

CASE NO. A11-1653

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State of Minnesota
IN COURT OF APPEALS

MARIE BLUMHARDT

Relator,

v.

INDEPENDENT SCHOOL DISTRICT NO. 361,
INTERNATIONAL FALLS, MINNESOTA

Respondent.

RELATOR'S REPLY BRIEF & APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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ISSUE

Whether the School District violated Minnesota Statutes §179A.07, subd. 6 when it failed to grant Relator Blumhardt a Union leave of absence to represent teachers in other Minnesota school districts.

The School Board denied the requested leave.

STATEMENT OF THE CASE

On July 8, 2011, Relator Marie Blumhardt submitted a request for two types of leave to the Superintendent of Respondent, Independent School District No. 361, International Falls ("District"). One type of leave, an Extended Leave of Absence pursuant to Minnesota Statute §122A.46 can be denied with reasonable justification. Blumhardt also requested Union leave pursuant to the Minnesota Public Employment Labor Relations Act ("PELRA"), Minnesota Statute §179A.07, subd. 6. It is Blumhardt's position that the Union leave is non-discretionary and must be granted, as she has been appointed to a full-time position with Education Minnesota.¹

Respondent School Board denied both of her leave requests. This appeal, challenging the denial of her request for Union leave, followed.

STATEMENT OF THE FACTS

Relator Blumhardt is a long time teacher in District. For the past several years, she also has been the President of the local teacher union affiliate in International Falls. See, e.g. International Falls Daily Journal, *Falls teachers give*

¹ Education Minnesota is a statewide union, representing teachers and other education employees.

*input on facilities (January 23, 2008); Concerns on 361 program reductions voiced (April 21, 2010).*².App. 56-58.

By letter of July 8, 2011, Blumhardt requested a leave of absence under the Minnesota Public Employment Labor Relations Act (PELRA), Minnesota Statute §179A.07, subd. 6. App. 3. She informed the Superintendent and School Board Chair that her leave request was contingent on approval of her appointment as a Field Staff Representative for Education Minnesota. App. 3. Blumhardt had previously discussed her likely appointment to a position representing teachers in the Bemidji area with her Superintendent, App. 50.

Blumhardt's counsel also contacted the Superintendent to inform him that Blumhardt "will be working for Education Minnesota, out of the Bemidji office, on behalf of unions (exclusive representatives) in fifteen Minnesota school districts." App. 10. Although Blumhardt had requested a both an extended leave of absence and Union leave, her counsel's letter addressed only the non-discretionary Union leave pursuant to PELRA.

At the July 18, 2011 School Board meeting, the School District denied her request for Union leave, stating its belief that because Relator would be working as an employee of Education Minnesota, she would not be working in an elected or appointed position. App. 47-48. In response to this concern, Blumhardt informed the Board that her appointment would be approved by the Education Minnesota Governing Board on July 27 or 28, 2011. App. 48.

² All citations to the Appendix are App, ___, indicating the appropriate page number.

By letter of July 19, 2011, the District informed Blumhardt that it had denied her request for an extended leave of absence. However, the letter did not address her request for Union leave. App. 16. Blumhardt's counsel contacted the School District on her behalf to clarify the status of her Union leave request and inform the District that Blumhardt had, in fact, been appointed by Education Minnesota to a full-time position to represent local unions in the Bemidji area. App. 17.

Counsel for the School District responded, stating its belief that Relator Blumhardt was ineligible for Union leave because she would not be representing her own local union, but rather was appointed to represent unions in other school districts. App. 18. He also informed her that Blumhardt's request for Union leave was denied. *Id.*

STANDARD OF REVIEW

The standard of review in this case, one involving statutory interpretation, is quite broad. This Court may overturn the school board's decision if it was fraudulent, arbitrary, unreasonable, not supported by substantial evidence on the record, not within its jurisdiction, or based on an error of law. *Harms v. Indep. Sch. Dist. No. 300*, 450 N.W.2d 571, 574 (Minn. 1990).

In this case, the District erred as a matter of law when it denied Relator Blumhardt Union leave under PELRA.

