



In the Missouri Court of Appeals Eastern District

DIVISION THREE

AMERICAN FEDERATION OF	)	No. ED95131
TEACHERS, et al.,	)	
	)	
Respondents,	)	Appeal from the Circuit Court of
	)	the City of St. Louis
vs.	)	
	)	
RICHARD LEDBETTER, et al.,	)	Hon. Robert H. Dierker
	)	
Appellant.	)	FILED: May 17, 2011

Before Sherri B. Sullivan, P.J., Clifford H. Ahrens, J., and Lawrence E. Mooney, J.

PER CURIAM

The plaintiff teachers' union appeals the trial court's summary judgment declaring that the defendant school board has no duty to collectively bargain. We would reverse the judgment and remand the cause. However, in light of the general interest and importance of the question presented, we transfer this case to the Missouri Supreme Court pursuant to Rule 83.02.

Background

Appellants are the American Federation of Teachers, its St. Louis affiliate Local 420, and individual representatives Mary Armstrong and Byron Clemens (collectively, the Union). Respondents are the Board of Education of the Construction Career Center Charter School District and its individual members Richard Ledbetter, Paul

Shaughnessey, Gerald Hutchinson, Hattie Jackson, Terry Nelson, Don Pohl, Trip Zumwalt, and John Costello (collectively, the Board).

Because we do not reach the application of the law to the present facts, we need not recite the evidence in detail. In March 2008, the Board formally recognized Union as the exclusive collective bargaining representative for all teachers and other certified employees. Between May 13, 2008 and April 9, 2009, the parties met and conferred eighteen times to negotiate a collective bargaining agreement. But no agreement was reached. Union filed a petition for declaratory judgment asserting that the Board violated Missouri sunshine law and its employees' constitutional right of collective bargaining.

The parties subsequently submitted the case on cross-motions for summary judgment on stipulated facts. As relevant here, the trial court found that the Board did not bargain in good faith as that term is understood under federal labor law.¹ The trial court declared, however, that Missouri law imposes no duty on the employer even to "meet and confer" with a collective bargaining representative chosen by employees. Union appeals.

Standard of Review

This case is an action for declaratory judgment decided by summary judgment. The appellate standard of review for declaratory judgment is the same as in any court tried case: we will affirm the trial court's judgment unless there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law. *Guyer v. City of Kirkwood*, 38 S.W.3d 412, 413 (Mo. banc 2001)(citing *Murphy*

¹ While not central to the issue on appeal, the trial court also found that the Board violated the Sunshine Law, sections 610.015 and 610.022 RSMo 2000, by holding its February and March meetings in closed session without recording roll call votes. However, the court further found that such violations were minor and likely inadvertent and therefore did not warrant invalidation of the Board's action or an award of attorney fees to Union.

v. Carron, 536 S.W.2d 30, 32 (Mo. banc 1976)).

The purpose of summary judgment is to resolve cases in which there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. Rule 74.04(c)(6); *Grattan v. Union Elec. Co.*, 151 S.W.3d 59, 61 (Mo. banc 2004). Union asserts a point of legal error. Our review is *de novo*. *ITT Commercial Finance Corp. v. Mid-America Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. banc 1993).

Discussion

Union asserts that the trial court erred in declaring that Board has no duty to bargain in good faith with Union because: Union's members have a constitutional right to bargain collectively under Article I, section 29, of the Missouri Constitution; the Board has a corresponding duty to bargain with Union; and inherent in that duty is an expectation of good faith on the part of the public employer. In short, Union posits that employees' right of collective bargaining would be hollow if the employer remains free to thwart the process. Though no Missouri court has expressly interpreted Article I, section 29 to contain a duty of good faith, Union argues that the drafters of the Missouri Constitution intended - even assumed - that the right of collective bargaining inherently encompasses a duty of good faith because the duty was already well-established under federal law when the state constitutional provision was adopted. In other words, the drafters meant for the right to mirror then-existing federal protections. Additionally, *amici*² supporting Union's position contend that the Missouri Supreme Court's *Independence* decision mandates good faith through its expectation that "the point of

² The Missouri National Education Association and the St. Louis Police Officers' Association, Fraternal Order of Police, Lodge 68.

bargaining, of course, is to reach agreement.” *Independence-NEA v. Independence School Dist.*, 223 S.W.3d 131, 138 (Mo. banc 2007).

