

No. SC 88368

IN THE
SUPREME COURT OF MISSOURI

MISSOURI ALLIANCE FOR RETIRED AMERICANS, et al.,
Plaintiff-Appellants,

v.

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS,
DIVISION OF WORKERS' COMPENSATION,
Defendant-Respondent.

Appeal from the Cole County Circuit Court
Nineteenth Judicial Circuit
Honorable Byron I. Kinder, Judge

AMICUS CURIAE BRIEF BY MISSOURI STATE LABOR COUNCIL

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TABLE OF CONTENTS

TABLE OF CASES AND STATUTES CITED 2

POINTS RELIED ON 4

ARGUMENT 5

CONCLUSION 15

CERTIFICATE OF SERVICE 16

CERTIFICATE OF COMPLIANCE 17

TABLE OF CASES, STATUTES AND OTHER AUTHORITIES CITED

Cases:

Dodson v. City of Wentzville, 133 S.W.3d 528, 535
 (Mo.App. E.D. 2004) 6

General Motors Acceptance Corporation v. The Windsor Group, Inc., et al., S.W.3d 836, 839 (Mo.App. E.D. 1999) 6

Home Builders Association of Greater St. Louis, Inc., v. City of Wildwood, S.W.3d 612, 614 (Mo.App. E.D. 2000) 8

Missouri Bankers Association, et al. v. Director of the Missouri Division of Credit Unions, et al., 126 S.W.3d 360, 363
 (Mo.banc 2004) 5, 14

Missouri Healthcare v. Attorney General, 953 S.W.2d 617, 620-621 (Mo.banc 1997) 5, 8, 9, 14

Rodrigues v. Suzuki Motor Corp., 996 S.W.2d 47, 52-53
 (Mo.banc 1999) 8

Ste. Genevieve School District R-2, et al. v. Board of Aldermen of the City of Ste. Genevieve, 66 S.W.3d 6, 10 (Mo.banc 2002) 6, 9

Statutes:

Section 287.020.6(3) RSMo 2005 6

Section 287.020.(1) RSMo 2005 7

Section 287.170.4 RSMo 2005 7

Section 287.020 RSMo 2005 7

Section 287.020.3 RSMo 2005 7

Section 287.067.2 RSMo 2005 7

Section 287.067.3 RSMo 2005 7

Section 152(5), Labor-Management Relations Act

29 U.S.C. § 152(5) 13

POINT RELIED ON

THE TRIAL COURT ERRED IN HOLDING THAT THE PLAINTIFF LABOR UNIONS LACKED REPRESENTATIONAL STANDING TO PURSUE THESE CLAIMS BECAUSE SAID LABOR UNIONS ARE PROPER PLAINTIFFS IN THAT MEMBERS OF SAID UNIONS HAVE STANDING IN THEIR OWN RIGHT TO BRING THIS ACTION FOR DECLARATORY RELIEF; THE INTERESTS WHICH THE PLAINTIFF UNIONS SEEK TO PROTECT ARE GERMANE TO THE PURPOSE OF THE UNIONS TO REPRESENT AND PROTECT THE INTERESTS OF THEIR MEMBERS REGARDING THE MEMBERS' CONDITIONS OF EMPLOYMENT; AND THE DECLARATORY RELIEF SOUGHT BY THE PLAINTIFF UNIONS DOES NOT REQUIRE THE PARTICIPATION OF INDIVIDUAL UNION MEMBERS.

ARGUMENT

The Missouri State Labor Council, AFL-CIO (hereinafter the “Council”), is an association of labor organizations which represent union members throughout the State of Missouri. Some of those labor organizations are plaintiffs in the action brought herein challenging some or all of the March 2005 amendments to the Missouri Workers’ Compensation Act (hereinafter the “Act”).’

The trial court dismissed these claims for various reasons including, but not limited to, the alleged lack of standing of the aforesaid labor organizations to pursue these claims for declaratory relief. This Council has requested permission to appear before this Court as an amicus curiae for the limited purpose of contesting the trial court’s decision regarding the labor organizations’ representational standing.

This Court has ruled that an entity has associational or representational standing if: (1) its members would otherwise have standing to bring suit in their own right; (2) the interests it seeks to protect are germane to the organization’s purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. *Missouri Bankers Association, et al. v. Director of the Missouri Division of Credit Unions, et al.*, 126 S.W.3d 360, 363 (Mo.banc 2004); *Missouri Healthcare v. Attorney General*, 953 S.W.2d 617, 620-621 (Mo.banc 1997).

