

DETERMINATION

Matter No.: PLA-16-001

In the Matter of: Appeal of Determination by the City Council of the City of O'Fallon, Missouri, on June 25, 2015, to Enter into a Project Labor Agreement on a Public Works Project described as The New Police Station and Justice Center

On Behalf of: A.C. (Arnie) Dienoff

The above-captioned matter is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 34.216.3 RSMo.¹ Having reviewed the evidence and considered the whole record, the Commission finds that the City Council of the City of O'Fallon 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 July 9, 2015, the City Council of the City of O'Fallon (the City), Respondent, published its Determination to Enter into a Union Project Labor Agreement (Determination). On July 24, 2015, Petitioner A. C. Dienoff, a citizen of O'Fallon, Missouri, filed with the Commission his appeal of the determination pursuant to § 34.216.3.

On September 16, 2015, the Commission heard the matter at its offices in Jefferson City, Missouri. Petitioner appeared *pro se*. Kevin O'Keefe, Esq. represented the City.

Preliminaries

During the hearing Petitioner raised allegations that the City violated Missouri's Sunshine Law, that § 34.216.2 RSMo. is unconstitutional as applied in this case, that several members of the City Council of the City of O'Fallon should have recused themselves from any vote to adopt the union-only project labor agreement (PLA), and that the City Council violated various provisions in the City Charter. Section 34.216.3(1) expressly restricts the scope of the Commission's review to questions regarding whether or not the City complied with § 34.216.2. Therefore, we have no jurisdiction to address any of plaintiff's allegations that fall outside of this scope.

Additionally, Petitioner requested a continuance because several of the witnesses he wished to call were not able to attend the hearing, and because he had not seen Respondent's exhibits prior to the hearing. This hearing was subject to the applicable provisions of the Missouri Administrative Procedures Act (MAPA), specifically §§ 536.070 to 536.080 RSMo. While the Commission is empowered to issue subpoenas to compel witnesses to appear, Petitioner did not request any, nor did Petitioner submit any affidavits from any potential witness. Petitioner did not request any form of discovery prior to the hearing. Since none of Petitioner's witnesses was under subpoena, their participation (or lack thereof) was strictly voluntary. For this reason, and because claimant did not request any discovery prior to the hearing, Petitioner's request for a continuance was denied.

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.

¹ All statutory references are to RSMo Supp. 2014 unless otherwise indicated.

² SB 339 (2007).

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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.

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;

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(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

We consider the appeal under a rational basis standard of review. The phrase "rational basis" appears in two subsections of § 34.216. The first 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 City 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 City's decision to pursue a union-only PLA and those reasons are articulated in sufficient detail to reveal they were reached through an orderly thought process.

The second use 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 Clause, whereby the court will uphold a law if it bears a reasonable relationship to the attainment of a legitimate governmental objective. Rational basis is the most deferential of the standards of review that 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 1453 (10th ed. 2014).

The Missouri Supreme Court has 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.⁶ "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."⁷ The rational basis test is offended only if the classification rests on grounds wholly irrelevant to the achievement of the state's objective.⁸

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.⁹

While the rational basis review as described above does not apply neatly to a review of the City'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

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

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

⁵ *Id.*

⁶ *Greenlee v. Dukes Plastering Service, Inc.*, 75 S.W.3d 273, 277 (Mo. banc 2002)

⁷ *Snodgras v. Martin & Bayley, Inc.*, 204 S.W.3d 638, 641 (Mo. 2006)(citations omitted).

⁸ *Ambers-Phillips v. SSM DePaul Health Ctr.*, 459 S.W.3d 901, 912 (Mo. 2015).

⁹ *Missourians for Tax Justice Educ. Project v. Holden*, 959 S.W.2d 100, 103 (Mo. 1997).

conclude that any City determination under § 34.216.2 will survive rational basis scrutiny if it is rationally related to a legitimate City interest; that is, if any set 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

Petitioner testified, and three witnesses testified on petitioner's behalf:

1. Jim Pepper, Councilmen for City of O'Fallon
2. Caleb Hunter, an electrician residing in the City of O'Fallon and a member of the Independent Electrical Contractors Association.
3. John Loudon, former Chair of the Missouri Senate Small Business, Insurance and Industrial Relations Committee

Kevin O'Keefe, Esq. testified on behalf of the City. The city stipulated that the entirety of the City's analysis and consideration regarding the union-only PLA is contained in the "Intent to Enter into a Union Project Labor Agreement" (Intent) entered into evidence. However, Mr. O'Keefe also testified that the union-only PLA was discussed at city council meetings on May 11, 2015, June 11, 2015, and June 25, 2015. At these meetings, the city council heard citizen comments both for and against the union-only PLA. Petitioner admitted he himself attended and spoke against adopting a union-only PLA at the June 11 and June 25 meetings.

