

CITIES REMAIN FREE TO SET FRAMEWORK FOR COLLECTIVE BARGAINING

Article I, Section 29 of the Missouri Constitution provides that “employees shall have the right to organize and to bargain collectively through representatives of their own choosing.”

In 2007, the Missouri Supreme Court held in *Independence-National Education Association v. Independence School District*, 223 S.W.3d 131, 139 (2007), that the right to collectively bargain guaranteed by the Missouri Constitution applies to public employees as well as to private-sector employees. The Court also held that a city is free to establish a framework for public employees to bargain collectively through representatives of their own choosing. The Missouri Supreme Court provided further clarification in *Eastern Missouri Coalition of Police, Fraternal Order of Police, Lodge 15 v. City of Chesterfield*, 386 S.W.3d 755 (Mo. banc 2012). The Court declared, “If it is unnecessary for the cities to pass an ordinance to carry out their constitutional duty to bargain collectively, then there is no reason to order the cities to do so.” *Id.* at 763. The Court concluded that the trial court erred “in requiring the cities to establish a procedure for a meet and confer process rather than simply ordering them to meet and confer with the union, allowing the cities, on their own, to make whatever arrangements are necessary to carry out that order.” *Id.* at 763-64.

REQUIREMENT FOR AGREEMENT

A city is not required to reach an agreement with employees as to



any aspect of employment or working conditions. A city is not required to have in place a written agreement with employees and may choose not to have a written agreement with employees.

A city may reject all employee proposals, as long as a city’s representative has first met and conferred with employees and/or their representatives. As it may reject all employee proposals, the city may choose to use its own governing authority to prescribe wages and working conditions.

SELECTION OF BARGAINING REPRESENTATIVE

Each individual employee has a free choice as to whether or not he or she is represented by a labor union or organization and has a free choice as to their particular representative. Under Article I, Section 29 of the Missouri Constitution – the free choice of each individual employee is paramount and the rights of some employees do not outweigh the right of choice of other employees.

No employee can be forced into

accepting representation by one particular representative or labor organization. Moreover, an employee may elect to represent himself or herself. Therefore, different bargaining representatives may represent different employees within the same department. Any employee may file with the city a notification of that employee’s chosen representative.

A “bargaining unit” shall consist of all employees within a particular department, regardless of the number of bargaining representatives or self-

represented employees.

Coercion of employees to join a union or organization at all, join a specific union or organization, or pick a specific bargaining representative is violative of Article I, Section 29 of the Missouri Constitution. No person or group of persons may, directly or indirectly, by intimidation or coercion, compel or attempt to compel any employee to join or refrain from joining a labor organization or union. No person or group of persons may, directly or indirectly, by intimidation or coercion, compel or attempt to compel any employee to designate a particular representative or refrain from representing himself or herself.

Cities cannot discharge or discriminate against an employee because of his or her exercise of these rights.

NO RIGHT TO STRIKE

The employees of a city are essential to the public services necessary for the public’s health, safety and welfare. Public employees do not have a right to strike.

RECENT CITY OF GRANDVIEW DECISION

The city of Grandview established a collective bargaining framework that: (1) required a secret ballot election as the designated method for employees to select a collective bargaining representative, (2) did not allow supervisory and non-supervisory employees to be members of the same bargaining unit, (3) did not establish a specialized procedural framework for the resolution of conflicts regarding the composition of collective bargaining units, (4) required, for the collective bargaining representative to be elected, it had to receive the votes of a majority of all eligible voters rather than the majority of the votes cast, (5) provided that the City would not pay any union representative for time spent preparing for or engaging in collective bargaining and would not enter into wage commitments that exceeded one year, (6) retained the right of the City to require the modification of the economic terms of any labor agreement in the event of a budget shortfall, and (7) gave the City the ability to modify the terms and conditions of employment for employees in the bargaining unit in the event a collective bargaining representative was decertified.

On Jan. 27, 2015, an appellate court upheld the City's framework, except that it made no determination about the constitutionality of the provision requiring that a collective bargaining representative receive more than 50 percent of votes of all eligible voters. *West Central Missouri Region Lodge 50 of the F.O.P. v. City of Grandview*, W.D. 77250. This is not a final decision, as the parties may seek transfer to the Missouri Supreme Court.

The court held that the enactment of a reasonable limitation by the City does not prevent the supervisory employees from selecting a "representative of their own choosing" within the meaning of Article I, Section 29 of the Missouri Constitution.

The court also pointed out that just because some issue is initially addressed in an ordinance providing a framework for negotiations does not mean that the City would be unwilling to negotiate about a change to that ordinance. The collective bargaining had not even begun between the City and the Fraternal Order of Police (F.O.P.). The City enacted its framework but it had not refused to meet and confer with the F.O.P. on any of the issues. The

MML ADVOCACY

Through use of the Advocacy Fund and at the request of the City of Grandview, the MML was able to participate in the appeal of the trial court's decision in West Central Missouri Regional Lodge #50 of the Fraternal Order of Police, et al., vs. The City of Grandview, WD77250. The MML retained the services of Ivan Schraeder with the Lowenbaum Partnership, LLC, to file an amicus brief with the Western District Court of Appeals. The amicus brief highlighted issues of statewide concern in this important arena. The MML continues to monitor this case as the FOP's Motion for Rehearing or Transfer to the Supreme Court filed on Feb. 10, 2015 was addressed by the Court on March 3, 2015, when it overruled the Motion for Rehearing and denied the Motion for Transfer to the Supreme Court. A direct appeal to the Supreme Court remains an option for the FOP.

City may have been "showing its hand" regarding its stance on certain issues, but nothing within the ordinance itself takes the issues off of the table during the bargaining process.

Thus, the establishment of a collective bargaining framework is for local legislative bodies and not the courts. To the extent that the City may in the future refuse to negotiate concerning any of the terms addressed in the ordinance, the F.O.P. may challenge the City's refusal at that time, if it believes that the refusal violates the duty of a public employer to negotiate in good faith as recognized in *American Federal of Teachers v. Ledbetter*, 387 S.W.3d 360, 367 (Mo. banc 2012). Enactment of the ordinance itself, however, does not necessarily presage a future refusal to negotiate in good faith.

Article I, Section 29 of the Missouri Constitution serves only to guarantee the right of employees to organize and to bargain collectively through representatives of their own choosing. The Missouri Supreme Court declared in *Quinn v. Buchanan*, 298 S.W.2d 413, 417 (Mo. banc 1957), that the purpose of Article 1, Section 29 of the Missouri Constitution "was to declare that such rights of collective bargaining were established in this state. It means that employees have the right to organize and function for a special purpose: namely, for the purpose of collective bargaining." "Section 29, Article I is not a labor relations act, specifying rights, duties, practices and obligations of employers and labor organizations[.]" *Id.*, at 418. □