

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

WEST CENTRAL MISSOURI REGION LODGE #50
OF THE FRATERNAL ORDER OF POLICE, ET AL.,

Respondents

v.

THE CITY OF GRANDVIEW, MISSOURI.

Appellant

DOCKET NUMBER WD77250

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: January 27, 2015

Appeal From:

Circuit Court of Jackson County, MO
The Honorable Sandra Midkiff, Judge

Appellate Judges:

Division Four
Alok Ahuja, C.J. Presiding, James Edward Welsh, J., and Tracey Mason-White, Sp. J.

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**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**WEST CENTRAL MISSOURI REGION LODGE #50 OF THE
FRATERNAL ORDER OF POLICE, ET AL., Respondents, v.
THE CITY OF GRANDVIEW, MISSOURI, Appellant**

WD77250

Jackson County

Before Division Four Judges: Ahuja, C.J. Presiding, Welsh, J., and Mason-White, Sp.J.

The City of Grandview appeals the circuit court's grant of summary judgment in favor of West Central Missouri Region Lodge #50 of the Fraternal Order of Police and its members who are current or former police officers, sergeants, and civilian members of the Grandview Police Department. The circuit court determined that the City's ordinance which established the collective bargaining framework for personnel in the Grandview Police Department violated article I, section 29 of the Missouri Constitution. In its appeal, the City contends that the circuit court erred in ruling that: (1) the City may not enact an ordinance requiring a secret ballot election as the designated method for employees to select a collective bargaining representative, (2) the ordinance was invalid because it did not allow supervisory and non-supervisory employees to be members of the same bargaining unit, (3) the ordinance was unconstitutional because it failed to establish a specialized procedural framework for the resolution of conflicts regarding the composition of collective bargaining units, (4) the Constitution requires the City to allow supervisory and non-supervisory employees to be represented by the same collective bargaining agent, (5) the ordinance was unconstitutional because, for the collective bargaining representative to be elected, it had to receive the votes of a majority of all eligible voters rather than the majority of the votes cast, (6) the ordinance was unconstitutional because it provided that the City would not pay any union representative for time spent preparing for or engaging in collective bargaining and would not enter into wage commitments that exceeded one year, (7) the ordinance was unconstitutional because the Board of Alderman retained the right to require the modification of the economic terms of any labor agreement in the event of a budget shortfall, and (8) the ordinance was unconstitutional because it gave the Board of Alderman the ability to modify the terms and conditions of employment for employees in the bargaining unit in the event a collective bargaining representative was decertified.

Reversed and remanded

Division Four holds:

(1) Given that the stipulated facts merely supported that, prior to the adoption of the ordinance, the Fraternal Order of Police demanded to be recognized as the exclusive bargaining representative, the circuit court erred in concluding, on the basis of *Eastern Missouri Coalition of Police, Fraternal Order of Police, Lodge 15 v. City of Chesterfield*, 386 S.W.3d 755 (2012) that as a matter of law an election was not necessary in this case and further erred in ruling that the City should immediately recognize the Fraternal Order of Police as the exclusive bargaining

representative of the proposed bargaining unit of Plaintiff Police Officers and Sergeants. The facts of this case demonstrate that the City had the right to enact its own framework for collective bargaining in the absence of state legislative action, and nothing within the Missouri Constitution or case law would prohibit the City from mandating that employees act through a secret ballot election to designate a collective bargaining representative.

(2) The Missouri Constitution does not define employees and sets no boundaries on the types of employees that may be included in a collective bargaining unit. Thus, because someone must act on behalf of the public employer, it is appropriate for the City in this case to exclude from an otherwise appropriate bargaining unit supervisory employees whose duties involve acting directly or indirectly in the interest of the employer in relation to other employees. Excluding supervisory employees from a particular bargaining unit does not deny those employees any collective bargaining rights. It merely allows the City to manage its work force and to exercise its discretion in legislating the collective bargaining framework.

(3) Nothing in the Missouri Constitution requires the City to create a procedural forum to make determinations about the scope of appropriate bargaining units within the City's police department. Indeed, in holding that the City's ordinance should have included a procedural forum for making determinations about the scope of appropriate bargaining units, the circuit court invaded the Board of Alderman's legislative province, in violation of the separation of powers provision contained in article II, section 1 of the Missouri Constitution.

(4) Article I, section 29 of the Missouri Constitution requires that employees be allowed to select a collective bargaining representative, not that they be permitted to choose from absolutely any conceivable representative without any limits. The enactment of a reasonable limitation by the City does not prevent the supervisory employees from selecting a "representative of their own choosing" within the meaning of article I, section 29 of the Missouri Constitution. The circuit court, therefore, erred when it declared, as a matter of law, that the City's ordinance was unconstitutional because it did not allow supervisory and non-supervisory employees to be represented by the same collective bargaining agent.

(5) We need not decide whether the City's framework which required that a labor organization receive more than 50 percent of the votes of all eligible voters to be designated and recognized by the City as the exclusive bargaining representative for all employees in the bargaining units is constitutional. It is apparent from the record that the number of police officers, sergeants, and civilian employees desiring to have the Fraternal Order of Police be their exclusive collective bargaining agent would exceed an absolute majority. Under the facts of this case, regardless of whether an election would require a simple majority or an absolute majority, it would result in the approval of a collective bargaining agent.

(6) Nothing in the ordinance prevents the City from negotiating with a labor union over whether union representatives should be compensated for collective bargaining activities. The mere fact that some issue is initially addressed in an ordinance providing a framework for negotiations does not mean that the City would be unwilling to negotiate over a change to that ordinance. The same is true of the limitations in the ordinance restricting the economic terms of any labor agreement to a one year term, allowing the Board of Alderman to retain the right to modify the economic terms of any labor agreement in the event of a budget shortfall, and

allowing the Board of Alderman to retain the ability to modify the terms and conditions of employment for employees in a bargaining unit in the event a collective bargaining representative is decertified. To the extent that the City may in the future refuse to negotiate concerning any of the terms addressed in the ordinance, the Fraternal Order of Police may challenge the City's refusal at that time, if it believes that the refusal violates the duty of a public employer to negotiate in good faith. Enactment of the ordinance itself, however, does not necessarily presage a future refusal to negotiate in good faith.

(7) As part of the judicial branch, the circuit court's authority in this case was limited to determining whether the ordinance violated article I, section 29 of the Missouri Constitution. The circuit court's declarations regarding the City's ordinance, however, crossed the line from adjudication to legislation. As such, the circuit court's declarations violated the separation of powers provision embodied in article II, section 1 of the Missouri Constitution. The circuit court engaged in legislative functions by imposing obligations on the City not found in the plain language of article I, section 29.

Opinion by James Edward Welsh, Judge

January 27, 2015

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