LEAGUE PREVAILS IN AMICUS SUPPORT OF THE CITY OF GRANDVIEW: COLLECTIVE BARGAINING LITIGATION

by Ivan Schraeder

The Missouri Municipal League (MML) filed an amicus curiae brief in support of the city of Grandview's appeal of an adverse collective bargaining lawsuit trial court decision. Grandview had been sued by the Fraternal Order of Police (FOP) seeking to challenge the City's ordinances on collective bargaining unit determinations; on the definition of "good faith" bargaining; on the process of elections to select an exclusive bargaining agent; and on elimination of certain topics from negotiations. The trial court ruled for the FOP and the city of Grandview appealed. The Western District Court of Appeals overturned the trial court and found on behalf of the City on all points except one relating to the number of votes needed to win a bargaining unit election.

The Court of Appeals determined that a city may adopt an ordinance regulating collective bargaining elections and may mandate elections to be conducted where there is no majority determination of who the employees want as an organization to represent them. The Court also determined that a city can require an election as the exclusive method for selection or rejection of a bargaining agent by employees.

The FOP challenged the constitutionality of the City's ordinance because it prohibited supervisors from being in the same unit as employees they supervised. FOP challenged the requirement that 50 percent of the unit eligible voters must choose a representative. FOP objected to the requirement that different unions had to represent supervisory units and the units supervised. It also objected to the requirement that employees who serve as the representative of employees do so without being paid by a city while performing such duties. FOP challenged the limit of contracts to a one-year duration. Finally, FOP challenged the right of the City to change terms of a contract in the event of a budgetary shortfall or when an exclusive bargaining agent is decertified.

The Court determined that the City was free to set out what it allows for inclusion in bargaining units relying on decisions issued under the state's "meet and confer" law (Sec. 105.500 RSMo et seq). The potential for conflict of interest was assessed and used as a basis for creating separate bargaining units for employees where such conflicts can arise. The Court determined that someone must act on the behalf of a city; and therefore, it is proper to exclude supervisors from units of supervised employees. Such delineation does not violate the rights to bargain collectively, and a city in exercising its legislative power can regulate such bargaining units.

The Court also found that the Missouri Constitution does not require a city to create a procedural forum to establish appropriate bargaining units. Having such a procedure is acceptable but not constitutionally required. Thus, a city could specify what bargaining units it would recognize for purposes of permitting employees to exercise their rights to bargain collectively or to select their representatives. What the Court did allow was for an organization that disagrees with the designation by a city of who are "supervisors" to seek review in the circuit courts. The ability

to challenge supervisory designation is not a new concept. It was adopted under the "meet and confer" cases.

The Court of Appeals found specifically that the trial court invaded the separation of powers doctrine when it substituted its judgment for the Board of Aldermen's legislative province in Grandview. MML specifically fought to preserve the separation of powers doctrine in its amicus brief.

As to the limitation of selection of bargaining agents, the Court of Appeals determined that a city has the legal ability to make decisions as to what entities can qualify to represent its workers so long as the limitations are not "unreasonable or arbitrary barriers" to the exercise of the employees to select agents of their choosing. The Court found nothing arbitrary or unreasonable about the ordinance prohibition of the same union representing employees and also representing supervisors. This preserves the ability of a city to have someone serve the interests of a city in relation to employees. The Constitution does not provide an absolute right to select representatives of employees' choosing without any limits. So long as the limitation does not interfere with employees' rights to bargain, limitations are proper determinations for the local government to make using its legislative prerogatives.

The Court next took up the limitations placed on payment of employees who serve as union representatives and also mandating single-year contracts. The Court did not find such restrictions to violate the Constitution, and in doing so, the Court pointed out that negotiations may result in a city having to amend existing ordinances to implement items agreed to during negotiations. This setting of preconditions to negotiations in an ordinance is not a violation of employees' rights to engage in collective bargaining. The Court stated that the "mere fact that some issue is addressed in an ordinance . . . does not mean that a city would be unwilling to negotiate over a change to that ordinance."

The Court determined that the Constitution does not place any affirmative duties on a city except to meet and confer in good faith. Since the legislature has not enacted any guidelines, it is left to a city using its legislative authority to make such determinations. If a city fails to negotiate some particular issue, the union can seek court review. However, enactment of an ordinance setting some limitations is not in and of itself a violation of the duty to negotiate in good faith.

What can be learned from this decision that is the definitive authority on what a local government can do is that the municipality has a great degree of latitude when exercising its legislative authority in relation to collective bargaining. It is the same discretion that exists for exercising other city processes where ordinances are enacted. So long as a city acts in a non-arbitrary or reasonable manner, it can regulate the activity of the collective bargaining process as it chooses. If it acts arbitrarily or unreasonably, the union and employees can then use the court system to address the suggested violations.

The Missouri courts have spoken definitively as to what rights employees have and how local governments can meet their governing obligations without violating the Constitution. The proper exercise of legislative prerogatives has been preserved. The Missouri Municipal League's amicus arguments assisted the city of Grandview in establishing a framework for collective bargaining consistent with all of the decisions issued by the Missouri courts to date.

Municipal officials should take the time now to determine what is good for each of their needs and ability to manage the local work force before presented with a request for recognition for police officers. It is better to be prepared in advance than to wait and have to react in a way that limits choices that could have been made before a problem arises. Police departments and local governments throughout the state are being faced with collective bargaining requests that cannot be ignored. Now is the time to prepare by obtaining proper and skilled advice.❑

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