COLLECTIVE BARGAINING
UPDATE FOR MISSOURI PUBLIC EMPLOYERS
What You Need To Know Now

Presented by
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Key Legal Issues

- Independence NEA v. Independence School District (MO Supreme Court)
- Section 105.500 RSMo et seq.
- 8 CSR 40-1.010 et seq.
- New circuit court cases (St. Louis County cases)
- Key Board of Mediation decisions
- FEDERAL PROPOSALS – DEFEATED in late 2010
Does collective bargaining authorized as a constitutional right under the Missouri Constitution encompass federal labor law concepts of “good faith” bargaining?

- IAFF Local 77 v. City of St. Joseph, MO, Buchanan County Case No. 09BU-CV01900
  - Not appealed

- American Federation of Teachers v. Ledbetter, St. Louis City Circuit Case No. 0922-CC01773
  - Pending Missouri Supreme Court argument and decision as American Federation of Teachers, Local 420, et al. v. Richard Ledbetter, et al. Case No. SC91766
  - Briefs filed
Collective bargaining rights under Missouri Constitution do not require exclusive recognition because such would disenfranchise employees who do not want to engage in collective bargaining.

*Springfield NEA v. Springfield School District*, Greene County Case No. 31GR-85429

*Settled on appeal without decision*
Do the collective bargaining rights under Missouri Constitution require a public employer to have a selection process for determining organization with bargaining rights or not?

- **Eastern Missouri Coalition of Police, FOP Lodge 15 v. City of Chesterfield, Missouri, ED Case No. ED95366**
  - Decided May 3, 2011
  - Transferred to Missouri Supreme Court as Case No. SC91736
  - Briefs filed

- **Eastern Missouri Coalition of Police, FOP Lodge 15 v. City of University City, Missouri, ED Case No. 95364**
  - Decided May 3, 2011
  - Transferred to Missouri Supreme Court as Case No. SC91737
  - Briefs filed
Cases withdrawn related to bargaining unit elections:

- **Grandview NEA v. Grandview School District**
  - Election held

- **LIUNA Local 1031 v. City of Wentzville, Missouri**
  - Decertification election held

Other St. Louis County Circuit collective bargaining cases filed in Berkeley, Bel-Ridge, Ferguson, Hazelwood and Jennings

- Jennings: election and unit ordered
What contract enforcement action is available under a collective bargaining agreement adopted by the school board granting grievance hearings to a dismissed employee?

Ciafullo v. Hazelwood School District, Case No. 11SL-CCO2477

Filed June 17, 2011
Key Terminology

★ **Good Faith Bargaining** - **NOT THE LAW IN MISSOURI CURRENTLY**

★ **Policy v. impact of policy**

★ **Mandatory subjects of bargaining**

★ **Permissive subjects of bargaining**

★ **Illegal subjects**

★ **City of St. Joseph, MO / IAFF and St. Louis Charter School / AFT**
Key Issues

★ Voluntary acts are BINDING?

MO Courts will enforce documents now!!!

★ Do not act precipitously, you will be bound

★ Do not accept bargaining units as they are proposed or as they exist

★ Do not agree to final documents or single parts, one at a time

★ Do not move too quickly until the extent of the decision is known
Key Issues

★ Who is the EMPLOYER?
- City Council or County Commission?
- Individual Elected Officials?
- Both?

★ Who speaks for Employer in negotiations & labor relations matters?

★ How are budget & general personnel expenditures/policies controlled?
Key Issues

★ Who are EMPLOYEES?

ALL PERSONS EMPLOYED

★ Police officers / deputies
★ Command & supervisory staff
★ All managers
★ All supervisors
★ Potentially everyone else (including Dept. Heads)
★ Correctional/jail/county staff
Key Issues

🌟 What State Agency Regulates Process?

- Board of Mediation except for police officers, deputies, supervisors, managers, confidential employees, teachers

- May require legislative action

- No federal agency has jurisdiction
Key Issues cont.

What documents are CONTRACTS?

- Section 432.070 RSMo
- Special provisions need to be carefully considered before taking action or negotiating
  - management rights attempt
  - operational concerns
  - scope of various bargaining units
  - eliminate “evergreen” provisions
  - take care when relating to arbitration
Key Issues cont.

★ Contract Provisions
★ Management rights (take care)
★ Disciplinary article (if any)
★ Grievance procedure use
★ Other post-disciplinary actions
★ No right to refuse to participate
Key Issues cont.

★ Arbitration
★ Avoid including any such provisions in any negotiated document, if possible
★ Is binding & legal once document is adopted
★ Understand types by function / by result
  ★ grievance (rights) or interest (contract creation)
  ★ Binding vs. advisory
  ★ Mandatory vs. voluntary
Key Issues cont.

★ How to Get Interest Arbitration

★ Mandate
  ★ By law
  ★ By contract – TAKE CARE!! Backdoor wording

★ Voluntary
  ★ Agreement between parties

★ For whom?
Key Terminology

★ Good Faith Bargaining (SUBJECT TO MO SUPREME COURT PENDING REVIEW)

★ Policy v. impact of policy
★ Mandatory subjects of bargaining
★ Permissive subjects of bargaining
★ Illegal subjects
★ Bargaining units revisited

★ Clean them up by separating, removing unnecessary people (administrators, command staff, supervisors, managers, confidential people)

★ Structure to meet needs of department/elected officials

★ Cross-department problems
Defining the Bargaining Unit

Types

Wall to wall
Departmental
Types of work
Mixed / Categorical
Examples by type of agency
Current agreements

- revise to remove non-mandatory subjects
- rewrite to support & strengthen management positions
- eliminate gratuitous and outdated provisions as well as non-mandatory items; tighten up the agreements NOW
Creating management teams

- identify and train key personnel and county officials - NOW
- understand the system and how it changes with law changes
- understand policy vs. impact of policy
- Secure professional help
Creating management teams (cont.)

