

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI

EASTERN MISSOURI COALITION OF)	
POLICE, FRATERNAL ORDER OF)	
POLICE, LODGE 15,)	July 15, 2010
)	
Plaintiff,)	Cause No. 09SL-CC00023
)	
v.)	Division No. 20
)	
CITY OF CHESTERFIELD,)	
)	
Defendant.)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

Cause having previously been called for hearing on plaintiff's petition for declaratory judgment, evidence having been adduced and the parties having filed their proposed finding of fact and conclusions of law, the court finds and orders:

FINDINGS OF FACT

1. Plaintiff Fraternal Order of Police Lodge 15 ("FOP Lodge 15") is an incorporated organization formed and existing under the laws of the State of Missouri.
2. The City of Chesterfield ("the City") is a municipal corporation formed and existing under the laws of the State of Missouri.
3. The City operates the Chesterfield Police Department ("Chesterfield Police"), which is the City department having law enforcement authority for the City.
4. In 2007, members of the Chesterfield Police Department, specifically the executive board of the Chesterfield Police Officers' Association, contacted FOP Lodge 15 regarding the procedural steps to collective bargaining.

5. The Chesterfield Police Officers' Association is a sister lodge to FOP Lodge 15 comprised of FOP Lodge 15 members that are employed as police officers and sergeants for the City of Chesterfield.

6. In July and August 2007, fifty-three (53) police officers and sergeants employed by the City's police department signed a "Fraternal Order of Police, Lodge 15, Representation Interest Card." By signing the Representation Interest Card, the officers and sergeants stated that they support the certification of the FOP Lodge 15 as their exclusive representative in collective bargaining and allowed FOP Lodge 15 to act as their "representative and exclusive bargaining agent for the purpose of collective bargaining, including bargaining with regard to wages, hours and working conditions." The cards were maintained in plaintiff's files and offered into evidence as plaintiff's group exhibit 2. Defendant's objections are overruled and exhibit 2 is admitted into evidence.

7. The number of signed cards demonstrated an overwhelming majority of the City's police officers and sergeants support FOP Lodge 15 to act as their exclusive representative for collective bargaining.

8. On September 5, 2007, FOP Lodge 15 legal counsel sent correspondence to the members of the City of Chesterfield City Council, Chief of Police and Mayor requesting "voluntary recognition of [FOP] Lodge 15 as the exclusive bargaining representative for the City of Chesterfield Police Officers and Sergeants as its Bargaining Unit for the purposes for collective bargaining." (Ex.'s 4-6).

9. On October 3, 2007, the City of Chesterfield sent correspondence to FOP Lodge 15 indicating that:

The City of Chesterfield respectfully declines to voluntarily recognize the Eastern Missouri Coalition of Police, FOP, and Lodge 15 as the exclusive representative

for its police officers and sergeants. It is in the position of the City of Chesterfield that all matters relating to third-party representation of employees of the City be processed in accordance with applicable regulatory guidelines and procedures.

(Ex.7)

10. On October 4, 2007, FOP Lodge 15 sent a reply to the City again requesting voluntary recognition of FOP Lodge 15 as the exclusive bargaining representative of the City's police officers and sergeants. (Ex. 8).

11. On October 17, 2007, FOP sent further correspondence to the City requesting the City to "establish a framework for police officers to bargain collectively through representatives of their own choosing." (Ex. 9).

12. On October 31, 2007, the City replied to FOP Lodge 15 indicating in part:

We reviewed your letter of October 17, 2007 and disagree with the assertion that the City of Chesterfield has a duty to establish a framework for police officers to choose their union representative for purposes of collective bargaining. The court's opinion, correctly recognizing Chesterfield's membership in the legislative branch of state government, states "...this Court's reading of the statute [sic] recognizes the role of the general assembly, or in this case, the school district – in the absence of the statute [sic] covering teachers – to set the framework for these public employees to bargain collectively through representatives of their own choosing." "Role" is clearly different than "duty."

Nothing in Independence – National Education Association v. Independence School District, 223 S.W.3d 131 (Mo. 2007) requires or mandates that Chesterfield voluntarily recognize FOP Lodge 15 as the bargaining unit for the City's Police Officers and Sergeants. As indicated in our previous letter, dated October 3, 2007, the City of Chesterfield respectfully declines to voluntarily recognize FOP Lodge 15 as the exclusive bargaining representative for its Police Officers and Sergeants.

Acting in it [sic] legislative capacity, the City of Chesterfield declines, at this time, to establish a framework for recognition of FOP Lodge 15 as the bargaining representative for the City's Police Officer and Sergeants...

(Ex. 10).

