CASE NO. A11-1653

State of Minnesota

IN COURT OF APPEALS

MARIE BLUMHARDT

Relator,

v.

INDEPENDENT SCHOOL DISTRICT NO. 361,
INTERNATIONAL FALLS, MINNESOTA

Respondent.

RELATOR'S REPLY BRIEF & ADDENDUM

Anne F. Krisnik #168245
EDUCATION MINNESOTA
41 Sherburne Avenue
St. Paul, MN 55103
(651) 292-4874

ATTORNEY FOR RELATOR

John M. Colosimo #18132
COLOSIMO, PATCHIN, KEARNEY, LINDELL
& BRUNFELT, LTD.
301 Chestnut Street
Virginia MN 55792
(218) 741-4500

ATTORNEY FOR RESPONDENT

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).

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

ARGUMENT 1

I. THE MINNESOTA PUBLIC EMPLOYMENT LABOR RELATIONS ACT GUARANTEES BLUMHARDT THE RIGHT TO UNION LEAVE 1

II. THIS PELRA RIGHT IS SEPARATE AND DISTINCT FROM ANY OTHER STATUTORY RIGHTS TO LEAVES OF ABSENCE 1

III. THE LEGISLATURE WOULD HAVE EXPLICITLY INCLUDED A LIMITATION ON UNION LEAVE HAD THAT BEEN ITS INTENT 4

IV. BLUMHARDT IS AN APPOINTED OFFICIAL OF THE EXCLUSIVE REPRESENTATIVE 6

CONCLUSION 8

ADDENDUM 9

TABLE OF AUTHORITIES

Cases

Am. Fed'n of State, County & Mun. Employees Council 65 v. Blue Earth County, 389 N.W.2d 244 (Minn. Ct. App.1986) *pet. for rev. denied* (Minn., Aug. 20, 1986) 7
Am. Fed'n of State, County & Mun. Employees Council 65, Local 667 v. Aitkin County, 357 N.W.2d 432 (Minn. Ct. App. 1984) 7
County of Hennepin v. Law Enforcement Labor Servs., Inc., Local No. 19, 527 N.W.2d 821 (Minn. 1995) 6
County of Morrison v. Litke, 558 N.W.2d 16 (Minn. App. 1997). *Expresio unius* 5
Indep. Sch. Dist. No. 721, New Prague v. Sch. Servs. Employees, Local 284, 379 N.W.2d 673 (Minn. Ct. App.1986) 7
Indep. Sch. Dist. No. 88, New Ulm v. Sch. Serv. Employees Union Local 284, 503 N.W.2d 104 (Minn.1993) 7
Law Enforcement Labor Services, Inc. v. Sherburne County, 695 N.W.2d at 632, n. 1. 7
Law Enforcement Labor Servs., Inc. v. Sherburne County, 695 N.W.2d 630 (Minn. Ct. App. 2005) 6
Nelson v. Productive Alternatives, Inc., 715 N.W.2d 452 (Minn. 2006) 5

Statutes

Minn. Stat. § 15.62 3
Minn. Stat. § 122A.46 ..... 1, 2
Minn. Stat. § 179A.01 4
Minn. Stat. § 181.940–41 3
Minn. Stat. § 181.9413 3
Minn. Stat. § 192.26 3
Minn. Stat. § 192.261 3
Minn. Stat. § 611A.036 3
Minn. Stat. § 645.19 5

ARGUMENT

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

As noted in Blumhardt's original brief, Minnesota Statute, §179A.07 of PELRA requires public employers to grant time off to public employees to conduct union business. 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.

Minn. Stat. §179A.07, subd. 6 (emphasis added). Under Minnesota law, the District *must* approve the leave if Blumhardt meets the statutory requirements.

II. THIS PELRA RIGHT IS SEPARATE AND DISTINCT FROM ANY OTHER STATUTORY RIGHTS TO LEAVES OF ABSENCE

This Court is interpreting a single statutory provision: §179A.07, subd. 6. The qualifications or limitations of other statutory leaves of absence are not relevant.

The school district spends several pages of its brief discussing the Extended Leave of Absence statute for teachers, found at Minnesota Statute Section 122A.46. In the present case, Blumhardt requested both Union Leave under PELRA and an Extended Leave of Absence under Minnesota Statute Section 122A.46. The Extended Leave would have allowed her to continue to

accrue years of service in the Teacher Retirement Association (at her own expense), if the school district allowed her to do so. Blumhardt recognizes that Section 122A.46 gives the district discretion to grant or deny the leave, provided it can provide "reasonable justification for the denial" if it is not approved. *See,* Minn. Stat. § 122A.46, subd. 2.

