

DETERMINATION

Matter No.: PLA-08-001

In the Matter of: Appeal of Determination by Northwest R-1 Board of Education as to its Intent to Enter Into a Union Project Labor Agreement on a Public Works Project Described and Defined as School Additions at House Springs Elementary, Brennan Woods Elementary, a Classroom Renovation at North Jefferson Intermediate and Window Reduction and Replacement at High Ridge Elementary, Murphy Elementary, North Jefferson Intermediary and Northwest Valley 7th and 8th Grade Center

On Behalf of: Associated Builders & Contractors, Heart of America Chapter and Meramec Mechanical

The above-captioned matter is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 34.216.3 RSMo (2007).¹ Having reviewed the evidence and considered the whole record, the Commission finds that the Northwest R-1 Board of Education complied with the provisions of § 34.216.2 RSMo, with regard to its Intent to Enter Into a Union Project Labor Agreement and its Determination to Enter Into a Union Project Labor Agreement.

Procedural History

On August 6, 2008, the Board of Education of the Northwest R-1 School District (the Board), Respondent, published its Determination to Enter Into a Union Project Labor Agreement (Determination). On September 4, 2008, Associated Builders & Contractors-Heart of America Chapter (ABC), and Meramec Mechanical (Meramec), Petitioners, filed with the Commission their appeal of the determination pursuant to § 34.216.3.

On October 14, 2008, the Commission heard the matter at its offices in Jefferson City, Missouri. Stephen P. Schuster, Esq., represented Petitioners. Celynda L. Brasher, Esq. and Michelle Basi, Esq., represented the Board. We have received the transcript of the October 14 hearing. The parties have filed briefs.

Preliminaries

During the hearing we took under advisement Petitioners' assertion that the Board failed to fully comply with subpoenas issued by this Commission and the Board's response thereto. We have no jurisdiction to address alleged Sunshine Law failures. We believe the District and Board substantially complied with our subpoenas as crafted.

Law

In 2007, the Missouri legislature enacted the Fairness in Public Construction Act (FPCA).² Section 34.206 sets forth the stated purpose of the FPCA.

The purpose of sections 34.203 to 34.216 is to fulfill the state's proprietary objectives in maintaining and promoting the economical, nondiscriminatory, and efficient expenditures of public funds in connection with publicly funded or assisted construction projects.

¹ All references are to the 2007 Revised Statutes of Missouri unless otherwise indicated.

² SB 339 (2007).

When the state, a state agency or any instrumentality of the state is letting a construction contract for a project that is funded primarily by state funds, the FPCA strictly prohibits the state actor from requiring bidders to agree to enter into agreements with labor organizations/unions.

The state, any agency of the state, or any instrumentality thereof, when engaged in procuring or letting contracts for construction of a project that is funded by greater than fifty percent of state funds, shall ensure that bid specification, project agreements, and other controlling documents entered into, required, or subject to approval by the state, agency, or instrumentality do not:

- (1) Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations on the same or related projects; or
- (2) Discriminate against bidders, offerors, contractors, or subcontractors for entering or refusing to enter or to remain signatory or otherwise adhere to agreements with one or more labor organizations on the same or related construction projects.

For projects funded fifty percent (50%) or less by state funds, state actors may enforce such requirements subject to certain circumstances. Section 34.216 RSMo, is reproduced in its entirety below:

1. For purposes of this section, the term "project labor agreement" shall be defined as a multiemployer, multiunion pre-hire agreement designed to systemize labor relations at a construction site that is required by the state or a political subdivision of the state as a condition of a bid specification for a construction project, thereby insuring that all contractors and subcontractors on a project comply with the terms of a union-only agreement.
2. The state or a political subdivision of the state may enter into a union-only project labor agreement for the procurement of construction services, except as provided in section 34.209, on a project-by-project basis only if the project is funded fifty percent or less with state funds and only on the condition that:
 - (1) The state or political subdivision must analyze the impact of a union-only project labor agreement and consider:
 - (a) Whether the union-only project labor agreement advances the interests of the public entity and its citizens;
 - (b) Whether the union-only project labor agreement is appropriate considering the complexity, size, cost impact, and need for efficiency on the project;
 - (c) Whether the union-only project labor agreement impacts the availability of a qualified work force; and
 - (d) Whether the scope of the union-only project labor agreement has a business justification for the project as bid;
 - (2) The state or political subdivision shall publish the findings of subdivision (1) of this subsection in a document titled "Intent to Enter Into a Union Project Labor Agreement". The document shall establish a rational basis upon which the state or political subdivision bases its intent to require a union-only project labor agreement for the project;

