

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**ANGELIQUE DEGRAFFENREID, ET AL.**

**v.**

**STATE BOARD OF MEDIATION, ET AL.**

**MISSOURI HOME CARE UNION**

**APPELLANT-RESPONDENTS,**

**RESPONDENT-APPELLANTS,**

**RESPONDENT-APPELLANT.**

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DOCKET NUMBER WD73330 cons/Wd73331, WD73332  
**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

DATE: May 01, 2012

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Appeal From:

Cole County Circuit Court  
The Honorable Patricia S. Joyce, Judge

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Appellate Judges:

Division Three: James E. Welsh, P.J., James M. Smart, Jr., and Joseph M. Ellis, JJ.

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Attorneys:

Lowell D. Pearson and Harvey M. Tettlebaum, Jefferson City, MO, for **appellant-respondents**.  
James Layton and William Sherman Vanderpool, III, Jefferson City, MO, and Arthur J. Martin,  
St. Louis, MO, for **respondent-appellants**.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

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No. WD73330 cons/WD73331, WD73332

Cole County

Before Division Three: James E. Welsh, P.J., James M. Smart, Jr., and Joseph M. Ellis, JJ.

Certain Plaintiffs bring a legal challenge to a union representation election under Missouri's Public Sector Labor Law. The Missouri Home Care Union sought an election to be certified to represent personal care attendants employed under the Consumer-Directed Personal Care Assistance Services Program.

The circuit court enjoined the State Board of Mediation from certifying the election in favor of the Union on the ground that the State Board of Mediation failed to promulgate mail-ballot election rules pursuant to Chapter 536 RSMo. The Union and the Plaintiffs (certain personal care attendants) appealed.

**AFFIRMED IN PART; REVERSED IN PART AND REMANDED.**

**Division Three holds:**

1. The trial court properly rejected the claims of the Plaintiffs under Article 1, Section 10 and Article 1, Section 29 of the Missouri Constitution, and under the Fourteenth Amendment due process clause of the United States Constitution.
2. The trial court properly rejected the claims of Plaintiffs under section 208.862.4, RSMo.
3. The trial court erred in determining that the election must be held invalid because the State Board of Mediation did not promulgate "rules" pursuant to Chapter 536 for mail-ballot elections. The Board did not violate the rule-making requirements of Chapter 536. In any event, even if rules for mail-ballot elections had been required to be promulgated, it would not necessitate that the election be held invalid, because the only action of the Board that was pursuant to allegedly unpromulgated rules was the approval of the stipulation between the election parties. Promulgated or not, there would have been authority to approve the stipulation and there would have been no reason to disapprove the stipulation. The approval of the stipulation was, by its

very nature, applicable only to a specific set of facts and could not constitute an interpretation of policy having future effect.

4. The Board's action in approving the stipulation was not governed by unpromulgated "underground" rules.

5. The Board's action in approving the stipulation was not unreasonable, arbitrary, or capricious, and did not involve an abuse of discretion.

The trial court's ruling is affirmed in part, and reversed in part. The case is remanded to the trial court with instructions to certify the election results.

Opinion by James M. Smart, Jr., Judge

May 01, 2012

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