



BOBROFF, HESSE, LINDMARK & MARTONE, P.C

PUBLIC SECTOR EMPLOYEE BARGAINING --
A WHOLE NEW BALL GAME

After the
Missouri Supreme Court's Decision
in

INDEPENDENCE-NATIONAL EDUCATION
ASSOCIATION, et al.
v. INDEPENDENCE SCHOOL DISTRICT

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INTRODUCTION

The Missouri Constitution has always stated that "employees shall have the right to organize and to bargain collectively through representatives of their own choosing." However, in 1947, the Missouri Supreme Court ruled that this constitutional right was not available to public sector employees. City of Springfield v. Clouse, 206 S.W.2d 539 (Mo. banc 1947). For the 60 years following the Missouri Supreme Court's decision, public sector employees have been denied the right to engage in "collective bargaining."

This all changed on Tuesday, May 31, 2007, when the Missouri Supreme Court reversed its position on this issue, overruled Springfield v. Clouse and held that all employees, including public sector employees, have the right to "bargain collectively through representatives of their own choosing."

This is undoubtedly the single biggest change to the law concerning public sector employees in more than 50 years. It will have a dramatic and immediate effect on every employer in the public sector, who can expect to face both increasing unionization and a greater emphasis on negotiating the terms and conditions of employment.

Because this is such a dramatic change in Missouri law, Bobroff, Hesse, Lindmark & Martone, P.C. has prepared the following FAQ to assist our clients in interpreting and applying the Missouri Supreme Court's Decision in Independence-National Education Association, et al. v. Independence School District:

FAQs:

- Q: How did the Missouri Supreme Court change the law for public sector employers?**

A: Before Tuesday, May 29, 2007, there was no obligation to bargain collectively with public sector employees, although many public sector employees did have a right to "meet, confer and discuss" the terms of their employment. In addition, contracts negotiated between public sector employers and their employees are now enforceable, where before they could be rescinded by the employer.

2. Q: Which public sector employees are affected by this change in the law?

*A: All public sector employees are affected by this change in the law. While under Section 105.510 only certain public sector employees enjoyed a statutory right to "meet, confer and discuss" the terms of their employment, the Missouri Supreme Court has now held that **all** public sector employees have a right to collective bargaining, including categories of employees specifically excluded from Section 105.510.*

3. Q: Will this change in the law give police officers, teachers and fire fighters the right to bargain collectively?

A: Yes.

4. Q: What does it mean to "bargain collectively"?

A: While the Constitution of the State of Missouri does not define the term "bargain collectively", Missouri Courts will probably look to federal case law for guidance. "Collective bargaining" includes the obligation to "meet at reasonable times and confer in good faith with respect to wages, hours and the other terms and conditions of employment. . . . execute a written contract incorporating any agreement reached . . . but does not compel either party to agree to a proposal that requires the making of a concession."

5. Q: Is the obligation to "bargain collectively" the same as the obligation to "meet, confer and discuss."?

A: Probably not. Missouri courts have never definitively considered this issue. However, under Federal law, the obligation to bargain collectively imposes a duty on the part of the employer to engage in good faith negotiations, which includes give and take at the bargaining table. This is a greater obligation than merely "meeting, conferring and discussing" proposals with employees.

6. Q: Are public sector employers free to reject written agreements with public sector employees?

A: No. Previously, a public sector employer was free to reject any written agreement it had reached with its employees concerning their wages, hours, and terms and conditions of employment. This is no longer the

case—the Missouri Supreme Court explicitly held that labor contracts with groups of public employees are now binding.

7. Q: Are public entities required to agree to proposals submitted by labor organizations representing their employees?

A: No.

8. Q: Can public sector employers automatically reject all employee proposals?

A: *No. While the law allows public sector employers to reject employee proposals, the obligation to bargain collectively requires employers to negotiate in good faith. While there is no applicable Missouri case law on this point, federal case law and case law from other states with public sector employee bargaining holds that if a public sector employer rejects employee proposals without legitimate reasons, it has failed to bargain in good faith and bargain collectively. The duty of good faith bargaining requires that a public sector employer come to the negotiating table with an open mind and a sincere desire to reach an agreement (and not just reject all of the labor organization's proposals).*

9. Q: Does the constitutional right to bargain "through representatives of their own choosing" give all public sectors the right to unionize?

A: Yes.

10. Q: What will happen next?

A: *There will be (and already has been) a scramble among the labor unions and employee associations that represent public sector employees (for example, AFSCME, the Fraternal Order of Police, the SEIU and the Firefighters' Union) to increase their organizing efforts and demand that public sector employers enter contract negotiations. While it is likely that the Missouri legislature will enact legislation to define the collective bargaining process and provide a framework for resolving disputes, the legislature cannot enact legislation reversing the Missouri Supreme Court's decision because the decision interprets the Constitution of the State of Missouri—the only way to change the law back to the way it was would be to amend the Missouri State Constitution, which is unlikely.*

11. Q: What should a public sector employer do next?

A. *Be informed and proactive--*

Public sector employers should:

1. *Take stock of all current agreements with employees, including memoranda, contracts, etc. and analyze the potential obligations under those agreements.*
2. *Prepare to begin contract negotiations with groups of employees already represented by a labor organization. Unions will quickly move forward to press their new found bargaining rights, and public sector employers need to be prepared to deal with the issues head on.*
3. *Typically the negotiation process involves evaluating current policies, practices and terms and conditions of employment, preparing written proposals, evaluating and negotiating over both side's proposals, and ultimately reaching a final, written collective bargaining agreement.*
4. *Evaluate the potential for and develop a game plan to deal with unionization for groups of employees not currently represented by a labor organization. This change in the law will lead to increasing unionization of public sector employees. To a certain extent, public sector employers are within their rights in attempting to persuade their employees not to join labor organizations. However, the law in this area is extremely complex and it is important for public sector employers to tread carefully and seek experienced legal assistance.*
5. *Train their department heads, supervisors and administrators in how to best deal with future unionization attempts and the obligation to bargain in good faith.*

If we can provide any additional clarification or assistance in this area, please do not hesitate to call. As you know, Bobroff, Hesse, Lindmark & Martone, P.C. is a labor and employment firm with combined experience of nearly a century in handling labor and employment issues with a substantial public sector practice (including several cities, counties, municipalities, police departments, fire departments and sheriffs' offices).

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