(3) No fewer than fourteen days but not more than thirty days following publication of the notice of a public hearing, the state or political subdivision shall conduct a public hearing on whether to proceed with its intent to require a union-only project labor agreement;

(4) Within thirty days of the public hearing set forth in subdivision (3) of this subsection, the state or political subdivision shall publish its determination on whether or not to require a union-only project labor agreement.

3. (1) Any interested party may, within thirty days of the determination of the state or political subdivision as set forth in subdivision (4) of subsection 2 of this section, appeal to the labor and industrial relations commission for a determination as to whether the state or political subdivision complied with subsection 2 of this section for a union-only project labor agreement as defined in subsection 1 of this section.

(2) The labor and industrial relations commission shall consider the appeal in subdivision (1) of this section under a rational basis standard of review.

(3) The labor and industrial relations commission shall hold a hearing on the appeal within sixty days of the filing of the appeal. The commission shall issue its decision within ninety days of the filing date of the appeal.

(4) Any aggrieved party from the labor and industrial relations commission decision set forth in subdivision (3) of this subsection may file an appeal with the circuit court of Cole County within thirty days of the commission's decision.

Standard of Review

Petitioners cite *Merideth v. Board of Education*, 513 S.W.2d 740 (Mo. App. 1974), for the proposition that in order to fulfill our review under the Act we must determine if the Board's decision is supported by competent and substantial evidence. *Meridith* is inapposite. The review standard cited by Petitioners is the standard for a reviewing court. The Commission is an administrative tribunal. Further, Petitioners' assertion is contrary to the plain language of the statute that we consider the appeal under a rational basis standard of review.

The phrase "rational basis" appears in two subsections of § 34.216. The first appearance is in § 34.216.2(2) which requires that the published Notice of Intent to Enter Into a Project Labor Agreement establish a rational basis upon which the Board bases its intent. In this subsection, the words in the phrase have no special legal meaning and are to be taken in their ordinary and usual sense. See §1.090 RSMo.

"Rational," means "of, relating to, or based upon reason."³ "Reason," means, "the power of comprehending, inferring, or thinking especially in orderly, sensible, rational ways." Also, "the ability to trace out the implications of a combination of facts or suppositions."⁴ "Reason" also means, "a consideration, motive, or judgment inducing or confirming a belief, influencing the will, or leading to an action or course of action: a rational ground or motive."⁵ Based upon these definitions, we conclude that the Notice of Intent will establish a rational basis if the Notice of Intent provides reasons for the Board's decision to pursue a PLA and those reasons articulated in sufficient detail to reveal they were reached through an orderly thought process.

³ WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1885 (2002).

⁴ WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1891 (2002).

⁵ *Id.*

The second appearance of the phrase "rational basis" is in § 34.216.3(2) which requires that we consider the appeal under a rational basis standard of review. Used in this context, the phrase has a peculiar and appropriate meaning in law and should be understood according to its technical import. See § 1.090.

The rational-basis test is most commonly used to determine if a statute passes constitutional muster. Black's Law Dictionary defines the standard as follows:

[R]ational-basis test. *Constitutional law*. The criterion for judicial analysis of a statute that does not implicate a fundamental right or a suspect or quasi-suspect classification under the Due Process or Equal Protection, whereby the court will uphold a law if it bears a reasonable relationship to a legitimate governmental objective. Rational basis is the most deferential of the standards of review the courts use in due-process and equal-protection analysis. — Also termed *rational-purpose test*; *rational-relationship test*; *minimum scrutiny*; *minimal scrutiny*.

