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Public Employee Bargaining Rights: An Avenue for Success for the Majority or a Trap for the Minority?

*Wrinkle v. International Union of Operating Engineers, Local 2, AFL-CIO*¹

I. INTRODUCTION

The rights of public employees are governed by state statute and the state or federal constitution.² *Wrinkle*, a case of first impression in Missouri,³ presents the issue of whether a group of employees, constituting a minority of an existing bargaining unit, have the right to appeal a State Board of Mediation determination which prevented them from forming a separate bargaining unit.

II. FACTS AND HOLDING

Nineteen employees ("Employees") of the utilities operation of Poplar Bluff, Missouri ("City") brought suit against the International Union of Operating Engineers, Local, AFL-CIO ("Union").⁴ The Employees of the City were members of a labor bargaining unit comprised of approximately 60 employees which was represented by the Union.⁵ The Employees sought judicial review of the State Board of Mediation's ("Board") decision to dismiss their request to be placed in a separate bargaining unit.⁶

The City's utilities operation consisted of three divisions which were represented by two labor bargaining units.⁷ Each bargaining unit had its own labor agreement with the City.⁸ The Employees who brought suit worked in the Electric Distribution division of the utilities operation and were in a bargaining unit with some employees from the Plant Maintenance and Office Division.⁹

In 1990, the City petitioned the Board for "Clarification or Amendment of Bargaining Unit" in order to separate the bargaining units into three units, representing each separate division of the utilities operation: (1) Electric

1. 867 S.W.2d 633 (Mo. Ct. App. 1993).

2. Michael Pritchett, Comment, *Public Employee Labor Law in Missouri*, 51 Mo. L. Rev. 715 (1986).

3. *Wrinkle*, 867 S.W.2d at 634.

4. *Id.*

5. *Id.*

6. *Id.* at 635.

7. *Id.* at 634. The divisions are: (1) Electric Distribution; (2) Water Distribution/Sewer Collection; and (3) Plant Maintenance and Office. *Id.*

8. *Id.*

9. *Id.*

Distribution; (2) Water Distribution/Sewer Collection; and (3) Plant Maintenance and Office.¹⁰ The City and the Union agreed to abide by the Board's ruling on the issue.¹¹

Consistent with the City's petition, the Employees (hereinafter referred to as "Intervenors") filed a "Petition for Intervention" with the Board, seeking recognition as a separate and independent bargaining unit within the Union, but apart from the Plant Office and Maintenance Division.¹² In support of their position, the Intervenors maintained that the Plant Office and Maintenance employees' interests were not sufficiently similar to theirs.¹³ The Plant Office and Maintenance employees, a majority of the bargaining unit, held superior power in negotiating safety issues affecting the Intervenors, and had the ability to advance their own interests by comparing their status to the higher-paid Intervenors. Therefore, as a minority, the Intervenors could not protect their own interests as long as the majority of the unit was not part of the Electric Distribution Division.¹⁴ The Board granted the Intervenors' petition.¹⁵

After an evidentiary hearing, the Board issued its decision stating that it would neither grant the City's request to replace the two bargaining units with three units, nor would it grant the Intervenors' request for removal from their present bargaining unit.¹⁶ After the Board dismissed both petitions, the Intervenors filed a "Petition for Review" in the Circuit Court of Butler County.¹⁷ The petition alleged that the Intervenors were aggrieved by the Board's decision and named the Union and the Board as defendants.¹⁸ The trial court affirmed the Board's decision.¹⁹ Subsequently, the Intervenors appealed to the Missouri Court of Appeals, Southern District, claiming that their request to be placed in a separate bargaining unit was improperly dismissed by the Board.²⁰

On appeal, the Union contended that only a majority representative or the public employer could file a petition for clarification or amendment of a

10. *Id.* at 635. The City filed the petition because (1) the manager of the Plant Maintenance and Office division was operating under two contracts stemming from the two bargaining units; (2) the division would aid the City in "job bidding" by placing all employees who work in a similar environment under a single labor contract; (3) the division would improve worker safety and allow more qualified employees to be assigned to jobs for which they are eligible; and (4) the divisions have grown and diversified which creates a lack of common interest when negotiating with the City. *Id.*

11. *Id.* The agreement was pursuant to an addendum attached to the labor agreement which read: "With regard to the City's proposal to separate the bargaining units into three groups . . . it is agreed between the parties to abide by the State Board of Mediation's ruling on this issue." *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.* The Intervenors joined the City as a party and the City filed an answer admitting the allegations of Intervenors' petition. *Id.* at 636.