The District identified a reasonable justification; Blumhardt is a high quality educator, the District had just had another English teacher resign, and it would be difficult to find a replacement of her caliber. Blumhardt did not challenge this denial. However, she retains her right to Union Leave under PELRA.

For some reason, the District believes that the five year limitation found in Minnesota Statute Section 122A.46, subd. 2 should be applied to Minnesota Statute Section 179A.073, subd. 6. There is no merit to this argument. Numerous Minnesota statutes allow teachers (and other public employees) to take various leaves of absence. None of them are subject to the five year limitation found in Minnesota Statute Section 122A.46.[1] Section 122A.46 is one of many statutory leave provisions available to teachers in Minnesota. Several are extremely disruptive to school districts. For example, Minnesota Statute Section 3.088 allows teachers (and other public employees) serving as elected officials to take unpaid leaves of absence to serve in the state legislature or full-

[1] The District argues that school districts must have flexibility in staffing. *See,* District brief, pp. 17-18. Blumhardt recognizes the general need for flexibility. However, that is irrelevant here. The Legislature has expressly required leaves of absence, knowing they impact employer planning and flexibility. The Extended Leave of Absence under Section 122A.46 is discretionary. The Union Leave under PELRA, Section 179A.07, subd. 6, is not.

time city or county offices. Of necessity, this entails significant disruption in scheduling, directly impacting the continuity of instruction of students. In contrast, Blumhardt's absence will allow the District to hire a full-time teacher to replace her. Like PELRA, this statute imposes no limitation on the number of years employees may take leaves of absence.

Similarly, Minnesota Statute Section 15.62 requires school districts (and other public employers) to give paid leaves of absence of up to 90 days for athletes or coaches training for or participating in Olympic, Pan-American or world competitions sponsored by the International Olympic Committee. There is no limitation on the number of leaves per year or the number of years an athlete or coach could take this leave.

Several statues mandate leaves of absence for military service. For example, Minnesota Statutes Section 192.26 provides paid leave for state and municipal employees who are reservists and are called into active service. Minnesota Statute Section 192.261 requires unpaid leaves of absences for state and municipal employees called into active service in a time of war or other emergency

Many other statutes provide for mandatory leaves of absence. *See, e.g.* Minn. Stat. §§ 181.946 (leave for civil air patrol service); 181.940–41 (parenting leave); 181.9413 (sick or injured child care leave); 611A.036 (reasonable time off for witnesses and victims to participate in criminal proceedings);. Due to their intermittent nature, many of these leaves are a challenge to implement.

The District also argues that allowing an unlimited leave of absence creates a challenge because a teacher may return at any time during the year. To the extent that returning from a leave creates a disruption, this would be true whether an employee returns in one year, five years, or any other amount of time. These challenges are as true of a PELRA leave as they are of any of the leaves listed above.

Rather than supporting the District's position that union leaves should be limited to five years, the restrictions on leave in Minnesota Statute Section 122A.46 do the opposite. The legislature knows how to limit the length of a leave of absence when it chooses to and it does so explicitly.

Contrary to Respondent's argument, the statutory language is neither "absurd" nor "ridiculous." Respondent's brief at 15. In fact, the leave is consistent with PELRA's statutory goal of "promot[ing] orderly and constructive relationships between all public employers and their employees," as well as "establishing special rights, responsibilities, procedures, and limitations regarding public employment relationships which will provide for the protection of the rights of the public employee, the public employer, and the public at large." Minn. Stat. §179A.01(a),(c)(3).. The District simply disagrees with the statutory rule.

III. THE LEGISLATURE WOULD HAVE EXPLICITLY INCLUDED A LIMITATION ON UNION LEAVE HAD THAT BEEN ITS INTENT.

The District argues that Subdivision 6 gives it the sole authority to decide which leaves are "reasonable" and should be granted. This runs

counter to a widely accepted rule of statutory construction. The canon of statutory construction "*expresio unius est exclusio alterius*" provides that "the expression of one thing is the exclusion of another." *Nelson v. Productive Alternatives, Inc.*, 715 N.W.2d 452, 457 (Minn. 2006). It also means "where a statute enumerates persons or things to be affected by its provisions, there is an implied exclusion of others." *County of Morrison v. Litke*, 558 N.W.2d 16, 18 (Minn. App. 1997). *Expresio unius* has also been codified into state law in Minnesota Statutes, Section 645.19; "Provisos shall be construed to limit rather than to extend the operation of the clauses to which they refer. Exceptions expressed in a law shall be construed to exclude all others."