Who is to serve

- chief spokesperson
- operations official(s)
- financial advisor
- labor relations staff
- team support
- no elected official should serve
Understand all processes

- Negotiating rules will change as to effect of language and process

- Arbitration types
  - grievance (contract interpretation & application)
  - interest (contract creation)
Unfair labor practices

there are no such things at this point in time, but the Courts can take up violations of the right to bargain.
★ Litigation can be expected !!!

★ civil rights suits (Sec. 1983)
★ constitutional claims (1st Amendment – US Constitution; MO Constitution provisions)
★ freedom of speech, of assembly to bargain collectively
★ recovery of attorney fees
★ Rights of Representation

★ Employer implemented
  ★ No guarantee
  ★ Rules and procedures govern

★ Bargaining Unit / Collective Bargaining / Contract
  ★ Weingarten type – explain
  ★ Contract rights
  ★ Grievance procedure
  ★ Multiple processes / non exclusive

★ Failure to give / observe rights
  ★ Order to participate - insubordination
Employee representation

- Weingarten-type employee representation rights
- Union presence at all activities related to unit
- Union approvals will be required before action can be taken
Critical Considerations

WIN/WIN Pitfalls cont.

- transfer of power to a “sharing” of power
- standards replace positions
  - standards = agreement before issues handled - mutuality without exchange
  - good intentions lead to expenditures of funds beyond need
  - outside force only appears to bring about outcomes
★ Critical Considerations (cont.)

WIN/WIN Pitfalls cont.

★ Desire for “YES” cannot replace “PRIORITY” among law enforcement needs

★ Consensus eliminates/relieves leaders of decision-making responsibility

★ Creates “partnership” where law requires “Elected Officials’ Action”

★ false mutuality
WIN/WIN Pitfalls (cont.)

★ **DO NOT ENGAGE IN THIS TYPE OF NEGOTIATIONS**

★ **Win/Win = Department loses**

 & union wins
What about due process laws / civil service?

- What is status now?
- What do we need to prepare for if unionized?
- What representation can be made? (must be an attorney, not union rep)
- How to deal with decisions?
- Are decisions binding under the Independence Schools’ case?
General Overview

“At will”

Civil service / tenure law / merit system

Contract rights

Public employees have some Constitutional rights
Research

Collect relevant management information
- financial
- operations
- policy based
- practice based
- valuation of benefits & employment costs
Research (cont.)

Collect relevant union information

- propaganda
- grievance matters
- past demands
- rumors
- unit profile
Setting the Strategy

Determining priorities & parameters on issues

- operational concerns
- financial concerns
- policy concerns
Setting the Strategy (cont.)

Establishing the end point
- target for conclusions
- determination of flexibility

Setting the pace for negotiations
- what order & timing
- relating to union demands
Setting the Strategy (cont.)

Understanding union issues
- determine responses
- prioritize responses
- time the responses
Relating to Language

- Understanding terms & parts of document
  - Its legal foundation
  - The parties respective parts

Goal of Administration

- Regulate salaries and other working conditions
  - Understand “intent” of language
  - Interpret words used
Relating to Language (cont.)

Standards for interpretation

- intent of the parties
- give legal support for documents
- normal & customary meaning
- use whole document
- avoid harsh or absurd results
Relating to Language (cont.)

Standards for interpretation cont.

- general vs. specific
- read in light of context
- look at bargaining history for context
- custom & past practice
- construe against proposing party
Relating to Language (cont.)

Standards for interpretation cont.

- external manuals, handbooks, etc.
- legal rules of contract construction
Relating to Language (cont.)

Special provisions

- management rights clause
  - general preservation
  - financial controls & appropriations
  - emergency management concerns (weather, terror, strike, other)
★ Special Management Provisions

★ Past practices elimination (bookends)
★ arbitration authority / limitation clause
  ★ define grievance limits
  ★ set steps carefully (who appeals & when)
  ★ election of remedies / waiver of rights provisions
    (eliminates 2 processes)
  ★ limit arbitrator authority (substantive v. procedural)
Special Management Provisions (cont.)

- Avoid “evergreen” term
- Zipper clause
  - (waiver – actual & impact)
- Labor management Committees
  - (advise - not control)
- Interpretive agreement
Special Management Provisions (cont.)
- definition section
- past practice wording – eliminate these
- term of document – eliminate evergreen clause
- other special terms
Special Management Provisions (cont.)

★ No strike & concerted activity (penalties)
★ Limits of financial provisions to appropriations
★ No INTEREST ARBITRATION provisions
Concluding the Process

- assembling the TA’s
- conforming the document
- executing the agreements
- planning implementation of the document
- training managers and supervisors
- application recordkeeping
Training
★ what are NEW parts and how to implement?
★ what was NOT changed?
★ what interpretation should be made?
★ where to get help?
★ what records are to be kept?
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