BLACK'S LAW DICTIONARY 1290 (8th ed. 2004).

The Missouri Supreme Court has oft had occasion to consider statutory enactments under the rational basis standard. An act will survive rational basis scrutiny if the act is rationally related to a legitimate state interest. *Greenlee v. Dukas Plastering Service, Inc.*, 75 S.W.3d 273, 277 (Mo. banc 2002). "The statute is presumed to have a rational basis, and this presumption will only be overcome by a 'clear showing of arbitrariness and irrationality.' A statutory classification is upheld if any state of facts reasonably may be conceived to justify it." *Snodgras v. Martin & Bayley, Inc.*, 204 S.W.3d 638, 641 (Mo. 2006)(citations omitted).

If the classification neither burdens a suspect class, nor impinges upon a fundamental right, the only issue is whether the classification is rationally related to a legitimate state interest. The burden is on the person attacking the classification to show that it does not rest upon any reasonable basis and is purely arbitrary. Under this analysis a classification is constitutional if any state of facts can be reasonably conceived that would justify it.

Missourians for Tax Justice Educ. Project v. Holden, 959 S.W.2d 100, 103 (Mo. 1997).

While the rational basis review as described above does not apply neatly to a review of the Board's considerations as described in § 34.216, we must attempt to give meaning to the legislature's expression that we conduct our review "under a rational basis standard." We conclude that any Board determination under § 34.216.2 will survive rational basis scrutiny if it is rationally related to a legitimate Board interest; that is, if any state of facts can be reasonably conceived that would justify it. Further, the burden is on the person attacking the action to show that it does not rest upon any reasonable basis and is purely arbitrary.

Findings of Fact

The parties entered into a Stipulation as to Procedural Compliance in which the parties stipulated to the following:

1. The relevant project is funded fifty percent or less with state funds.
2. On July 2, 2008, the District published a document titled "Intent to Enter Into a Union Project Labor Agreement" and notice of a public hearing in the Meramec Journal.

3. In accordance with Section 34.216.2(3) of the Missouri Revised Statutes, the District conducted a public hearing on July 24, 2008, which date was not fewer than fourteen nor more than thirty days following the publication of the notice of the public hearing.

4. The District published its determination to require a union-only project labor agreement on August 6, 2008, in the Meramec Journal, which date is within thirty days of the date of the public hearing referenced in paragraph 3, above.

5. ABC and Meramec Mechanical filed this appeal of the District's determination on September 4, 2008, with the Labor and Industrial Relations Commission, which date is within thirty days of the date of the publication of the District's determination referenced in paragraph 4, above.

Eight witnesses testified for the Board:

Dr. Kevin Carl, Assistant Superintendent, Northwest R-1 School District
Ms. Sherri Talbott, Board President
Ms. Retta Tuggle, Board Member
Ms. Victoria James, Board Member
Mr. Nelson Weber, Board Member
Ms. Sally Lippmann, Board Secretary
Mr. Thomas Wilkerson, Board Member
Ms. Nancy Bergfeld, Board Vice-President

Mr. Jim Kistler, President, Associated Builders and Contractors, Heart of America Chapter, testified on behalf of ABC. No witnesses appeared on behalf of Meramec.

Dr. Kevin Carl is the assistant superintendent for funds and facilities for the Northwest R-1 School District. He testified that in the fall of 2007, a District facilities committee identified facility improvements needed within the District and discussed how such improvements could be financed. Dr. Carl became aware that in 2004 and 2006, the District used project labor agreements successfully. At the time, he began researching project labor agreements.

The Board first considered the possibility of a project labor agreement when Dr. Carl brought it up at the November 7, 2007, District finance workshop. Respondent's Ex. A. In particular, the Board was reminded that in 2004 the District successfully performed a project under a project labor agreement, which project came in on time, under budget, and was performed with quality craftsmanship. The District was able to perform two other projects with money left over from the first PLA project.

