BOARD OF MEDIATION: Board of Mediation has no jurisdiction in labor disputes between municipally owned public utilities and their employees.

See State ex. Moore v. Julian 222 Mo 2nd 720

FILED 46

January 14, 1948

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Honorable Vance Julian, Chairman
State Board of Mediation
State Office Building
Jefferson City, Missouri

Dear Mr. Julian:

This is in reply to your request for an opinion, which reads, in part, as follows:

> "The State Board of Mediation has recently received a request from the International Brotherhood of Electrical Workers for the Board to take jurisdiction of a labor dispute between the City of Kirkwood, Missouri and the employes of the City, who work in the electric system supplying power and light within the city limits. A copy of Mr. Jacobs' letter is enclosed.
>
> "The State Board of Mediation, before assuming jurisdiction of this matter, respectfully requests the opinion of the Attorney General as to our jurisdiction of this dispute, * * * *"

In House Bill No. 180, passed by the 64th General Assembly, it seems that it was apparently the intention of the Legislature that the State Board of Mediation should intervene in labor disputes affecting public utilities, even those under governmental ownership and control. However, the Supreme Court of Missouri, en banc, in the recent case of City of Springfield vs. Harry Clouse, et al., ruled that the employees of a city could not organize into unions for the purpose of collective bargaining:

> "Under our form of government, public office or employment never has been and

cannot become a matter of bargaining and contract. (State ex rel. Rothrum v. Darby, 345 Mo. 1002, 137 S.W. (2d) 532; see also Nutter v. City of Santa Monica (Cal.) 168 Pac. (2d) 741, l.c. 745; Miami Water Works Local v. City of Miami (Fla) 26 So. (2d) 194, l.c. 197; Mugford v. Mayor and City Council of Baltimore (Md.) 44 Atl. (2d) 745, l.c. 747.) This is true because the whole matter of qualifications, tenure, compensation and working conditions for any public service, involves the exercise of legislative powers. Except to the extent that all the people have themselves settled any of these matters by writing them into the Constitution, they must be determined by their chosen representatives who constitute the legislative body. It is a familiar principal of constitutional law that the legislature cannot delegate its legislative powers and any attempted delegation thereof is void. (11 Am. Jur. 921, Sec. 214; 16 C.J.S. 337, Sec. 133; A.L.A. Schecter Poultry Co. v. U. S., 295 U.S. 495, 55 S. Ct. 837, 79 L. Ed. 1570.) If such powers cannot be delegated, they surely cannot be bargained or contracted away; and certainly not by any administrative or executive officers who cannot have any legislative powers. Although executive and administrative officers may be vested with a certain amount of discretion and may be authorized to act or make regulations in accordance with certain fixed standards, nevertheless the matter of making such standards involves the exercise of legislative powers. Thus qualifications, tenure, compensation and working conditions of public officers and employees are wholly matters of lawmaking and cannot be the subject of bargaining or contract. Such bargaining could only be usurpation of legislative powers by executive officers; and, of course, no legislature could bind itself or its successor to make or continue any legislative act. Therefore, this section can only be construed to apply to employees in private industry where

> actual bargaining may be used from which valid contracts concerning terms and conditions of work may be made. It cannot apply to public employment where it could amount to no more than giving expression to desires for the lawmaker's consideration and guidance. For these fundamental reasons, our conclusion is that Section 29 cannot reasonably be construed as conferring any collective bargaining rights upon public officers or employees in their relations with state or municipal government."

The above case is somewhat similar to the factual situation existing in Kirkwood in the present dispute inasmuch as some of the employees in Springfield were employed under the corporate or proprietary functions of the city. The court held that this did not change their ruling that city employees could not band together for purposes of collective bargaining. In this connection the court said:

> "Nor can there be any difference with regard to employees of the City in connection with its corporate or proprietary capacity. Defendant's contention that there should be is inconsistent with their contention that the word 'employees' as used in Section 29 is all inclusive, covers all who could be classified as employees whether public or private, and cannot be limited to any class of employees. If this term is all inclusive so as to include any public employees, why would it not cover all such employees whether state, county or municipal, governmental or corporate? Moreover, some of the city employees involved herein are governmental. The proposed contracts covered all those in street work and some in sewage disposal plants. In protecting health and sanitation, even in keeping its streets clean and sanitary, a city is exercising governmental functions. (Lober v. Kansas City, (Mo.) 74 S.W. (2d) 815 and cases cited.) The distinction between proprietary and governmental functions is one created by

> the courts mainly for the purpose of imposing some tort liability upon municipalities. (See 38 Am. Jur. 265, Sec. 573.) Nevertheless, 'a municipal corporation cannot be a private corporation in any true sense of the word, but remains, even in its dual capacity, essentially a public corporation.' (37 Am. Jur. 728, Sec. 114.) The question involved herein is a question of power rather than one of what function is involved. 'Missouri cities have and can exercise only such powers as are conferred by express or implied provisions of law; their charters being a grant and not a limitation of power, subject to strict construction, with doubtful powers resolved against the city.' (Taylor v. Dimmitt, 336 Mo. 330, 78 S.W. (2d) 841.) Fixing compensation, hours and tenure require the exercise of legislative powers in exactly the same way for all employees of the City, whether governmental or corporate, at least under the organization of second class cities in this state. We do not say that the General Assembly could not separate corporate functions, and employees engaged therein, and provide for their operation and management in some manner distinctly apart from other city functions (perhaps like the Tennessee Valley Authority under the federal government) so that employer and employee relations could be handled on a basis similar to private industry. However, it is clear that this has not been done in our cities of the second class."

The city of Kirkwood, Missouri, is a city of the third class, but we think that the reasoning applied in the Springfield case would also apply to cities of the third class. Section 6893, R.S. 1939, provides:

> "The council shall have power to fix the compensation of all the officers and employees of the city; but the salary of

> an officer shall not be changed during the time for which he was elected or appointed."

In Laws of Missouri, 1947, Volume 1, page 359, Section 2, the term "collective bargaining" is defined as follows:

> "The term 'collective bargaining' shall be understood to embody the philosophy of bargaining by employees through representatives of their own choosing, and shall include the right of representatives of employees' units to be consulted and to bargain upon the exceptional as well as the routine wages, hours, rules, and working conditions."

We think it is clearly the intent of the Legislature that the State Board of Mediation should assist parties to labor disputes in public utilities to reach an agreement through collective bargaining. As unions are unable to bargain collectively with municipalities under the ruling in the Springfield case, we do not think that there remains any grounds for intervention or aid by the State Board of Mediation in these disputes.

Conclusion.

It is the opinion of this department that the State Board of Mediation has no jurisdiction of disputes between employees and public utilities under the control and ownership of municipal corporations inasmuch as employees may not band together in order to bargain collectively with municipalities.

Respectfully submitted,

JOHN R. BATY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

JRB:ml