The City initially discussed adopting a union-only PLA at a city council workshop on May 11, 2015. The City published their findings in a document titled "Intent to Enter Into a Union Project Labor Agreement" after that meeting. A public hearing regarding the Intent was held on June 11, 2015, and the Intent was published on the city's website as an addendum to the agenda for the June 11, 2015, meeting. Petitioner's witness Caleb Hunter testified he received an email with an internet link to these documents before the meeting, and that the link led to the City's public website. The City published a Notice of Public hearing in the May 22, May 29, and June 5 editions of the St. Louis-Dispatch. This notice read:

Notice is hereby given that the City of O'Fallon will conduct a Public Hearing before the City Council on Thursday, June 11, 2015 at 7:30 p.m. in the Council Chambers of the O'Fallon Municipal Centre located at 100 North Main Street, O'Fallon Missouri, to hear comments on whether to proceed with an intent to enter into a union project labor agreement for the construction for a new police station and municipal courtroom located on Bryan Road.

The City enacted ordinance 6112 by an 8-2 vote at the city council meeting on June, 25, 2015, adopting and incorporating the "Intent to Enter Into a Union Project Labor Agreement" by reference. The City published a "Notice Pursuant to Sec. 34.216 RSMo" in the July 9, 2015 edition of the St. Charles County Business Record. This notice stated, in part:

In accord with the provisions of Sec. 34.216, RSMO, the City of O'Fallon, Missouri, hereby publishes notice that on June 25, 2015, following a public hearing held on June 11, 2015, the City determined to require a union-only project labor agreement with respect solely to future construction of the City's new police station and justice center to be located on Bryan Road, O'Fallon, Missouri.¹⁰

¹⁰ The City also provided evidence notice was also published in the July 10, 2015, edition of the St. Louis Post Dispatch. However, the text of the notice that was entered into evidence was not legible.

Petitioner and petitioner's witness, Jim Pepper, testified that the city conducted no analysis and consequently did not consider the factors required by § 34.216.2(1). They testified, and the city stipulated, that there was no analysis beyond that contained in the "Intent to Enter Into a Union Project Labor Agreement." Petitioner testified that the city did not seek input from anyone other than union members, though he also admitted he himself had spoken against the union-only PLA at the June 11, 2015, hearing. Mr. Loudon testified that the city's analysis was flawed, cut and pasted from other documents, and shameful; but when asked if it was "irrational" he said he would not call it irrational.

Discussion

Section 34.216 has not yet been interpreted or applied by any court. In the instant case, we must determine whether the City complied with § 34.216.2 for a union-only project labor agreement. We will review the evidence of the City's actions under each provision of § 34.216.2.

Section 34.216.2(1)

Did the City analyze the impact of a union-only PLA and consider the statutory factors?

The members of the City Council discussed entering into a union-only PLA at a May 11, 2015, workshop meeting. A transcript of this meeting was entered into evidence, which indicates that several members spoke in favor of a union-only project labor agreement, and at least one member spoke against it (Mr. Pepper, who testified on Petitioner's behalf).