As a component of his research of project labor agreements, Dr. Carl reviewed internal District documents relating to prior projects completed by the District. He reviewed the 2004 and 2006 project labor agreement projects that came in on time, under budget, and well-crafted. He also reviewed a 1999 project for the construction of a high school. The high school project was characterized by poor workmanship. The project came in extremely over-budget and resulted in litigation over faulty construction.

As another component of his research, Dr. Carl conducted extensive research on the Internet to identify the pros and cons of union-only project labor agreements. He researched the Fairness in Public Construction Act to familiarize himself with the requirements of pursuing a project labor agreement. After considering the District's history with construction projects and the information he gathered during his Internet research, Dr. Carl determined to recommend the Board consider entering into a union-only project labor agreement.

Approximately six days before the Board's June 19, 2008, meeting, the board members received their meeting packet. Among the items in the meeting packet was an Item of Consideration prepared by Dr. Carl. The Item of Consideration summarized Dr. Carl's belief that entering into a PLA for the 2008 bond issue project would benefit the District. It also included a draft of a Notice of Intent to Enter Into a Union Project Labor Agreement. Each board member testified the member read and considered the Item of Consideration prior to the June 19 meeting. All board members were present at the June 19, 2008, meeting. Dr. Carl discussed the Item of Consideration at the June 19, 2008, meeting. Board members testified that Dr. Carl informed them that there were positive and negative reports and studies regarding PLAs. The Board discussed the recommendation to publish the Intent and the Board voted unanimously to publish its Intent and schedule a public hearing as set forth in the Item of Consideration.

On July 2, 2008, the Board published its Intent to Enter Into a Union Project Labor Agreement of the Northwest R-1 Board of Education. Respondents Ex. B. The Intent included notice of a public hearing scheduled for July 24, 2008, the purpose of which was to "determine whether there is a favorable impact on the governmental agency or political subdivision of having a Project Labor Agreement."

The Board convened the hearing on July 24 as scheduled. Four board members were present (Talbot, Lippmann, Weber, Tuggle). At the hearing, there was a PowerPoint presentation made to the Board discussing the requirements of the Fairness in Public Construction Act and the District's successful history with a 2004 project performed under a project labor agreement. Respondent's Ex. D. In particular, the PowerPoint presentation contained a slide for each of the factors set forth in § 34.216.2(1), as reprinted below:

- **Whether the PLA advances the interests of the government and its citizens**
 - Entering into a PLA provides a reliable, stable supply of trained and skilled construction craft labor that will promote timely, cost-effective project delivery that will help the project come in close to budget
 - A PLA ensures there will be no striking, slow-downs or work stoppages
- **Whether the PLA is appropriate, considering the complexity, size, cost impact and need for project efficiency**
 - The PLA project is estimated at \$5,893,974
 - Since craft labor is a major, critical component of any construction project, the quality, productivity and reliability of the craft labor workforce used on a project has a direct and substantial impact on the success of the projects.
 - Skilled, trained workers are better able to build a project in accordance with plans and specifications, generally produce quality workmanship, work more safely and productively and are more cost-effective and cost-efficient than workers who do not have formal training.
- **Whether the PLA affects the availability of a qualified work force**
 - Securing a local craft labor supply that is less susceptible to disruptions will be more reliable in terms of facilitating adequate project staffing and timely project delivery
 - A PLA for the proposed projects allows the District to substantially limit risks of schedule delays, deficient quality workmanship, safety incidents and other problems caused by insufficient craft labor supply and/or the use of unskilled or improperly trained construction craft personnel

- **Whether the scope of the PLA has a business justification for the project**
 - A number of industry reports and studies on Project Labor Agreements have found that, by securing access to a highly skilled local workforce, these agreements promote safe, timely, cost-effective execution of capital projects, resulting in innumerable economic benefits to project owners and other public or private parties responsible for or dependent upon such projects