ARGUMENT

I. THE MINNESOTA PUBLIC EMPLOYMENT LABOR RELATIONS ACT GUARANTEES BLUMHARDT THE RIGHT TO UNION LEAVE.

Minnesota Statute, §179A.07 of PELRA imposes several obligations on public employers. Among these are a duty to meet and negotiate in good faith with the exclusive representative concerning terms and conditions of employment (subd. 2), a prohibition on direct dealing with individual employees represented by an exclusive representative (subd. 4), and a duty to grant time off for public employees to conduct union business (subd. 6). State law specifically provides:

A public employer must afford reasonable time off to elected officers or appointed representatives of the exclusive representative to conduct the duties of the exclusive representative, and **must, upon request, provide for leaves of absence to elected or appointed officials of the exclusive representative or to a full-time appointed officer of an exclusive representative of teachers in another Minnesota school district.**

Minnesota Statutes, §179A.07, subd. 6 (emphasis added).

The statute provides for two different types of leave: (1) “reasonable time off” for employees who continue to work for the employer while serving in elected or appointed positions of their union, and (2) leaves of absence for those employees who choose to interrupt their active employment with a school district so they may serve their exclusive representative (union) or another representative of teachers within the state. *Id.* In this case, Blumhardt seeks approval of the second type of leave addressed in the statute: leave to serve as a field staff

representative for Education Minnesota, the Union of which she was already a member. Under the statutory provision, the District *must* approve the leave if Blumhardt meets the statutory requirements.

Although the District did not approve Blumhardt's Union leave, it does not dispute that Blumhardt is acting as a union representative for educators in numerous Minnesota school districts, that she has been appointed by Education Minnesota, or that she is working full-time in this position. It appears to be rejecting her right to Union leave because she "has not been sent on business for Local 331," but rather will be "taking an entirely different job" working with other local union affiliates of Education Minnesota. App. p. 18. This is not a valid basis for denying Union leave.

II. BLUMHARDT IS AN APPOINTED UNION OFFICIAL AND IS ENTITLED TO UNION LEAVE

PELRA provides that a public employer "must, upon request, provide for leaves of absence to elected or appointed officials." Minnesota Statute §179A.07, subd. 6. This is precisely the case here. The language is mandatory; the employer *must* provide the leave of absence. Blumhardt has been hired by Education Minnesota and is assigned to work with Education Minnesota locals. She is entitled to Union leave under the statute.

III. BLUMHARDT'S INTERPRETATION OF SUBDIVISION 6 IS CONSISTENT WITH THE LEGISLATIVE HISTORY

There is minimal legislative history available regarding the initial enactment of subdivision 6. The provision requiring public employers to grant employees union leave has been in the law since 1973. See, Laws of Minnesota 1973, Ch. 635, §17. At that time, floor sessions of the Legislature were recorded in meeting minutes, but no audio recordings were made.

The original language read as follows:

A public employer must afford reasonable time off to elected officers or appointed representatives of the exclusive representative to conduct the duties of the exclusive representative, and must, upon request, provide for leaves of elected or appointed officials of the exclusive representative.

Id. This language expressly covers someone like Blumhardt, an appointed official of Education Minnesota.

In 1994, the Legislature broadened the provision mandating leave for union duties to include employees who were members of one union and went to work for another. The underlined portion reflects the additional language:

A public employer must afford reasonable time off to elected officers or appointed representatives of the exclusive representative to conduct the duties of the exclusive representative, and must, upon request, provide for leaves of absence to elected or appointed officials of the exclusive representative or to a full-time appointed officer of an exclusive representative of teachers in another Minnesota school district.

Act of Apr. 7, 1994, ch. 647, art. 8, sec 27 (codified as amended at Minn. Stat. §179A.07, subd. 6)(2011).

Rose Hermodson, lobbyist for the Minnesota Federation of Teachers (“MFT”)(a predecessor union of Education Minnesota, along with the Minnesota Education Association or “MEA”), testified about the reason for the amendment:

To be very specific about this piece of legislation, because it will probably impact very few people, the particular teacher was teaching in Spring Lake Park. He was offered a job with the Osseo Federation of Teachers. Because Spring Lake Park School District is represented by the MEA, he is not a member of the exclusive representative . . . He is employed by the Osseo Federation of Teachers [an MFT local]. This [legislation] would allow the Spring Lake Park school district to give him a leave under these provisions of the statute so that he may continue his employment with the Osseo Federation of Teachers.

Audio-tape: Session of the House Committee on Labor Management Relations (Mar. 14, 1994, Audiotape #1, 12:30 p.m.) (Statement of Rose Hermodson) (on file with Minn. Historical Society).³

Representative Phil Carruthers, an author of the bill, offered additional explanation in support of the amendment:

The situation is one where a teacher asked ‘to have leave as normally provided’ for union reps. The District says we’d like to help you but we have a problem with the current law which says you have to be a representative of the ‘exclusive representative.’ I want to put this before the legislature to clean that language up, make it a little more flexible so he could be covered under what is the clear intent of the law. That’s what this particular provision does.