19. *Id.*

20. *Id.*

bargaining unit or appeal a decision issued by the Board.²¹ According to the Union, the Intervenor was neither the majority representative nor the public employer, and as such, the Intervenor's appeal should have been dismissed for lack of jurisdiction.²² The Intervenor's brief did not argue their right to appeal.²³

The court of appeals noted that the case was one of first impression and held that the law of Missouri does not grant public employees, constituting a minority faction of a union-represented bargaining unit, the individual right to judicial review because they are not a bargaining unit as defined by the State Board of Mediation.²⁴

III. LEGAL BACKGROUND

The rights of private employees in all states are protected by the National Labor Relations Act ("NLRA").²⁵ Public employees are not covered by the NLRA.²⁶ The rights of public employees are protected by state statute and the state or federal constitution.²⁷

A. Constitution

In 1947, in *City of Springfield v. Clouse*,²⁸ the Missouri Supreme Court recognized that the right of public employees to organize into labor organizations was insured by federal and state constitutional guarantees of the freedom of speech, assembly, and petition.²⁹ In *Parkway School District v. Parkway Ass'n of Educ.*,³⁰ the Missouri Supreme Court held that public employees have the right to join organizations and select representatives to negotiate with their employers.³¹ In making this determination, the *Parkway* Court relied on Article I, §§ 8 and 9 of the Missouri Constitution, which provide public employees the rights of freedom of expression and association.³²

21. *Id.*

22. *Id.* The Union cited no cases supporting their contention. *Id.* at 637.

23. *Id.* at 637.

24. *Id.*

25. 29 U.S.C. §§ 151-169 (1988).

26. National Labor Relations Act § 2(2)-(3), 29 U.S.C. § 152(2)-(3) (1988).

27. Pritchett, *supra* note 2, at 715.

28. 206 S.W.2d 539 (Mo. 1947).

29. *Id.* at 542.

30. 807 S.W.2d 63 (Mo. 1991).

31. *Id.* at 66-67.

32. *Id.* at 66.

B. Missouri Statute

Missouri's first public employee bargaining statute was enacted by the General Assembly in 1965.³³ This act was replaced by the Public Sector Labor Law ("PSLL") in 1967, which, along with one amendment,³⁴ remains Missouri's statute governing public employee bargaining.³⁵ The constitutionality of the PSLL was affirmed by the Missouri Supreme Court in 1969 in *State ex rel. Missey v. City of Cabool*.³⁶

The PSLL provides that public employees, excluding the police, deputy sheriffs, highway patrolmen, members of the national guard and teachers, have "the right to form and join labor organizations and to present proposals" to their employers regarding wages, hours, and working conditions "through the representative of their choosing."³⁷ This section of the PSLL further provides that public employees cannot be discriminated against on the basis of exercising such rights nor intimidated or coerced into joining or not joining a labor organization.³⁸

In order to promote more effective and efficient labor negotiations, the PSLL authorizes employees to form "bargaining units," which are represented by a union, to negotiate with employers regarding employment conditions.³⁹ The PSLL does not specifically define what constitutes a "bargaining unit."⁴⁰ However, the PSLL provides the Board with the authority to determine what constitutes a "bargaining unit," and whether a particular labor organization has the requisite majority support to become the exclusive bargaining representative of that unit.⁴¹ In order to make such determinations, the Board holds a hearing in which it evaluates all of the evidence relevant in determining each party's role in the labor negotiation process.⁴² The Board then examines the PSLL's definitions of "appropriate unit"⁴³ and "exclusive bargaining representative."⁴⁴ A bargaining

33. See MO. REV. STAT. §§ 105.500-530 (Supp. 1965) (amended in 1978 and 1986). The parameters of Missouri's public employee bargaining rights, upon which the PSLL was based, were originally set forth by the Supreme Court in 1947 in *Clouse*, 206 S.W.2d 539 (Mo. 1947).

34. See MO. REV. STAT. § 105.510 (1986).

35. MO. REV. STAT. §§ 105.500-530 (1986).

36. 441 S.W.2d 35 (Mo. 1969).

37. MO. REV. STAT. § 105.510 (1986). If an exclusive bargaining representative, chosen by the public employees of an appropriate unit, presents proposals relative to the conditions of employment to the public body or its designated representative, the PSLL dictates that the parties shall meet, discuss and confer on the proposals. *Id.*

38. *Id.*

39. *Id.* § 105.525 (1986); see *Parkway*, 807 S.W.2d at 67-68.

40. *Parkway*, 807 S.W.2d at 67-68.

41. MO. REV. STAT. § 105.525 (1986). A labor organization having the majority support of the members or a bargaining unit is the majority representative.