In response, the Board asserts that while Union’s members have a constitutional right to bargain collectively, Board’s conduct did comply with the Missouri Constitution and state statutory “meet, confer and discuss” process, which the parties adopted voluntarily to govern their negotiations.³ Board also contends that Missouri law does not impose, expressly or implicitly, a requirement of good faith. Board argues that the General Assembly has declined to codify a good faith requirement into existing public sector labor law⁴ and, even looking to federal law as Union proposes, the National Labor Relations Act specifically excludes employees of any state or political subdivision and thus would not aid Union’s members here. 29 U.S.C. §152(2). Board also contends that its conduct did not amount to a refusal to bargain collectively, but was rather to comply with Missouri statutes which prevent it from negotiating wages to be applied retroactively, and set time limits for notifying teachers of employment for the following school year and for the issuance of contracts to returning teachers. Additionally, *amicus*⁵ supporting the Board’s position explain that “good faith” in the labor law context is a term of art loaded with legal obligations, and argue that imposing such a duty on public employers would severely burden local governments and deter volunteer service on local school boards.

Article I, section 29, of the Missouri Constitution states that “employees shall have the right to organize and to bargain collectively through representatives of their own

³ Section 105.520 RSMo.

⁴ Even in the wake of *Independence*, legislative bills aiming to codify a good faith requirement have failed to pass out of committee. HB 2030 (2008), HB 1159 (2009), SB 473 (2009), HB 2227 (2010), SB 761 (2010).

⁵ The Missouri School Boards’ Association.

choosing.” Missouri’s public sector labor law, codified in section 105.500 *et seq.* RSMo, provides a procedural framework for collective bargaining for most public employees, but it expressly excludes law enforcement officers and teachers. The Missouri Supreme Court considered the fate of the latter in its *Independence* decision. There, the teachers’ union sought to enforce their constitutional right of collective bargaining after the school district rescinded their prior agreement, unilaterally instituted new terms, and refused to engage in further discussions with the union. The Court held that the constitution grants all public employees a right to bargain collectively, including those not covered by statutory labor laws. *Independence*, 223 S.W.3d at 139. When the procedural framework for bargaining is not codified, *i.e.*, for excluded employees, the Court recognized the role of their public employers to set the framework:

To be consistent with article I, section 29, the statute’s exclusion of teachers cannot be read to preclude teachers from bargaining collectively. Rather, the public sector labor law is read to provide procedures for the exercise of this right for those occupations included, but not to preclude omitted occupational groups from the exercise of the right to bargain collectively, because all employees have that right under article I, section 29. Instead of invalidating the public sector labor law to the extent that it excludes teachers, this Court’s reading of the statute recognizes the role of the general assembly, or in this case, the school district -- in the absence of a statute covering teachers -- to set the framework for these public employees to bargain collectively through representatives of their own choosing.

Id. at 136. Within that framework, “proposals are made and either accepted or rejected.”

Id. at 138. The employer remains free to reject any proposal. *Id.* at 136. While no “meet and confer” guidelines exist for employees excluded from Missouri’s statutory labor laws, by common understanding collective bargaining entails ““negotiations between an employer and the representatives of organized employees to determine the conditions of employment....”” *Id.* at 138 n.6 (quoting Black’s Law Dictionary (8th Ed. 2004)). “The

point of bargaining, of course, is to reach agreement.” *Id.* at 138. However, nothing requires a public entity to reach an agreement with its employee unions; the employer is free to reject any proposal. *Id.* And public employees are forbidden to strike. *Id.* at 133.

The foregoing recent pronouncements by our Supreme Court instruct that an employer of statutorily excluded employees must not only adopt procedures for collective bargaining but also participate in the process it created. Indeed, if one is granted the right to bargain, he must bargain with someone other than himself. The notion that an employer has no duty to engage with its employees’ representatives renders meaningless those rights guaranteed to employees under Article I, section 29. An employee’s constitutional right of collective bargaining necessarily implies a corresponding duty of the employer to facilitate the exercise of that right.

Thus we would hold, following *Independence*, that the trial court erred in declaring that employer had no duty to bargain or even to meet and confer with employees’ representative, and would reverse its judgment as to that declaration of the law.⁶ The public employer had a constitutional duty to engage in collective bargaining with the employees’ chosen representative, although the constitution does not require public employers to reach agreements with their employee associations.

The trial judge also found that the Board did not bargain in good faith as that term is understood under federal labor law. The question of whether Missouri law parallels federal law is presently undecided. We would remand for the trial court to consider whether the Union is entitled to relief under Missouri law. Because the Board argues that material facts are still genuinely disputed, both the Board and Union should be allowed to present additional evidence. However, in light of the general interest and importance of

⁶ We decline at this juncture to further clarify the nature of collective bargaining.

the question presented, we transfer this case to the Missouri Supreme Court pursuant to Rule 83.02.