13. On November 18, 2008, FOP Lodge 15 sent correspondence to the City, indicating in part:

As part of the recognition process for police officers, Missouri law requires that a framework for collective bargaining be established by the City. The issues that the framework would need to address include the process for recognition, the method of requiring and holding bargaining sessions and method of adoption, modification or amendment to agreements from bargaining sessions. The framework must include the ability of employees to meet, confer and discuss proposals and for results of such discussion to be put into writing and presented to the “appropriate administrative, legislative or other governing body in the form of an ordinance, resolution, bill or other form require for adoption, modification or rejection.” Independence – National Education Association v. Independence School Dist., 223 S.W.3d 131 (Mo. banc 2007).

(Ex. 11).

14. On December 8, 2008, the City responded to FOP Lodge 15’s November 18, 2008 correspondence stating in part:

The City of Chesterfield considers that here [sic] has been no change of circumstances requiring it to alter the position taken in our October 31, 2007 letter to the Fraternal Order of Police. Neither the legislature’s inaction during the 2008 session, nor any other circumstances-- including the *Jennings* case leads us to believe that the City is required to act on the Fraternal Order of Police request at this time.

(Ex. 12).

15. In February and March of 2009, sixty-eight (68) police officers and sergeants employed by the City signed or re-signed FOP Lodge 15 Representation Interest Cards due to officer turnover since 2007. These cards were offered into evidence as plaintiff’s group exhibit 3. Defendant’s objections are overruled and plaintiff’s group exhibit 3 is admitted into evidence. At the time of the signing in 2009, there were approximately ten sergeants and sixty-four or sixty-five police officers employed by the City.

16. At trial, two police officers and one sergeant testified to the authenticity of their signatures on the Representation Interest Cards from 2009.

17. The City has not voluntarily recognized FOP Lodge 15 as the exclusive bargaining representative for police officers and sergeants.

18. The City has not created a framework for collective bargaining for its police officers and sergeants.

CONCLUSIONS OF LAW

19. The Court has jurisdiction over this action for declaratory judgment pursuant to Mo. Rev. Stat. §527.010. Venue is proper in this Court pursuant to Mo. Rev. Stat. §508.010 because Defendant City's principal place of business is in St. Louis County, Missouri.

20. FOP Lodge 15 has standing to sue on behalf of its members through the doctrine of associational standing. An association can have standing in either one of two ways: (1) by seeking judicial review from injuries to its own rights or (2) by seeking to vindicate whatever rights its members may enjoy. Ferguson Police Officers Association v. City of Ferguson, 670 S.W.2d 921, 924 (Mo.App.E.D. 1984) citing Warth v. Seldin, 422 U.S. 490, 511 (1975). When an association is not itself affected by the actions of a party, the association has standing to sue the adverse party on behalf of its members if associational standing exists. Bankers Assoc. v. Div. of Credit Unions, 126 S.W.3d 360, 363 (Mo.banc 2003). The Missouri Courts have long applied the United States Supreme Court's test for associational standing to Missouri associations. Ferguson Police, 679 S.W.2d at 924.

Before an association can bring suit on behalf of its members, the following criteria must be met: (1) the members must have standing to bring suit in their own right; (2) the interests the association seeks to protect must be germane to its purpose; and (3) neither the claim asserted nor the relief requested must require the participation of individual members in the lawsuit. Id. citing Hunt v. Washington State Apple Advertising Comm’n, 432 U.S. 333, 343 (1977).

A. FOP Lodge 15’s members have standing to bring suit in their own right. The first element of associational standing requires that the association allege that “its members, or any of them, are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought suit.” Ferguson Police, 670 S.W.2d at 924 citing Warth v. Seldin 442 U.S. at 511.

Here, the members of FOP Lodge 15 have been denied their constitutional rights to bargain collectively through representatives of their own choosing as guaranteed by Article 1, Section 29 of the Missouri Constitution. FOP Lodge 15’s members are suffering immediate and continuing injury from the City’s ongoing refusal to adopt a framework for collective bargaining for its police officers and sergeants. Any member of FOP Lodge 15 employed by the City could bring a suit against Defendant City in their individual capacity analogous to Plaintiff’s current suit.

B. The interests FOP Lodge 15 seeks to protect are germane to its purpose. The court in Ferguson Police Officers Association v. City of Ferguson, found that the second element of associational standing was met given that the goals of the association were to “promote the welfare of its members and to improve their working conditions”

and the association's suit sought to protect the members constitutional rights thus improving their working conditions and welfare in general. 670 S.W.2d at 925. The court went on to say that the "members of the association agreed to bring the suit and feel it is in their best interest." Id.