42. *Parkway*, 807 S.W.2d at 68.

43. MO. REV. STAT. § 105.500(1) (1986) (defining appropriate unit as "a unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned"). *Id.*

unit is thus a group of employees fitting within the definition of "appropriate unit," which the Board deems to be an appropriate bargaining unit for negotiating with a public employer.⁴⁵

After the Board has made a determination about the appropriateness of a bargaining unit in a particular situation, "the majority representative⁴⁶ or the public employer may file" with the Board "a petition for clarification of a bargaining unit or amendment of any certification issued by the chairman of the Board."⁴⁷ Therefore, under the PSLL the Board has discretion to make all rulings regarding public employee bargaining rights when a dispute arises between public employers, unions or public employee bargaining units.⁴⁸

After the Board has rendered a decision concerning the appropriateness of a bargaining unit, the appropriate administrative body,⁴⁹ or any of the bargaining units that are aggrieved by the decision, has the right to judicial review.⁵⁰ A party is deemed aggrieved "when the judgment operates prejudicially and directly upon his personal or property rights or interests" and such rights or interests are presently attainable rather than "merely a possible remote consequence."⁵¹ Original jurisdiction for appeal of the Board's decision is vested in the circuit courts.⁵² Further appeal of the Board's decision following the circuit court's review rests in the appellate courts.⁵³ The appellate court is to review the findings and decisions of the Board rather than the circuit court's judgment.⁵⁴

Further review of the Board's decision, outside the scope of the PSLL, is granted by the Administrative Procedure and Review Act which provides for

44. *Parkway*, 807 S.W.2d at 67; MO. REV. STAT. § 105.500(2) (1986) (defining exclusive bargaining representative as "an organization which has been designated or selected by majority of employees in an appropriate unit as the representative of such employees in such unit for purposes of collective bargaining"). *Id.*

45. *Id.* at 67-68.

46. A labor organization (union) that has the majority support of a bargaining unit, thus allowing it to act as the exclusive bargaining representative for the unit. Pritchett, *supra* note 2, at 727.

47. 8 CSR § 40-2.050. A rule promulgated by the Board pursuant to MO. REV. STAT. § 295.070.1 (1986), which grants the Board the authority to prescribe the procedure for which they will review bargaining unit status.

48. §§ 105.500-.530; *see Parkway*, 807 S.W.2d 30 (Mo. 1991).

49. The public body defined in MO. REV. STAT. § 105.500(3) (1986) as "the State of Missouri, or any officer, agency, department, bureau, division, board or commission of the state, or any other political subdivision of or within the state." *Id.*; *see also Wrinkle*, 867 S.W.2d at 636.

50. MO. REV. STAT. § 105.525 (1986).

51. *Hertz Corp. et al. v. State Tax Commission*, 528 S.W.2d 952, 954 (1975).

52. MO. REV. STAT. § 105.525 (1986) "[A]ppel may be had to the circuit court of the county where the administrative body is located or in the circuit court of Cole County." *Id.*

53. *City of Cabool v. Missouri State Bd. of Mediation*, 689 S.W.2d 51, 53 (Mo. 1985).

54. *Id.* Reviewing courts must give great deference to the Board's evidentiary findings and must not substitute their own discretion. *City of Columbia v. Missouri State Bd. of Mediation*, 605 S.W.2d 192, 194 (Mo. Ct. App. 1980). The court is to review the Board's decision to determine if it is supported by competent and substantial evidence and to insure it is not unreasonable, arbitrary or capricious. *Id.* However, the reviewing court may apply its independent judgment to questions of law. *Missouri Nat'l Educ. Ass'n v. Missouri State Bd. of Mediation*, 695 S.W.2d 894, 897 (Mo. 1985).

appeals of administrative agency decisions.⁵⁵ The Administrative Procedure and Review Act provides that:

Any person who has exhausted all administrative remedies provided by law and who is aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, shall be entitled to judicial review thereof, as provided in MO. REV. STAT. §§ 536.100 to 536.140.⁵⁶

The right to review extends to "any person. . . aggrieved by a final decision in a contested case," regardless of whether such person is a party to the administrative proceedings.⁵⁷ Appeal from the circuit court's review of the Board's decision may then be made to the appellate courts.⁵⁸

IV. INSTANT DECISION

The *Wrinkle* court began its analysis by noting that under § 105.525 of the PSLL, the Board was authorized to determine the appropriateness of bargaining units and majority representative status.⁵⁹ The court also noted that the only means to appeal the Board's decision under the PSLL was statutory.⁶⁰ Under § 105.525, only an aggrieved public body or bargaining unit may appeal the Board's decision to the circuit court.⁶¹

