

IN THE CIRCUIT COURT OF COLE COUNTY
NINETEENTH JUDICIAL CIRCUIT
STATE OF MISSOURI

SERVICE EMPLOYEES)	
INTERNATIONAL UNION LOCAL 2000,)	
et al.,)	
)	
Plaintiffs,)	Case No. 04-CV-324864
)	
v.)	
)	
STATE OF MISSOURI, et al.,)	
)	
Defendants.)	

FINAL JUDGMENT

In this lawsuit, Plaintiffs sought a declaratory judgment that defendants had violated Article I, Sections 8 and 9 of the Missouri Constitution and section 105.510 of the Revised Statutes of Missouri by denying to all Probation and Parole Officers II a July 1, 2004 pay increase which was provided to all other state employees; The Plaintiffs also sought various injunctive relief requiring Defendants to reclassify and place all Probation and Parole Officers II in a pay grid, classification, and range that would provide a rate of pay equal to what such officers would have received had they been given the July 2004 pay increase.

Trial was held on November 9, 2005. While Plaintiffs' evidence in support of their claims was largely circumstantial, Defendants failed to present any testimony that the denial of the 2004 general pay increase was motivated by a nonretaliatory objective. In an order dated December 5, 2005, the Court found for Plaintiffs on their request for declaratory relief, but withheld ruling on their request for injunctive relief in order to give the Defendants the opportunity to appeal. Defendants appealed the Court's decision to the Missouri Court of Appeals for the Western District. On February 20, 2007, the Court of Appeals affirmed the

decision of this Court. *Service Employees Intern. Union Local 2000, et al. v. State of Missouri, et al.*, 214 S.W.3d 368 (Mo.App.2007).

Upon the case being returned from the Court of Appeals, Plaintiffs amended their petition to seek monetary relief for backpay in addition to their request for injunctive relief. After additional discovery, trial was held on March 26, 2008. At trial, Plaintiffs established through expert witnesses that as a result of the denial of the July 2004 pay increase, Probation and Parole Officers II lost salary totaling \$4,133,969.77 for the period July 1, 2004 through June 30, 2007. This figure was undisputed by the Defendants. Also undisputed is that the entity making payment of these lost wages will be responsible for remitting \$316,248.72 to the federal government for the employer portion of FICA (Social Security and Medicare) taxes on these wages. Plaintiffs presented additional evidence that interest on the lost salary if computed at the rate of 5% per annum would amount to \$414,658.81 through December 31, 2007, and that Plaintiffs incurred \$23,888.50 in expert witness fees in preparing their economic evidence for trial.

The injunctive relief which the Plaintiffs seek is an order compelling the defendants to “place each Probation and Parole Officer II in a pay grid, classification and range what would provide a rate of pay equal to what such Probation and Parole Officers II would receive had they been given the July 2004 pay increase.” At the trial held on November 9, 2005, the evidence established that the state pay grid is prepared annually in response to the appropriation passed that year by the General Assembly. The Commissioner of Administration is required to certify that the salaries proscribed by the grid are in fact provided for in the appropriations passed by the General Assembly. Any order which this Court would issue to satisfy Plaintiffs’ request for injunctive relief would either infringe on the General Assembly’s constitutional prerogatives on

matters of appropriation or require the Commissioner of Administration to certify to something that heretofore hasn't been passed by the General Assembly. A court may not order what it cannot enforce. The real nub of Plaintiffs' complaint is not with their placement on any pay grid but with the fact that the General Assembly refuses to appropriate their pay increase. This Court, however, lacks the power to grant Plaintiffs' request for injunctive relief because such an order would in essence command the legislative branch of government to appropriate money, and the power of appropriation is exclusively given to the legislative branch, not the judicial branch. As Judge Robertson noted in his concurring opinion in *Committee for Educational Equality v. State of Missouri*, 878 S.W.2d 446, 457, (Mo. Banc 1994), there is no supremacy clause in the Missouri Constitution that permits courts to undertake executive or legislative functions.

The Court does, however, have power to enter a judgment for the equitable relief of backpay sought by plaintiffs. In this regard, as noted above, the undisputed evidence reflects that the Probation and Parole Officers are entitled to backpay totaling \$4,133,969.77 through June 30, 2007, with an additional liability for employer FICA taxes in the amount of \$316,248.72. Any award of prejudgment interest must be based upon either a statute or a contract, either express or implied. The Court finds neither and so the Plaintiffs' request for prejudgment interest is denied. Similarly, the Court finds no basis for awarding Plaintiffs the costs of expert witness fees they have incurred.

ORDER AND JUDGMENT

WHEREFORE, IT IS HEREBY ORDERED that that the Court's Order of December 5, 2005 is incorporated herein by reference as if fully set forth herein.

IT IS FURTHER ORDERED that Plaintiffs' Motion for Certification as a Class is sustained.

IT IS FURTHER ORDERED that judgment be entered in favor of Plaintiffs and against Defendant State of Missouri in the amount of \$4,450,218.49, which consists of \$4,133,969.77 as backpay and \$316,248.72 in FICA taxes on said amount. Plaintiffs' requests for prejudgment interest and expert witness fees are denied.

IT IS FURTHER ORDERED that, upon collection of the judgment amount, plaintiffs shall disburse the judgment amount in the manner set forth in the March 20, 2008 report prepared by Plaintiffs' accountants (Plaintiffs' Exhibit 9).

IT IS FURTHER ORDERED that Plaintiffs' request for injunctive relief is denied and all remaining unresolved claims are further found in favor of Defendants.

SO ORDERED THIS 9th DAY OF APRIL, 2008.

Richard G. Callahan
Circuit Court Judge, Division II