Public comments were received from four witnesses. Each witness was afforded 3 minutes to comment. Mr. Bart Velasco and Mr. Jerry Feldhaus spoke in support of PLAs. Mr. Velasco also presented a 3 page document in support of his comments. Mr. Jim Kistler and Mr. James Knowles, III, spoke in opposition to PLAs. Mr. Kistler presented at the hearing a binder of materials for consideration by the Board. Some of the materials are included in the record as ABC Exhibits 7, 8, 9, 12, 13, and 14. The binder was in excess of 100 pages. As the vote on the Determination was scheduled for the meeting, the board members did not have an opportunity to review and consider the written materials prior to the vote. (Some board members perused the written materials after the hearing.)

The Board voted unanimously (4-0) to enter into a project labor agreement for the 2008 bond issue project as described in the case caption. On August 6, 2008, the Board published its Determination of the Northwest R-1 Board of Education to Enter Into a Union Project Labor Agreement. Respondent's Ex. F.

Counsel for the Board and Petitioner questioned each board member regarding the four statutory considerations set forth in § 32.216.2. For convenience, we summarize many factors considered by the board members for each statutory consideration and identify the board member by initials. This list is by way of summary and is not intended to reflect each factor identified by each witness.

Advance interest of the District and the taxpayers

Good experience with past PLA projects	(ST, RT, VJ, NW, SL)
Smooth	(ST, NW, TW)
On time	(RT, SL)
Under budget	(ST, NW, SL)
Quality workmanship	(ST, SL, TW)
Efficiency	(VJ, NW, SL)
 Dr. Carl's recommendation	 (ST, RT, VJ, NW, SL, TW)
 Bad experience with past non-PLA projects	 (ST, RT, VJ, NW, TW)
Poor workmanship	(ST, NW)
Over budget	(NW)
Legal action	(ST)

Appropriate considering complexity, size, cost, impact, and need for efficiency

Good experience with past PLA projects	(RT, VJ, NW)
On-time	(RT, VJ, NW, SL, NB)
Under budget	(RT, VJ, NW)
No work stoppage	(RT, NW, TW)
Economies of scale	(VJ, NW)

One contact person for district	(RT, VJ)
Significant expenditure	(VJ, NW, SL)
Varied activities	(ST, TW)
Varied work sites	(RT, VJ, SL, TW)
Multiple trades people	(ST, SL, TW, NB)

Bad experience with non-PLA projects	(VJ)
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Availability of a qualified workforce

Good experience with past PLA projects	(ST, RT, VJ, NW)
High quality workforce with unions	(ST, RT, VJ, TW)
Union requires significant training	(RT, NW, TW)
General contractor could identify quality workforce	(VJ)
PLA would require certain training, knowledge, licensing	(NW, SL, NB)

Business justification

Good experience with past PLA projects	(ST, RT, VJ, NW, SL, TW)
On time	(RT, VJ, SL, NB)
On or under budget	(ST, RT, VJ, NW)
Quality workmanship	(ST)
No work stoppage	(RT)
Efficiency	(NW)

Dr. Carl's summary of industry reports and studies	(ST, RT, SL, NB)
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Mr. Kistler testified on behalf of ABC. Mr. Kistler's testimony was largely about his Sunshine Request to the District and Board and Petitioners' allegations that District and Board did not comply with Commission subpoenas. Notably missing from Mr. Kistler's testimony is any testimony regarding what Mr. Kistler told the Board during his three-minute presentation at the public hearing on July 24, 2008. Several board members testified that nothing Mr. Kistler said during his public comment period swayed their opinion or piqued their interest such that they read the studies and reports he presented. Petitioners offered no evidence to rebut the board members assertion that Mr. Kistler's public comments did not move them to action or further study.

Petitioners offered several industry reports and studies without objection. The reports were offered without foundation or testimony. The reports are critical of PLAs and detail problems (e.g. cost overruns, delays) encountered by other governmental entities on projects covered by PLAs. The assertions and conclusions contained in the studies offered by Petitioners do not diminish the value of first-hand experience and positive history with PLAs as a legitimate factor for consideration under § 32.216.2.