Here, FOP Lodge 15 seeks to protect its members' constitutional rights to collectively bargain as guaranteed by Article 1, Section 29 of the Missouri Constitution. The Constitution and By-Laws of FOP Lodge 15 states that it is associated for the purpose of supporting and defending the constitution of the United States and the State of Missouri. (Ex. K, pg. 1). Fighting for and defending the constitutional rights of its members is one of the primary principles of FOP Lodge 15 and one of the main reasons the association was formed.

C. The members need not participate individually in the lawsuit to obtain the relief requested. A request for prospective relief generally does not require membership participation, in contrast to a case where money damages or some other relief is sought that is specific to individual members. Bankers Assoc., 126 S.W.3d at 363; Ferguson Police, 670 S.W.2d at 925-926.

Here, like the plaintiff in Ferguson Police, Plaintiff seeks a declaratory judgment in order to determine the rights of its members. Therefore, FOP Lodge 15's members are not individually required in this suit to obtain the court's determination of the rights, obligations, and liabilities that exist among the parties.

Defendant argues that Plaintiff does not have standing under Wrinkle v. Local 2, 867 S.W. 2d 633 (Mo. App. S.D. 1993). Wrinkle is distinguishable from the case at hand. In Wrinkle, a group of union members, "the intervenors," sought review of a State Board

of Mediation decision dismissing their request to be placed in a bargaining unit consisting only of themselves. 867 S.W.2d at 634. The intervenors were nineteen (19) employees of a public body and members of a bargaining unit comprised of sixty (60) employees. Id. The court held that the intervenors were neither a public body nor a bargaining unit within the meaning of the governing statute §105.525 and therefore did not have the right to appeal the decision. Id. at 637.

Here, unlike the plaintiffs in Wrinkle, no one has been recognized as the bargaining representative of the City's police officers and sergeants because of the City's failure to recognize Plaintiff as their exclusive bargaining representative, hold a certification election, or adopt a framework for collective bargaining. Here, Plaintiff fights for the constitutional rights to collectively bargain through representatives of its members' choosing.

21. The City has a duty to establish a framework for collective bargaining for its police officers and sergeants. In May of 2007, the Missouri Supreme Court held that all employees, including all public sector employees, have the right to bargain collectively through representatives of their own choosing based upon Article I, Section 29 of the Missouri Constitution. Independence, 223 S.W.3d at 133. The Court went on to explain how employees that had been excluded by Section 105.510, such as teachers and police officers, would be provided collective bargaining rights. In its case pertaining to teachers, the Court found:

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.

Independence, 223 S.W.3d at 136.

Here, in the absence of a statute governing police officers, it is the City's role to set the framework for these public employees to bargain collectively through representatives of their own choosing. The City argues that it does not have a "duty" to set a framework and is not specifically required by Independence to set a framework.

In its Motion to Dismiss and again at trial, the City argued that the term "role" in the Court's decision in Independence does not mean the City has the "duty" to establish a framework for collective bargaining. This court has already ruled on this differing interpretation of the holding in Independence. In its "Order Denying Motion to Dismiss" issued on April 22, 2009, this Court dismissed the City's Motion to Dismiss and held as follows:

Defendant argues the term "role", used by the Court in its opinion, does not mean the City of Chesterfield has the "duty" to establish the framework. Essentially, defendant is asserting that even if plaintiff has a right, there is no remedy that this court can afford it if defendant refuses to allow plaintiff to exercise that right. The court finds the holding in Independence does establish a duty on the part of the City to establish the framework for collective bargaining in the absence of a statute enacted by the general assembly. Defendant's motion to dismiss for failure to state a claim is denied.

(Legal File).

Basic legal principles are easily applied to the context of the Independence decision which recognized that police officers have a right to bargain collectively through representatives of their own choosing. Independence, 223 S.W.3d at 133, 139. Since the basic corresponding legal principle to any right is a duty, one person or entity cannot

have a legal right to do something without another person or entity having some legal duty to act. *See generally* Wesley Newcomb Hohfeld, Fundamental Legal Conceptions as Applied in Judicial Reasoning, 26 Yale L. J. 710 (1917). Otherwise, the police officers' right to collectively bargain is effectively extinguished by the City sitting on its hands and refusing to act.

Here, it is the City of Chesterfield's duty to establish a framework for collective bargaining for its police officers and sergeants. By failing to do so, the City has deprived its employees of their rights under Article 1, Section 29 to bargain collectively through representatives of their own choosing.

21. The separation of powers doctrine does not restrict the city from establishing a framework for collective bargaining for its police officers and sergeants.

