

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

FILED

AUG 13 2010

JOAN M. GILMER
CIRCUIT CLERK, ST. LOUIS COUNTY

EASTERN MISSOURI COALITION)
OF POLICE, FRATERNAL ORDER OF)
POLICE, LODGE 15,)

Plaintiff,)

vs.)

CITY OF UNIVERSITY CITY,)

Defendant.)

Cause No. 09SL-CC01454

Division 13

ORDER AND JUDGMENT

This matter is before the Court on cross motions for Summary Judgment on Plaintiff's Petition for Declaratory Judgment. The motions were called, heard and taken under submission on June 9, 2010. Plaintiff's Amended Proposed Order and Judgment was filed on June 18, 2010; Defendant's Proposed Order and Judgment was filed on June 21, 2010. Being now fully advised, the Court enters the following Order and Judgment.

There are no disputed material facts. Plaintiff Fraternal Order of Police, Lodge 15 ("FOP Lodge 15") is a Missouri corporation. Defendant, City of University City ("the City"), is a charter city formed pursuant to and governed by the Charter of the City of University City. Article II, Section 17, Subsection (4) of University City's Charter specifically states that the City Council has the power "by ordinance" to "[a]dopt police, sanitary, safety and other similar regulations not inconsistent with general laws, and provide for their enforcement."

On January 5, 2009, FOP Lodge 15 sent the City a letter requesting it voluntarily recognize FOP Lodge 15 as the exclusive bargaining representative of the City's police officers and sergeants for purposes of collective bargaining. This request was based on representation cards signed by 71% of the City's police officers and sergeants indicating they wanted FOP

Lodge 15 to act as their exclusive bargaining representative. On January 22, 2009, the City declined the request.

On January 27, 2009, FOP Lodge 15 again requested the City to voluntarily recognize it as the exclusive bargaining representative of the City's police officers and sergeants for purposes of collective bargaining, citing the Missouri Supreme Court's decision in Independence-National Education Association v. Independence School District, 223 S.W.3d 131 (Mo. 2007). On January 30, 2009, the City declined FOP Lodge 15's request.

FOP Lodge 15 seeks a declaratory judgment that the City has an affirmative duty, pursuant to Article I, § 29 of the Missouri Constitution, to establish a meaningful framework of procedures that allows its police officers and sergeants to organize and bargain collectively, through certified bargaining representatives of their own choosing, with the City. The relief sought by FOP Lodge 15 is an order from this Court requiring the City to establish procedures that allow for: (i) a sufficient showing of interest by the City's police officers and sergeants to have FOP Lodge 15 as their exclusive bargaining representative with the City; (ii) a determination that the appropriate bargaining unit includes the City's police officers and sergeants; (iii) a certification election; and (iv) a detailed election process that certifies FOP Lodge 15 as the exclusive bargaining representative of the City's police officers and sergeants.

In support of its Motion for Summary Judgment, FOP Lodge 15 relies on Independence, supra, wherein the Missouri Supreme Court held all public employees have a constitutional right under Article I, § 29 of the Missouri Constitution to engage in collective bargaining through representatives of their own choosing. FOP Lodge 15 takes the position that the holding in

Independence requires the City to adopt a framework of procedures that would allow its police officers and sergeants to bargain collectively with the City.

The City, in its Motion for Summary Judgment, takes the position that it has no affirmative duty to adopt a particular procedure or framework for collective bargaining, and further, the doctrine of separation of powers prohibits the Court from granting the relief sought by FOP Lodge 15.

The Court finds and concludes the City has a duty to establish a framework for collective bargaining for its police officers and sergeants. In Independence, 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, supra, 223 S.W.3d at 133. The Court went on to explain how employees that had been excluded by section 105.510, RSMo., 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, *supra*, 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 it does not have a "duty" to set a framework and is not specifically required to do so by the holding in Independence. In its Motion for Summary Judgment, the City argues 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. In essence, the City is asserting that even if FOP Lodge 15 has a right, there is no remedy this Court can afford it if the City refuses to allow FOP Lodge 15 to exercise that right. The Court finds the holding of 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. It is a basic legal principle that one person or entity cannot have a legal right to do something without another person or entity having some corresponding legal duty to act. 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'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 I, Section 29 to bargain collectively through representatives of their own choosing.

The separation of powers doctrine does not restrict the City from establishing a framework for collective bargaining for its police officers and sergeants. The Court in Independence 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, *supra*, 223 S.W.3d at 135. The Court in Independence stated 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, as it has developed, 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 Court in Independence 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), cited by the City in its Suggestions of Law in Support of Motion for Summary Judgment, the plaintiff appealed the trial court’s refusal to order the defendant city to adopt plaintiff’s rezoning plan. 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 the instant case, the Court is not ordering the City to 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 I, section 29.

WHEREFORE, Plaintiff's Motion for Summary Judgment is GRANTED and Defendant's Motion for Summary Judgment is DENIED. Judgment on Plaintiff's Petition for Declaratory Judgment is entered in favor of FOP Lodge 15 and against the City. Defendant City shall expeditiously establish a reasonable framework of its choosing for collective bargaining which will include: the scope of an appropriate bargaining unit which will include the City's 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:

8/13/10
Date

Barbara W. Wallace
Barbara W. Wallace, Judge

cc: Gregory Kloeppe
Attorney for Plaintiffs

Timothy A. Garnett
Nathan J. Plumb
Attorneys for Defendant