Summary of SC97833, *Rebecca Karney and Johnny Miller v. The Department of Labor and Industrial Relations, et al.*

Appeal from the Jackson County circuit court, Judge James F. Kanatzar
Argued and submitted January 14, 2020; opinion issued March 31, 2020

Attorneys: The state was represented by Solicitor General D. John Sauer and Julie M. Blake of the attorney general's office in Jefferson City and Alyssa M. Mayer and Rachel M. Rivers of the attorney general's office in Kansas City; the office number is (573) 751-3321. Karney and Miller were represented by Joshua A. Sanders, John B. Boyd, John R. Boyd, Mark E. Parrish, Brianne N .Thomas, Erica Fumagalli and Raymond E. Salva of Boyd, Kenter, Thomas & Parrish LLC in Independence, (816) 471-4511.

The Missouri National Education Association, which submitted a brief as a friend of the Court, was represented by Sally E. Barker and Loretta K. Haggard of Schuchat, Cook & Werner in St. Louis, (314) 621-2626.

This summary is not part of the opinion of the Court. It has been prepared by 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: The state appeals the circuit court's judgment holding a statutory prohibition against picketing in public-sector labor agreements is unconstitutional. In a unanimous decision written by Judge Zel M. Fischer, the Supreme Court of Missouri affirms the judgment to the extent it enjoins the state from prohibiting unobtrusive picketing about matters of public concern in negotiations for a new labor agreement with the local union. The statute's prohibition against "picketing of any kind" is unconstitutional because it fails to recognize there are matters of public concern about which public employees retain their freedom of speech. It is appropriate to sever this phrase from the remainder of the statute, which is constitutional. The statute's prohibition against public employee strikes, however, was unchallenged and is not affected by this opinion, as it is well-settled that public employees are not permitted to strike.

Facts: In 2018, the legislature enacted section 105.585(2), RSMo, which provides, in pertinent part, that every labor agreement applicable to public employees shall "expressly prohibit … picketing of any kind" and "include a provision acknowledging that any public employee who … pickets over any personnel matter[] shall be subject to immediate termination of employment." Rebecca Karney and Johnny Miller are 911 dispatchers for the Jackson County sheriff's office and members of a local union. Their prior labor agreement allowed picketing. During negotiations over a new labor agreement, Karney and Miller sued the state's department of labor and industrial relations, the Jackson County sheriff, the county and the chair of the state board of mediation (collectively, the state), seeking declaratory and injunctive relief on the basis that section 105.585(2) violates their constitutional rights to equal protection, free speech, peaceable assembly and collective bargaining. Following a trial, the circuit court entered its judgment holding the statute unconstitutional and enjoining the state from using or applying the statute's prohibition against picketing in negotiating the dispatchers' collective bargaining agreement. The state appeals.

AFFIRMED.

Court en banc holds: (1) Although United States Supreme Court precedent permits some limits on the speech of public employees, section 105.585(2)'s unambiguous blanket prohibition against "picketing of any kind" is unconstitutionally broad. Given common understanding of "picketing" and the fact the statute expressly prohibits picketing in conjunction with a strike, "picketing of any kind" must be construed to include demonstrations and protests unrelated to an employee strike. Public employees have a right to exercise their freedom of speech about matters of public concern when that speech does not impede the efficiency of the public services the state performs through its employees.

(2) Section 105.585(2) is constitutional to the extent its requirement that labor agreements "include a provision acknowledging that any public employee … who pickets over any personnel matter[] shall be subject to immediate termination" is interpreted narrowly to personnel matters rather than to matters of public concern.

(3) The unconstitutional phrase in section 105.585(2) – "and picketing of any kind" – can be severed, leaving the remaining statute intact, complete and constitutional. The mere supplementary nature of the phrase leaves no question the remaining statute is one the legislature would have enacted had it known the rescinded portion was invalid.

(4) It is appropriate to enjoin the state permanently from using or applying the statutory prohibition against "picketing of any kind" because Karney and Miller have shown irreparable harm and they have no adequate remedy at law due to the ongoing nature of the labor agreements between their local union and the sheriff's office.