Discussion

This matter presents a case of first impression as § 34.216 has not yet been interpreted or applied by this Commission or any court. In the instant case, we must determine whether the Board complied with § 34.216.2 for a union-only project labor agreement as that term is defined in § 34.216.1. We will review the evidence of the Board's actions under each provision of § 34.216.2.

Section 34.216.2 (main)

Is the Board's project subject to a "project labor agreement" as defined in § 34.216.2?

Dr. Carl and all of the board members testified that although the construction activities that are the subject of this dispute will occur at multiple sites, the construction activities constitute one project. If

we understand Petitioners' argument, they assert that the inclusion of the singular phrase "construction site" in § 34.216.1 means that the FPCA prohibits political subdivisions from entering into multiemployer, multiunion pre-hire agreements designed to systemize labor relations on any project that involves construction at multiple sites.⁶

Section 1.030.2 RSMo resolves this issue for us: "When any subject matter, party or person is described or referred to by words importing the singular number or the masculine gender, several matters and persons, and females as well as males, and bodies corporate as well as individuals, are included." The definition of project labor agreement includes agreements designed to systemize labor relations at construction sites by operation of § 1.030.2.

Is the Board's project funded with ≤ 50% state funds?

The parties stipulate that the project is funded fifty percent or less with state funds.

Section 34.216.2(1)

Did the Board analyze the impact of a union only PLA

"Analyze," means, "to weigh or study (various aspects, factors, or elements) in order to arrive at an answer, result, or solution. < constantly tries to ~ the motives for his own behavior...>."⁷

Dr. Carl did extensive research on the pros and cons of union-only PLAs. He prepared and provided a summary of his analysis to the board members and provided his recommendation. Prior to voting to publish its Intent, each of the board members considered Dr. Carl's analysis and recommendation. In addition, the board members considered the outcome of earlier District projects performed under PLAs. The board members indicated that the great success the Board had with the 2004 PLA was a significant factor in their ultimate determination. Four of the board members (Talbot, Lippman, Weber, Tuggle) considered the comments of Mr. Kistler as presented at the July 24, 2008, meeting. The testimony of the board members clearly establishes that the board members weighed the various PLA aspects presented to them or of which they were otherwise aware in reaching their conclusions. We conclude the board members analyzed the impact of a union-only PLA.

Did the Board consider the statutory factors?

In reviewing the sufficiency of the Board's consideration of the statutory factors, we presume there was a rational basis for the Board's actions. The burden is on Petitioners to show that the Board's actions do not rest upon any reasonable basis and are purely arbitrary.

Each board member testified that the member considered each of the factors enumerated in § 34.216.2(1). Each board member testified that the success of the 2004 project labor agreement project weighed significantly in favor of a PLA as the member contemplated the statutory factors. We can conceive of a state of facts to justify the Board's actions, because the board members explained one such state of facts in great detail when the members described the successes of the 2004 project. Petitioners put on no evidence to show that the 2004 project labor agreement success does not provide a rational basis for the Board's determination to enter into a PLA now or to show that the determination is purely arbitrary. Although, the above findings are sufficient to support our conclusion that the Board complied with § 34.216.2(1), we provide additional reasoning.

⁶ A necessary corollary of petitioners' argument is that any labor agreement covering construction at multiple sites cannot be a "project labor agreement" as defined in § 34.216.1. Ironically, if we were to accept petitioners' reasoning, we could not rule on petitioners' appeal because our statutory authority is limited to a "determination as to whether the state or political subdivision complied with subsection 2 of this section *for a union-only project labor agreement as defined in subsection 1 of this section.*" (Emphasis added).

⁷ WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 77 (2002).

- Whether the union-only project labor agreement advances the interests of the public entity and its citizens;

Each board member testified that the member believed the use of a union-only PLA would advance the interest of the District and taxpayers. The factors considered by the members are summarized in the Findings of Fact. The most significant factor in the board members determination is the history of success the Board has had with PLAs. This fact alone establishes the Board's rational basis to believe that a PLA will advance the interests of the District and taxpayers. We conclude that the desire to replicate the success is a legitimate Board interest and, if successful, will advance the interests of the District and taxpayers. The Board sufficiently considered this factor.