In deciding whether the Intervenors had a statutory right to appeal the Board's decision, the *Wrinkle* court first determined whether the Intervenors were a bargaining unit under § 105.525 of the PSLL.⁶² The court examined the Intervenors' relationship to their existing bargaining unit and the definitions of "appropriate unit" and "exclusive bargaining representative" as defined in § 105.500 of the PSLL.⁶³ While finding that the Intervenors were arguably an "appropriate unit," the court concluded that the Intervenors were not a "bargaining unit" as contemplated by § 105.525 of the PSLL.⁶⁴ Instead, the court found that the Intervenors were a minority faction of an existing bargaining unit represented by the Union.⁶⁵ Also, the Court found that the Intervenors were not a public body as contemplated by the PSLL.⁶⁶ The court, therefore, concluded that the

55. MO. REV. STAT. §§ 536.100-140 (1986).

56. *Id.* § 536.100.

57. State ex rel. Schneider v. Stewart, 575 S.W.2d 904, 909-10 (Mo. Ct. App. 1978).

58. *Id.*

59. *Wrinkle*, 867 S.W.2d at 636.

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.* at 636-37.

64. *Id.* at 637.

65. *Id.*

66. *Id.*

Intervenors had no statutory right to appeal under the PSLL.⁶⁷ Additionally, the court held that the Intervenors did not have the right to petition the Board for clarification of the bargaining unit or amendment of certification because 8 CSR 40-2.050 only allows the majority representative or the public employer to do so.⁶⁸

Finding no provisions under the PSLL granting the Intervenors the right to appeal, the court analyzed the constitutional guarantees to determine if the Intervenors had a right to appeal the Board's decision.⁶⁹ The court noted that MO. REV. STAT. § 536.100 (1986), which codified Article V, § 18 of the Missouri Constitution, grants judicial review to any person who has exhausted all administrative remedies granted by law and is still aggrieved by the final decision.⁷⁰ An aggrieved party is one who has property rights or interests which have been prejudicially and directly affected by the decision.⁷¹ The court concluded that Intervenors had a right to appeal the Board's decision only if that decision prejudicially and directly affected their rights or interests as contemplated by § 536.100.⁷² The court found that the Intervenors did not claim a legally protected right that would justify placing them in a separate 19-member bargaining unit.⁷³ As such, the court found that the Board's decision did not restrict the Intervenors' rights to appeal.⁷⁴ The court further found that the Board has the authority to determine what constitutes an appropriate bargaining unit and that the Board's determinations should be given great deference by Missouri courts.⁷⁵ Therefore, the court concluded that the Intervenors had no independent right to judicial review of the Board's decision outside of the PSLL.⁷⁶ Finding that the Intervenors had no right to appeal the Board's decision under the PSLL or § 536.100, the court concluded that the Intervenors had no right to petition the trial court for review of the Board's decision, and that the trial court should have dismissed the Intervenors' petition.⁷⁷ The case was remanded to the trial court with directions to dismiss the Intervenors' petition.⁷⁸

67. *Id.*

68. *Id.*

69. *Id.* at 638.

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

V. COMMENT

The *Wrinkle* court correctly held that the Intervenor had no right to appeal the Board's decision under the PSLL.⁷⁹ However, the *Wrinkle* court construed MO. REV. STAT. § 536.100 too narrowly in holding that the Intervenor had no right to appeal the Board's decision outside of the PSLL.⁸⁰ The Intervenor should have been allowed to appeal the Board's decision on grounds outside the PSLL. Section 105.525 of the PSLL grants the Board the authority to determine if a group of employees is an appropriate bargaining unit.⁸¹ Because § 105.525 only authorizes a bargaining unit or a majority representative to appeal a decision by the Board regarding bargaining unit status, the Intervenor was correctly denied the right to appeal under the PSLL.⁸²

As a result of the court's decision, the Intervenor was left with no procedure under the PSLL for judicial review of whether the Board abused its discretion by making an unreasonable, arbitrary or capricious decision or whether the Board made an error of law. As § 105.525 of the PSLL is drafted, the right to appeal does not extend to members of a bargaining unit seeking to be placed in a separate bargaining unit, unless they are the majority of their present bargaining unit. This effectively restricts the rights of employees, who join a union and vote, to be in a bargaining unit to organize and choose representatives. Such employees must either leave the Union or rely on a public employer or the majority of their present bargaining unit to petition the Board for clarification or amendment of the bargaining unit, to remedy their grievance. There is no internal mechanism to insure that minority members of bargaining units will be adequately represented.