The City presented testimony that there is no other document reflecting analysis beyond the meeting transcripts and the Intent to Enter Into a Union Project Labor Agreement. This document states that the City "has analyzed and considered the matters required by 34.216.2(1) and does hereby adopt findings with respect thereto...." The referenced findings are, in their entirety:

1. A union only labor agreement advances the interests of the City and its citizens in that:
 - (A) This project will involve numerous contractors and employees in different trades, have critical timelines for completion, and require a skilled and properly trained workforce to successfully complete the work in a proper and timely manner. In order to avoid costly delays and additional expense to the City, it is essential that construction on such projects proceed with the most highly-trained and disciplined craftsmen available and without the labor disruptions that can occur on long-term projects both from external labor relations problems and from the frictions that often arise when a large number of contractors and their employees work in proximity to one another on a job site.
 - (B) In the private sector, project labor agreements have been used for years on complex construction projects to achieve satisfactory performance and the economic benefits that result from having a guaranteed source of skilled workers and from avoiding disruptions in work. The city and its citizens are entitled to benefit from similar arrangements in order to ensure quality construction and efficiency.
 - (C) In the public sector, project labor agreements have been used successfully by numerous other public entities in and around the Greater St. Louis region for hospitals, wastewater treatment facilities, schools and other complex construction projects. Such agreements have been a major factor in producing quality construction work and

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projects completed on time, within budget, and without labor strife of disruptions.

2. A union-only project labor agreement is appropriate considering the complexity, size, cost impact, and need for efficiency on the project, in that:
 - (A) This City of O'Fallon can reasonably be expected to realize overall cost savings and avoid unnecessary and costly delays and corrective work and disruption on this project involving numerous contractors and employees in different trades, having critical timelines for completion, and requiring a skilled and properly trained workforce to successfully complete the work in a proper and timely manner. In order to avoid costly delays and additional expenses to the City, it is essential that construction on such projects proceed with the most highly-trained and disciplined craftsmen available and without the labor disruptions that can occur on long-term projects both from external labor relations problems and from the frictions that often arise when a large number of contractors and their employees work in proximity to one another on a job site.
 - (B) In the private sector, project labor agreements have been used for years on complex construction projects to achieve satisfactory performance and the economic benefits that result from having a guaranteed source of skilled workers and from avoiding disruptions in work. The complexity, size, cost impact, and need for efficiency on the project make this undertaking especially well-suited to achieve similar benefits.
 - (C) In the public sector, project labor agreements have been used successfully by numerous other public entities in and around the Greater St. Louis region for hospitals, wastewater treatment facilities, schools and other complex construction projects. Such agreements have been a major factor in producing quality construction work and projects on time, within budget, and without labor strife or disruptions.
3. [T]he union-only project labor agreement is not reasonably likely to negatively impact the availability of a qualified work force, and is, in fact, likely to enhance the availability of a qualified work force in that:
 - (A) Highly trained craftsman qualified to participate in the project under this project labor agreement are readily available.
 - (B) There is a need to provide City of O'Fallon residents with more opportunities to participate in workforce development and apprenticeship programs that include life skills training and job readiness training. Such apprenticeship programs will increase the capacity of O'Fallon residents to succeed apprenticeship programs, reduce the unemployment rate, and increase the available pool of qualified craftsman to serve the City's needs in this and other projects in the future.

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- (C) The construction crafts that are employed on these projects require a supply of new apprentices to perpetuate the crafts into the future which provide meaningful employment opportunities to individuals seeking to enter the building and construction trades for long-term, well-paid careers in the construction industry.
4. [T]he scope of the union-only project labor agreement has a business justification for the project as bid in that:
- (A) This project will involve numerous contractors and employees in different trades, have critical timelines for completion, and require a skilled and properly trained workforce to successfully complete the work in a proper and timely manner. In order to avoid costly delays and additional expense to the City, it is essential that construction on such projects proceed with the most highly-trained and disciplined craftsmen available and without the labor disruptions that can occur on long-term projects both from external labor relations problems and from the frictions that often arise when a large number of contractors and their employees work in proximity to one another on a job site.
- (B) In the private sector, project labor agreements have been used for years on complex construction projects to achieve satisfactory performance and the economic benefits that result from having a guaranteed source of skilled workers and from avoiding disruptions in work. The city and its citizens are entitled to benefit from similar arrangements in order to ensure quality construction and efficiency.
- (C) In the public sector, project labor agreements have been used successfully by numerous other public entities in and around the Greater St. Louis region for hospitals, wastewater treatment facilities, schools and other complex construction projects. Such agreements have been a major factor in producing quality construction work and projects completed on time, within budget, and without labor strife or disruptions.