³ An official copy of the hearing testimony has been ordered from the Minnesota History Center and a transcript will be provided in the appendix to Relator’s Reply Brief.

Audio-tape: Session of the House Committee on Labor Management Relations (Mar. 14, 1994, Audiotape #1, 12:30 p.m.) (Statement of Rep. Carruthers) (on file with Minn. Historical Society). Carruthers continues, stating “I’d just like to point out that it happens to be that he is an MFT employee but of course the same would apply if he was an MEA member at a district that happened to be an MFT district. So it cuts both ways and it’s fair in that way.” Id.⁴

These comments make clear that the existing law allowed a union member to take Union leave to work for his or her own union (for example, an MEA member going to work for the MEA). However, the involved employee (from an MEA-represented school district) wished to take a leave to work as a representative of the MFT. The amendment clarified that a teacher could take Union leave to work for a different exclusive representative of teachers. If the amended statute allows Union leave for a teacher in a local represented by the MEA to work in support of MFT members, it certainly allows an Education Minnesota member to take Union leave to work for Education Minnesota.

IV. STRONG POLICY ARGUMENTS SUPPORT THE GRANTING OF UNION LEAVE

When enacting PELRA, the Legislature specifically identified its overriding purpose: “to promote orderly and constructive relationships between all public

⁴ Although the proposed amendment was initially vetoed as part of a larger bill, the language currently contained in PELRA was passed again as part of another bill and signed into law.

employers and their employees. . . .” Minn. Stat. § 179A.01 (a). The Legislature further recognized that these relationships created a “need for cooperation” between the parties. Minn. Stat. § 179A.01 (b). The importance of effective labor-management relationships was specifically recognized by the Minnesota Supreme Court in *Minneapolis Fed’n of Teachers, Local 59 v. Minneapolis Special School Dist. No. 1*, 258 N.W.2d 802, 805 (Minn. 1977) noting that public sector collective bargaining can lead to improvement in the delivery of government services. .

Subdivision 6 furthers the goal of fostering “orderly and cooperative bargaining relationships” by allowing employees who possess experience with the issues that confront rank and file union members to work for the union without sacrificing their ability to return to their former position at some point in the future. At least one commentator has stressed the importance of allowing union leave, noting the benefits of union leave to employers, unions, and individual members:

In grievance administration, knowledge and past experience with workers, management, and working conditions will provide added insight into the merit of grievances and possible resolutions. In the negotiation context, a negotiator’s first-hand knowledge of the problems and concerns of the rank-and file members will both increase the likelihood that these issues will be addressed and promote the striking of an agreement acceptable to rank and file members.

The employee’s retention of at least the same level of salary and benefits, including the continued accrual of seniority, is essential to encourage employees to pass between work for the employer and work for the union. If an employee had to take a reduction in wages or other benefits in order to work for the union, it is unlikely that he would be willing to make this economic sacrifice. .

. . . An employee would be reluctant to work for the union unless job security with the employer was guaranteed. . . .

Christopher J. Garofalo, *Section 302 of the LMRA: Make Way for the Employer-Paid Union Representative*, in 75 N.Y.U. L. REV. 775 (2000).⁵

It is precisely this flexibility that Ms. Blumhardt requests from the District. She is not seeking pay, insurance or any other benefit in connection with her Union leave. She simply wishes to retain the right to return, should that become necessary. In light of the recent job reductions in our neighboring state of Wisconsin,⁶ her request for Union leave is understandable.

Further, as an experienced leader, Blumhardt brings a strong education background and understanding to her new position working with teachers in the Bemidji area. She has experience in negotiating contracts and resolving possible disputes and is familiar with the issues facing Minnesota teachers. This experience allows her “to promote orderly and constructive relationships” in the school districts in which she works. She should be granted Union leave.

⁵ Although the article deals with union leave in the private sector, the same arguments apply to union leave in the public sector. Further, the article supports paid union leave. In this case, Blumhardt is seeking only a leave of absence, without pay or benefits.

⁶ See, *WEAC* [Education Minnesota’s counterpart in Wisconsin] *issues layoff notices for 40% of staff*, Milwaukee Journal Sentinel (August 15, 2011) App. 59.

CONCLUSION

For the foregoing reasons, Relator Blumhardt respectfully requests that this Court approve the granting of Union leave.

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