Applied to the language of Minnesota Statutes section 179A.07, subdivision 6, *expresio unius* limits the word "reasonable" to the first clause regarding time off. The statute reads:

> 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.

The word "reasonable" in the first clause gives the employer some discretion to deny an active employee time off to conduct union business. In contrast, the word "reasonable" is conspicuously absent from the second clause, which governs the leave Blumhardt has requested from the District. Had the legislature

intended to include this discretionary language for all union leaves, it would have used the word "reasonable" in the second clause. It did not do so.

IV. BLUMHARDT IS AN APPOINTED OFFICIAL OF THE EXCLUSIVE REPRESENTATIVE

Finally, the District argues that the statute was not intended to apply to union representatives like Blumhardt who take full time positions with a public sector labor union. This argument must be rejected.

In the public sector, it is common for unions to represent employees in numerous jurisdictions, whether cities, counties or school districts. Several court decisions involve Law Enforcement Labor Services ("LELS"), a union representing law enforcement employees. LELS represents employees in numerous counties. *See, Law Enforcement Labor Servs., Inc. v. Sherburne County*, 695 N.W.2d 630, 177 (Minn. Ct. App. 2005) (representing members in Sherburne County); *County of Hennepin v. Law Enforcement Labor Servs., Inc., Local No. 19*, 527 N.W.2d 821, 824 (Minn. 1995) (representing members in Hennepin County). This Court recognizes LELS as "the exclusive representative" of bargaining unit members, specifically noting in a footnote that it represented "law enforcement personnel throughout Minnesota." *Law Enforcement Labor Services, Inc. v. Sherburne County*, 695 N.W.2d at 632, n. 1.

Similarly, School Service Employees Union Local 284 represents members in a variety of jurisdictions. *See, Indep. Sch. Dist. No. 88, New Ulm v. Sch. Serv.*

Employees Union Local 284, 503 N.W.2d 104, 106 (Minn.1993) (representing members in Brown County); *Indep. Sch. Dist. No. 721, New Prague v. Sch. Servs. Employees, Local 284*, 379 N.W.2d 673, 674 (Minn. Ct. App.1986) (representing potential members in Brown County). The American Federation of State, County and Municipal Employees ("AFSCME") also represents employees in numerous jurisdictions. *See, e.g. Am. Fed'n of State, County & Mun. Employees Council 65 v. Blue Earth County*, 389 N.W.2d 244, 248 (Minn. Ct. App.1986) *pet. for rev. denied* (Minn., Aug. 20, 1986) (representing members in Blue Earth County); *Am. Fed'n of State, County & Mun. Employees Council 65, Local 667 v. Aitkin County*, 357 N.W.2d 432 (Minn. Ct. App. 1984) (representing members in Aitkin County). Staff appointed to work with these members are clearly "appointed officials" of the exclusive representatives.

Like each of these statewide labor organizations, Education Minnesota represents members in numerous jurisdictions throughout the state of Minnesota. These unions, and many others, are covered by the PELRA rights contained in Section 179A.07. The District is apparently advocating that Blumhardt would be allowed Union Leave if she were working with members in a single Minnesota school district. However, that limitation is not set forth in the statute or consistent with the policy issues that led to PELRA's enactment.

If employees cannot take union leave to work for these organizations because they represents multiple bargaining units in numerous jurisdictions,

PELRA's goal of assuring representatives have the requisite skills and experience to effectively represent their members is thwarted. Blumhardt is "an appointed official of the exclusive representative" and must be granted Union Leave.

CONCLUSION

For the foregoing reasons, we respectfully request that this Court approve Blumhardt's Union Leave, pursuant to Minnesota Statute, Section 179A.07, subd. 6.

Like many Education Minnesota Field Representatives and other union business agents, Blumhardt came to her union position after serving as an elected official of her local

Dated: 12/22/11

Anne F. Krisnik, Reg. No. 168245
David A. Aron, Reg. No. 0392074
EDUCATION MINNESOTA
41 Sherburne Avenue
St. Paul, Minnesota 55103
Telephone: 651-292-4874
ATTORNEYS FOR RELATOR