- Whether the union-only project labor agreement is appropriate considering the complexity, size, cost impact, and need for efficiency on the project;

Each board member testified that the member believes the use of a union-only PLA is appropriate for the project in question. The factors considered by the members are summarized in the Findings of Fact. Each of the factors identified is a legitimate Board interest. The testimony of the Board establishes the Board has a rational basis for believing a PLA will assist the Board in managing these factors. The Board sufficiently considered this factor.

- Whether the union-only project labor agreement impacts the availability of a qualified work force;

Each board member testified that the member believes the use of a union-only PLA will help ensure the availability of a qualified work force. The factors considered by the members are summarized in the Findings of Fact. The testimony of the Board establishes the Board has a rational basis for believing a PLA will ensure a qualified work force is available for the project. The Board sufficiently considered this factor.

- Whether the scope of the union-only project labor agreement has a business justification for the project as bid;

Each board member testified that the member believed the use of a union-only PLA is justified from a business perspective. The business purposes the board members believe will be advanced by a PLA are summarized in the Findings of Fact. Each of the purposes identified is a legitimate Board interest. The testimony of the Board establishes the Board has a rational basis for believing a PLA will assist the Board in achieving these purposes. The Board sufficiently considered this factor.

We conclude that the Board considered each of the statutory factors set forth in § 34.216.2(1) at the time it considered whether to publish its Notice of Intent and at the time it voted to enter into a PLA. Petitioners' evidence showing that not every project performed under a project labor agreement results in great success is not sufficient to overcome the presumption that the Board had a rational basis for its determination, particularly in light of this Board's experience.

Section 34.216.2(2)

Did the Board publish its Intent?

The parties stipulate that the Board properly published its Intent to Enter Into Union Project Labor Agreement (Intent).

Did the Notice of Intent establish a rational basis for the Board's intent?

The Intent provides detailed benefits to the District under each of the § 34.216.2(1) factors. The Intent identified many motives leading the Board to the decision to publish the Intent. Each of the board members and Dr. Carl displayed the power of thinking in orderly, sensible, rational ways providing a foundation for us to conclude that the Board reached its decision to intend to enter into a PLA by the use of those powers. The Intent established a rational basis for the Board's decision to pursue a PLA and intent to enter into a PLA.

Section 34.216.2(3)

Did the Board conduct a Public Hearing?

The parties stipulate that the Board timely conducted a public hearing.

Section 34.216.2(4)

Did the Board publish its Determination?

The parties stipulate that the Board properly published its Determination.

Conclusion

Based upon the foregoing findings, we conclude that the Board of Education of the Northwest R-1 School District fully complied with § 34.216.2 RSMo, for a union-only project labor agreement as defined in § 34.216.1 RSMo.

Given at Jefferson City, State of Missouri, this 3rd day of December 2008.

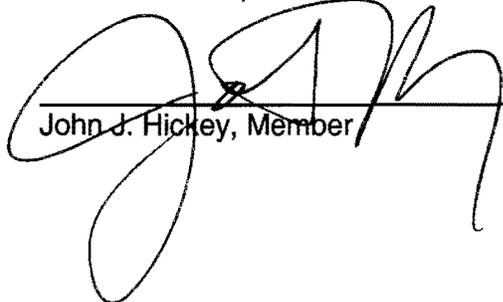
LABOR AND INDUSTRIAL RELATIONS COMMISSION



William F. Ringer, Chairman

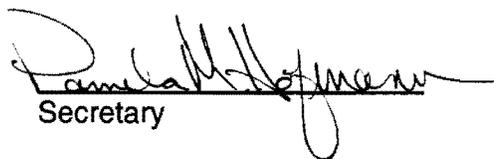


Alice A. Bartlett, Member



John J. Hickey, Member

Attest:



Secretary