Standing of Individual Members

Reduced to its essence, standing roughly means that the parties seeking relief must have some personal interest at stake in the dispute, even if that interest is attenuated, slight or remote. In the context of an action for declaratory judgment, Missouri Courts require that the plaintiff have a legally protectable interest at stake in the outcome of the litigation. A legally protectable interest exists if the plaintiff is directly and adversely affected by the action in question or if the plaintiff's interest is conferred by statute. *Ste. Genevieve School District R-2, et al. v. Board of Aldermen of the City of Ste. Genevieve*, 66 S.W.3d 6, 10 (Mo.banc 2002). A legally protectable interest has also been defined as a pecuniary or personal interest directly in issue or jeopardy which is subject to some consequential relief, either immediate or prospective. *Dodson v. City of Wentzville*, 133 S.W.3d 528, 535 (Mo.App. E.D. 2004); *General Motors Acceptance Corporation v. The Windsor Group, Inc., et al.*, 2 S.W.3d 836, 839 (Mo.App. E.D. 1999).

The petition alleges that the 2005 amendments have unconstitutionally reduced benefits and restricted coverages under the Act. In addition, the petition alleges that the illegal amendments subject employees to unreasonable searches and seizures (Section 287.020.6(3))¹, deny employees necessary medical treatment in those cases

¹All statutory citations are to RSMo 2005, unless otherwise noted.

in which there may be no permanent disability (Section 287.020.(1)), and subject the employees to termination of benefits because of “post-injury misconduct,” a term not defined by the amendment (Section 287.170.4).

Furthermore, the statutory amendment to the definition of “accident” (Section 287.020), the “causation” standard (Section 287.020.3) and the definition of “occupational disease” (Section 287.067.2 and 287.067.3) have raised such doubts as to the availability of coverage under the Act that employees do not know whether to submit their medical claims to their employer or health insurance carrier, or whether to file claims with the Division of Workers’ Compensation or civil actions in circuit court.

In general, the questions as to the constitutionality and enforceability of the 2005 amendments have created uncertainty for the members of the plaintiff labor unions as to their rights and obligations under the Act.

The interest of the employee in obtaining prompt and appropriate medical care is a pecuniary or personal interest directly and adversely affected by the 2005 amendments.

The interest of the employee in knowing whether his or her job is at risk if the employee refuses to admit to an unreasonable search and seizure is a personal interest directly and adversely affected by the amendments.

The interest of the employee in knowing what conduct might be construed as “misconduct” for purposes of forfeiting the employee’s benefits is a personal interest directly and adversely affected by the amendments.

The interest of the employee in knowing, within reason, whether his or her claim is covered by the Act is a personal interest directly and adversely affected by the amendments.

In short, all of the amendments relate to pecuniary or personal interests which the employees have regarding their working conditions. Moreover, there can be no doubt that the members have a legally protectable interest in working in an environment free from the constraints and requirements of unlawful statutes. Justice dictates that these members be given the opportunity to challenge the lawfulness of the 2005 amendments. *Home Builders Association of Greater St. Louis, Inc., v. City of Wildwood*, 32 S.W.3d 612, 614 (Mo.App. E.D. 2000). *Missouri Healthcare v. Attorney General*, 953 S.W.2d 617, 620 (Mo.banc 1997).

Compare the interests of the employees here with those of the parties in the following cases wherein this Court found that the parties had standing: *Rodrigues v. Suzuki Motor Corp.*, 996 S.W.2d 47, 52-53 (Mo.banc 1999) (defendant had standing to challenge the constitutionality of the statutory provision dividing punitive damage award evenly between the plaintiff and the State, even though it was possible that

defendant would have to pay the entire award, even if the statute were to be held unconstitutional); *Missouri Healthcare v. Attorney General*, 953 S.W.2d 617, 620 (Mo.banc 1997) (Association and its individual members had standing to challenge the constitutionality of statutory provisions pertaining to long term health care, stating that said plaintiffs have a protectable interest in doing business free from the constraints of an unconstitutional law); and *Ste. Genevieve School District R-2, et al., v. Board of Aldermen of the City of Ste. Genevieve, et al.*, 66 S.W.3d 6, 10 (Mo.banc 2002) (school district had standing to challenge redevelopment project because of potential loss of tax revenue).

In *Homebuilders Association of Greater St. Louis, Inc., v. City of Wildwood*, the court addressed an issue very similar to that before this Court: the standing of an association to challenge the legality of certain city ordinances. In that case, the defendant city had passed an ordinance pertaining to the financial security requirements for the development of subdivisions. The Association filed suit, claiming that the ordinance violated State law. The trial court dismissed the petition, finding that the Association did not have standing to challenge the ordinance. In reversing, the court stated as follows:

We find HBA's developer members have a legally protectable interest in that an interest in doing business free

from the constraints of an unlawful ordinance deserves legal protection. (Cite omitted). Here, HBA alleges it is a ‘not for profit Missouri corporation . . . with over 1,100 members comprised of builders, developers and others associated with the shelter industry in the St. Louis metropolitan area, including . . . the County of St. Louis’; and Wildwood is located in St. Louis County. Its members, HBA further alleges, ‘are directly affected by municipal requirements pertaining to escrow or other deposits securing improvement and utility construction and post-construction maintenance.’ Through this lawsuit, HBA is seeking to protect its developer members’ interests in doing business as subdivision developers free from unlawful financial constraints allegedly set forth in Wildwood’s challenged ordinance . . .