The Independence Court explicitly discusses the separation of powers argument from City of Springfield v. Clouse, 206 S.W.2d 539 (1947) which mirrors the City's argument that legislative rule-making power cannot be delegated and that it is the role of the legislature to deal with the employees excluded by the public sector labor law. Independence, 223 S.W.3d at 135. The Court in Independence stated that this argument is based on the "largely defunct nondelegation doctrine" which has been "largely abandoned in Missouri" and "has rightly been called an 'anachronism.'" Id. There is nothing in the law that requires a public entity to do anything more than meet and confer with employee representatives; they are free to reject any proposal and are not required to agree to any proposal. Id. at 136. The Independence Court unambiguously states that under this interpretation, no legislative power or prerogative is being delegated. Id. In Lenette Realty & Investment Co. v. City of Chesterfield, 35 S.W. 3d 399 (Mo. App. E.D.

2000), plaintiff appealed the trial court's refusal to order the defendant city to adopt plaintiff's plan for rezoning. The trial court instead found the existing zoning restriction invalid and ordered the city to place a reasonable zoning classification on the properties. The appellate court affirmed the decision of the trial court, stating that a judicial command to a municipality dictating how to zone property within its boundaries would raise serious questions of the separation of powers of the legislative and judicial branches which were not implicated by the court's order to place "reasonable zoning classifications" on the property. In this case, plaintiff is not requesting, and the court is not ordering, that defendant City establish or adopt a particular framework. Rather, the City is ordered to adopt a reasonable framework of its choosing for collective bargaining.

The City's refusal to voluntarily recognize FOP Lodge 15 as the exclusive collective bargaining representative for the City's police officers and sergeants, refusal to hold a certification election, and refusal to adopt a framework for collective bargaining has violated the constitutional rights of the City's police officers and sergeants guaranteed in Article 1, Section 29.

22. The appropriate scope of the bargaining unit includes the city's police officers and sergeants. Under Missouri law, an appropriate bargaining unit is a unit of employees "in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned." §105.500 R.S.Mo. (2000). In this context, the typical definition of "employee" excludes managerial or supervisory employees because their inclusion could create conflicts of interest or because they have an insufficient community of interest with the other workers. Baer v. Civilian Personnel Div., 747 S.W.2d 159, 163 (Mo.App.W.D. 1988) citing Missouri National Education Association v.

Missouri State Board of Mediation, 695 S.W.2d 894, 898 (Mo.banc 1985). There are seven factors to determine the supervisory status of an employee:

(1) The authority to effectively recommend the hiring, promotion, transfer discipline or discharge of employees; (2) the authority to direct and assign the work force; (3) the number of employees supervised and the number of other persons exercising greater, similar, or lesser authority with respect to the same employees; (4) the level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employees; (5) whether the supervisor is primarily supervising an activity or is primarily supervising employees; whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees; (7) the amount of independent judgment and discretion exercised in the supervision of employees.

Baer v. Civilian Personnel Div., 747 S.W.2d at 164 citing Western Missouri Public Employees, Local 1812 and Missouri State Council 72, American Federation of State, county and Municipal Employees v. Jackson County, Missouri Department of Corrections, Public Case No. 90 (SBM 1976).

Here, the City's police officers and sergeants have a clear and identifiable community of interest and thus are an appropriate bargaining unit. At trial, a Chesterfield police officer and sergeant both agreed that the police officers and sergeants represent an appropriate unit with similar interests. The police officers and sergeants are all hourly employees working together in the same police department to handle the City's police calls. They have similar hours and benefits that operate on different scales. The City's police officers and sergeants are both P.O.S.T. certified and have powers of arrest. The police officers and sergeants have a common supervisor, the lieutenant, who supervises both the officers and the sergeants.

Any form of supervision by the City's sergeants is limited to supervision of work at a scene. The only form of discipline that the City's sergeants can impose on a police

officer is an oral reprimand which has to be approved by someone higher in the chain of command. The City's sergeants can not promote, demote, hire, or fire the police officers.

The City's police officers and sergeants comprise an appropriate bargaining unit since they share a clear and identifiable community of interest and thus should be included in the same bargaining unit.

JUDGMENT

Judgment shall be entered in favor of Plaintiff. Defendant shall expeditiously establish a framework for collective bargaining which will include: the scope of an appropriate bargaining unit which will include police officers and sergeants, procedures for the election process for certifying FOP Lodge 15 as the exclusive bargaining unit for the City's police officers and sergeants, including the date, time, and place of election, the procedures for holding an election, and the procedures for the meet and confer process.

SO ORDERED: _____
Judge Colleen Dolan, Division 20

cc: Gregory Kloeppe, Danielle Thompson, attorneys for plaintiff
Robert Heggie, Harold O'Rourke, Mark Mittleman, attorneys for defendant