The City entered into evidence copies of the meeting minutes from the June 11, 2015, public hearing. The meeting minutes summarized citizen comments from twenty-nine speakers, including Petitioner. These summaries indicate that approximately equal numbers of speakers were in favor of and in opposition to the union-only PLA. Some speakers described situations where projects using union labor were delayed, over budget, lacking in quality, and restricted the available workforce. Other speakers described situations where projects using union labor were completed early, under budget, were of high quality, and had not restricted the workforce.

The meeting notes also included letters from the superintendants for the Northwest R-I and Hancock Place school districts outlining their experiences with school district projects conducted both with and without union-only PLAs. These letters noted that their projects that were not union-only experienced delays and cost overruns while their union-only PLA projects came in on time and within budget. Several other letters and other documents described situations where union-only PLA projects had gone over budget, been delayed, and were found to have restricted the labor force.

Petitioner argues that the City conducted no analysis at all, noting that the city did not conduct a financial study, or any other formal study, and that the city deviated from its normal method of conducting an analysis regarding construction projects. He also argues that the ordinance and Intent were written by union members and not the city attorney, and that the city relied only on union members and did not reach out to any non-union organizations. Consequently, according to Petitioner, the City did not consider any of the factors required by § 34.216.2(1).

However, Petitioner was unable to demonstrate any provision of § 34.216.2 that requires the City conduct their analysis in any particular way, or any provision that restricts the sources of information City may use when crafting its ordinances and documents. As previously noted, § 34.216.3(1) expressly restricts the scope of the Commission's review to questions regarding whether or not the City complied with § 34.216.2. When interpreting a statute, "[t]he first rule is to give effect to legislative intent as reflected in the plain language of the statute at issue."¹¹ "[W]ords should be given their plain and ordinary meaning whenever possible."¹²

Petitioner argues that the formal studies are required because the statute states the city "must analyze the impact of a union-only project labor agreement and consider [the factors listed in subsections (a) – (d)]." "Analyze," means, "to weigh or study (various aspects, factors, or elements) in order to arrive at an answer, result, or solution."¹³ "Consider" means, "to reflect on: think about with a degree of care or caution."¹⁴ The plain and ordinary meanings of the words "analyze" and "consider" thus do not support Petitioner's position that City was required to conduct a formal study of any particular type. Rather, an analysis requires only the weighing of various factors, and "consider" means only to reasonably reflect on these factors.

From the record before us, we cannot say that the City failed to analyze or consider the factors listed under § 34.216.2(1)(a)-(d). The transcripts of the May 11, 2015, meeting and the Intent itself shows a weighing and reflection upon the factors enumerated by statute. Petitioner's construction of the statute would require us to add many words to the statute passed by the Legislature, going well beyond the plain language of the statute and the ordinary meaning of the words used by the legislature. This we may not do.¹⁵

We find the City analyzed the impact of a union-only project labor agreement and considered the factors listed in § 34.216.2(1)(a)-(d)

Section 34.216.2(2)

Did the City publish its findings in a document titled "Intent to Enter Into a Union Project Labor Agreement"?

The City provided evidence that it published its findings in a document titled "Intent to Enter Into a Union Project Labor Agreement," and entered a copy of a document titled as such into evidence. The Intent was then published on the city's website as an addendum to the agenda for the June 11, 2015, public hearing. Petitioner's witness Caleb Hunter testified he received an email with an internet link to these documents before the meeting, and that the link led to the City's public website. The City published a Notice of Public hearing in the May 22, May 29, and June 5 editions of the St. Louis-Dispatch. This notice read:

Notice is hereby given that the City of O'Fallon will conduct a Public Hearing
before the City Council on Thursday, June 11, 2015 at 7:30 p.m. in the Council

¹¹ *Ivie v. Smith*, 439 S.W.3d 189, 202 (Mo. 2014).

¹² *State ex rel. Jackson v. Dolan*, 398 S.W.3d 472, 479 (Mo. banc 2013).

¹³ WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 77 (2002).

¹⁴ WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 483 (2002).

¹⁵ *Ivie v. Smith*, 439 S.W.3d 189 at 202. See also *State ex rel. Jackson v. Dolan*, 398 S.W.3d at 479.

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Chambers of the O'Fallon Municipal Centre located at 100 North Main Street, O'Fallon Missouri, to hear comments on whether to proceed with an intent to enter into a union project labor agreement for the construction for a new police station and municipal courtroom located on Bryan Road.