Although the Intervenor has no statutory right to appeal the Board's decision under the PSLL,⁸³ they should have been granted the right to appeal under MO. REV. STAT. § 536.100 (1986). Section 536.100 entitles persons aggrieved by a final administrative decision to judicial review of that decision.⁸⁴ By denying that right, the court removed the umbrella of judicial protection which the legislature intended to shield the rights of individuals, such as the Intervenor.

Under § 536.100, the right to appeal the Board's decision would extend to the Intervenor only if it operated prejudicially and directly upon a right of the Intervenor.⁸⁵ When examining whether the Intervenor had any rights that were prejudicially and directly affected, the court only examined whether or not the Intervenor had a right *per se* to be a bargaining unit.⁸⁶ Because the Board is

79. *Id.*

80. *Id.*

81. MO. REV. STAT. § 105.525 (1986).

82. *Id.*

83. *Id.*

84. MO. REV. STAT. § 536.100 (1986).

85. *Wrinkle*, 867 S.W.2d at 638; MO. REV. STAT. § 536.100 (1986).

86. *Wrinkle*, 867 S.W.2d at 638.

statutorily authorized to determine what constitutes a bargaining unit,⁸⁷ the court found that the Board's decision to deny the Intervenors the right to form a separate bargaining unit did not operate prejudicially and directly upon the rights of the Intervenors.⁸⁸ The court, therefore, concluded that § 536.100 did not grant the Intervenors the right to judicial review of the Board's decision.⁸⁹

The rights prejudicially and directly affected by the Board's decision are not the Intervenors' rights to be a separate bargaining unit *per se*, but the rights to join labor organizations and to select representatives to negotiate with their employer. The court's ruling is inconsistent with the holding in *Parkway*, which allows public employees to join labor organizations and to select representatives of their choice to confer with employers.⁹⁰ By holding that the Intervenors had no right to be a bargaining unit or to receive judicial review of the Board's decision, the court impermissibly restricted the Intervenors' rights to select union representatives. While the Intervenors are presently members of a bargaining unit, the court has paralyzed their future bargaining ability by closing the avenue for judicial appeal to minority members.

Furthermore, although § 536.100 only implicates the Intervenors' rights to appeal outside of the PSLL,⁹¹ the court concludes from it that the Intervenors have no right to review of the Board's decision.⁹² The court reasoned that because the Board determines what constitutes a bargaining unit, the Intervenors cannot be a bargaining unit unless the Board so determines.⁹³ The court further reasoned that the Board's determination, that the Intervenors were not a bargaining unit, conclusively precluded the Intervenors from appealing under § 536.100. However, § 536.100 concerns only a person's right to judicial review when the person has exhausted all administrative remedies, and the decision still restricts that person's rights.⁹⁴ Section 105.525 of the PSLL should not have been considered when determining whether the Board's decision operated prejudicially and directly upon the Intervenors' constitutional rights. The PSLL should not operate to restrict the constitutional rights of employees but instead should operate as an avenue by which employees may assert their constitutional rights.⁹⁵ It is clear from the court's analysis that shadows of § 105.525 of the PSLL affected the court's interpretation of § 536.100.

The court's decision created a framework whereby the Union can discriminate against the Intervenors and other employees, free from judicial oversight. Surely, this was not the legislature's intent when they drafted the PSLL. Applying the

87. MO. REV. STAT. § 105.525 (1986).

88. *Wrinkle*, 867 S.W.2d at 638.

89. *Id.*

90. *Parkway*, 807 S.W.2d at 66-67.

91. MO. REV. STAT. § 536.100 (1986).

92. *Wrinkle*, 867 S.W.2d at 638.

93. *Id.*

94. MO. REV. STAT. § 536.100 (1986).

95. *Pritchett*, *supra* note 2, at 726.

PSLL and § 536.100 in this manner allows unchecked discrimination against employees that do not constitute a majority of a bargaining unit. The Intervenors were seeking to become a separate bargaining unit because they felt they could not adequately protect their own interests when the majority of the bargaining unit is able to out vote them. The present arrangement allows the majority of the bargaining unit to improve their interests at the expense of the Intervenors' interests. The majority members retain the sole right to appeal. However, because their own interests are benefitted by keeping the Intervenors in the bargaining unit, the propriety of the arrangement is almost assured to remain unchecked.

VI. CONCLUSION

Public employees have the well-established rights to join labor organizations and to choose representatives to negotiate with their employer. The PSLL should operate as an avenue by which employees may assert these rights, not as a restricting agent allowing the Board to act without the safeguards of judicial overview.

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