

SUPREME COURT OF MISSOURI

Utility Service Co., Inc. v. Department of Labor and Industrial Relations

331 S.W.3d 654 (Mo. banc 2011) · No. SC 90963 · Decided March 1, 2011

SUMMARY

The Supreme Court of Missouri held that work performed under a water tank maintenance contract constituted "construction" subject to Missouri's prevailing-wage requirements, rather than exempt "maintenance work." The court concluded that reconstruction, improvements, alterations, painting, and major repairs may fall within the statutory definition of construction even when work does not change a facility's size, type, or extent, and reversed the trial court's judgment.

CASE DETAILS

COURT	Supreme Court of Missouri
WRITING FOR THE COURT	Mary R. Russell
JURISDICTION	Missouri
DECIDED	March 1, 2011
DOCKET	SC 90963
DISPOSITION	reversed
PROCEDURAL POSTURE	The Department appealed from a summary judgment entered for Utility Service in its declaratory-judgment action concerning whether contracted work on a city's water storage tank and tower was exempt maintenance work or covered construction under Missouri's Prevailing Wage Act. The Missouri Supreme Court accepted transfer after disposition by the court of appeals.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. It is proper when the undisputed facts establish the moving party's right to judgment as a matter of law. Statutory interpretation is also reviewed by examining the statute's language and giving it its plain and ordinary meaning.
PRECEDENTIAL VALUE	Published en banc opinion of the Supreme Court of Missouri; precedential.
PARTIES	Department of Labor and Industrial Relations, Labor and Industrial Relations Commission of Missouri v. Utility Service Co., Inc.

TOPICS

construction law wage and hour statutory interpretation administrative law
judicial review of agency action

PRACTICE AREAS

construction law employment law administrative law statutory interpretation

QUESTIONS PRESENTED

1. Whether the contracted work on the city's existing water storage tank and tower constituted construction subject to Missouri's Prevailing Wage Act or maintenance work exempt from the Act.
2. Whether work may constitute statutory construction even when it does not change or increase the existing facility's size, type, or extent.
3. Whether the trial court properly entered summary judgment for Utility Service.

HOLDINGS

1. The contracted work constituted construction under section 290.210(1) and therefore was subject to the Act's prevailing-wage requirements.
2. The size-type-extent limitation in the maintenance-work definition cannot be applied to narrow the plain statutory scope of construction; construction may occur on an existing facility without changing its size, type, or extent.
3. Summary judgment for Utility Service was improper because the contracted work was construction subject to prevailing-wage requirements.

KEY QUOTATIONS

"Because "maintenance work" is exempt from coverage under the Act, its definition must be read narrowly."
(660)

"The plain meaning of the terms included in the definition of "construction" under section 290.210(1) encompasses work that can occur without any change to a facility's size, type, or extent." (660)

"Because the contracted work in this case fits within terms defining "construction" under section 290.210(1), the trial court erred in determining the work was "maintenance work" for purposes of applying the Act."
(662)

FACTUAL BACKGROUND

Monroe City contracted with Utility Services, Inc. to care for and maintain an elevated water storage tank and tower. The contract included inspections, cleaning, disinfection, engineering and inspection services, replacement of steel and other major component parts, repairs, installation of an anti-climb device and roof-hatch lock, and complete interior and exterior repainting. The parties disputed whether prevailing wages were

required for the work under Missouri's Prevailing Wage Act, which applies to construction of public works but excludes maintenance work.

PROCEDURAL HISTORY

Utility Service sought a declaration that its contracted inspections, painting, welding repairs, and related work were maintenance work exempt from prevailing-wage requirements. The parties filed cross-motions for summary judgment, and the trial court entered judgment for Utility Service. The Department appealed, and the Supreme Court of Missouri took transfer after the court of appeals' disposition.

DISPOSITION

reversed

CASES CITED

- ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp., 854 S.W.2d 371, 376, 381-82 (Mo. banc 1993)
- United Pharm. Co. of Mo., Inc. v. Mo. Bd. of Pharm., 208 S.W.3d 907, 909-10 (Mo. banc 2006)
- Neske v. City of St. Louis, 218 S.W.3d 417, 424 (Mo. banc 2007)
- State ex rel. LeFevre v. Stubbs, 642 S.W.2d 103, 106 (Mo. banc 1982)
- State v. Breckenridge, 219 Mo. App. 587, 282 S.W. 149, 150 (1926)
- Foremost-McKesson, Inc. v. Davis, 488 S.W.2d 193, 197 (Mo. banc 1972)
- Purler-Cannon-Schulte, Inc. v. City of St. Charles, 146 S.W.3d 31, 47 (Mo. App. 2004)
- State Dep't of Labor & Indus. Relations v. Bd. of Pub. Utils. of City of Springfield, 910 S.W.2d 737, 744 (Mo. App. 1995)
- Chevron, U.S.A., Inc. v. Natural Res. Def. Council, 467 U.S. 837, 842-43 (1984)
- Long v. Interstate Ready-Mix, L.L.C., 83 S.W.3d 571, 574 (Mo. App. 2002)

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