We find that that City published its findings in a document entitled "Intent to Enter Into a Union Project Labor Agreement."

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

The Intent provides information regarding benefits to the City under each of the § 34.216.2(1) factors. Though the Intent did not go into great detail, and was at times repetitive (we note that paragraphs 1 and 4 of the findings of fact in the intent are identical), § 34.216 does not require these findings be of any particular length or detail.

We review the City's findings only to determine if they are rational. We do not pass judgment on their persuasive force, or substitute our own judgment for that of the City Council. As previously discussed, we must presume the findings are rational¹⁶ and it is Petitioner's burden to show they are not rational but are instead purely arbitrary.¹⁷ The rational basis test is offended only if the City's decision rests on grounds wholly irrelevant to the achievement of the City's objective.¹⁸ We cannot say the findings in the Intent are arbitrary or rest on grounds wholly irrelevant to the achievement of the City's objective. Concerns over cost overruns, timeline delays, and quality of construction are all relevant to the achievement of legitimate City objectives. Nor do we find any indication in the record before that the City's findings were not the product of an orderly thought process. Consequently, we find Petitioner did not meet his burden of showing that the City's findings not rational.

Section 34.216.2(3)

Did the City conduct a Public Hearing?

The City conducted a public hearing on June 11, 2015. The City's meeting minutes from that hearing indicate that twenty-nine people spoke for or against a union-only PLA at that meeting. Petitioner admits he attended this meeting and spoke against the union-only PLA. Petitioner's witness, Jim Pepper, a city councilmen, also testified that a hearing took place on June 11. We find the city timely conducted a public hearing.

Section 34.216.2(4)

Did the City publish its Determination?

The City published a "Notice Pursuant to Sec. 34.216 RSMo" in the July 9, 2015, edition of the St. Charles County Business Record. This notice stated, in part:

In accord with the provisions of Sec. 34.216, RSMO, the City of O'Fallon, Missouri, hereby publishes notice that on June 25, 2015, following a public hearing held on June 11, 2015, the City determined to require a union-only project labor agreement with respect solely to future construction of the City's new police station and justice center to be located on Bryan Road, O'Fallon, Missouri.¹⁹

We find the City properly published its determination.

¹⁶ *Snodgras v. Martin & Bayley, Inc.*, 204 S.W.3d at 641.

¹⁷ *Missourians for Tax Justice Educ. Project v. Holden*, 959 S.W.2d at 103.

¹⁸ *Ambers-Phillips v. SSM DePaul Health Ctr.*, 459 S.W.3d 901, 912 (Mo. 2015)

¹⁹ The city also published some form of notice in the July 10, 2015, edition of the St. Louis Post Dispatch. However, the text of the notice entered into evidence was not legible.

Conclusion

Based upon the foregoing findings, we conclude that the City Council of the City of O'Fallon, Missouri 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 29th day of September 2015.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

CONCURRING OPINION FILED
James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

CONCURRING OPINION

I fully concur in the Commission's opinion in the matter. I write separately to offer additional observations.

During the hearing, Petitioner repeatedly expressed his concern that no formal study was done, that no formal financial analysis was produced or shared with the public, and that the City engaged in a rushed process that significantly deviated from their normal method for analyzing construction projects. I share those concerns.

Petitioner's witness John Loudon testified that the City's analysis was shameful, flawed, cut and paste, and did not make any finding regarding the City of O'Fallon specifically. Caleb Hunter, a member of the City's zoning board and a non-union electrician, testified that the City did not consult with anyone that was not affiliated with a union when making its decision. Again, I share these concerns.

The City's analysis was many things. It was rushed, superficial, repetitive, generic, and heavily influenced by organized labor. But it was an analysis. In addition, it was rational in that the City's findings, minimal and generic though they were, were relevant to the achievement of legitimate City objectives.

This kind of rushed analysis is bad public policy, and it is bad governance. However, it complies with the minimal and essentially toothless requirements of § 34.216. That is the only issue this Commission is empowered to consider. To interfere with a political question would open the flood gates for every citizen who was not satisfied with a particular outcome. Petitioner's remedy lies in the political process, not before this Commission.

James G. Avery, Jr., Member