Importantly, an injury need not have occurred prior to bringing a declaratory action because one of the main purposes of declaratory relief is to resolve the conflicts in legal rights before loss occurs. (Cite omitted). In fact, case

law supports a determination a challenge to a city's authority to impose certain regulations may be ripe for judicial determination prior to compliance with the city's regulations. (Cite omitted). Finally, we keep in mind that the Declaratory Judgment Act is peculiarly suited to interpreting and declaring the validity of statutes and ordinances. (Cite omitted).

The challenged ordinance provisions are clearly directed at HBA's developer members and are designed to regulate financially the way those members engage in developing subdivisions within Wildwood. There is no speculation that HBA's developer members are or will be immediately adversely affected by Wildwood's collection of the allegedly improper amounts for subdivision developments within that city. (Cite omitted). In light of the challenge presented and the present effect of the ordinance's challenged provisions on HBA's developer members, an immediate, concrete dispute exists that can be resolved by a specific conclusive decree. Therefore, HBA's members

would have standing to pursue the claims presented in this lawsuit. *Id.* at 614-615.

Similarly, the interests of the individual members here are as directly and adversely affected as any of the parties whose standing was challenged in the cases cited above.

The argument of the defendant that these claims are not ripe for consideration is refuted by the defendant's own answer wherein at paragraph 16, the defendant acknowledges that for the years 1999 through 2003 there were an average of 24,284 Workers' Compensation claims filed in Missouri. One can reasonably assume that there have been hundreds, if not thousands, of claims filed under the 2005 amendments wherein the legitimacy of these amendments could have been called into question. Yet, while any member could have raised these concerns, the plaintiff unions are better able to absorb the financial costs associated with such a challenge.

Inasmuch as the members of the plaintiff labor unions have standing to bring suit in their own right, the first element of representational standing under Missouri law is satisfied.

**The Interests the Labor Organizations Seek
to Protect are Germane to the Organizations' Purpose.**

Section 152(5) of the Labor-Management Relations Act (29 U.S.C. § 152(5))

defines a labor organization as:

Any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exist for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

By definition, the purpose of a labor organization or union is to protect the interests of its members in an employment or workplace context. As noted above, the Petition alleges that the interests of the union members, as employees, have been adversely affected by the 2005 amendments to the Act. The labor organizations who are bringing this suit are thereby serving the purpose for which the organizations were created, i.e., protecting the interests of their members in fair, safe and reasonable working conditions.

Clearly, the interests which the plaintiff labor unions seek to protect here are germane to the organizations' purpose and, therefore, the second element for representational standing is satisfied.

Neither the Claim Asserted Nor the Relief Requested

Requires the Participation of Individual Members in the Lawsuit.

The relief requested here is prospective only, and no request has been made for money damages or some relief specific to individual members. As such, participation of the individual members in this action is not required. *Missouri Bankers Association*, 126 S.W.3d at 363, *Missouri Healthcare v. Attorney General*, 953 S.W.2d at 621.

Therefore, the third and final element for representational standing is satisfied.

CONCLUSION

All of the requisites for representational standing under Missouri law have been satisfied by the plaintiff labor unions and, therefore, it is respectfully requested that this Court reverse the decision of the trial court on this issue.

Furthermore, the amicus curiae agrees with the arguments set forth by the plaintiffs in their brief before this Court and joins in the plaintiffs' request for relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that two copies of the foregoing “Amicus Brief” were served upon the Attorney General, State of Missouri, 207 W. High Street, P. O. Box 899, Jefferson City, MO 65102, by placing same, postage prepaid, in the U. S. Mail this ____ day of _____, 2007.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 84.06(c) of the Missouri Rules of Civil Procedure, the undersigned certifies that the foregoing Amicus Brief was prepared using Corel Word Perfect 10. The font used to prepare the foregoing brief is Times New Roman, 14 point type, and according to the line number and word number functions on Corel Word Perfect 10, the foregoing brief contains 301 lines and 2,223 words.

The undersigned also certifies, pursuant to Rule 84.06(g), that the computer diskette provided herewith has been scanned for viruses using McAfee Virus Scan Version 3.0.02, and is virus-free.

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