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NEW PUBLIC-SECTOR LABOR LAW IN MISSOURI

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KEY FINDINGS

- The right for private-sector employees to bargain collectively is included in Missouri's 1945 Constitution (Article 1, Section 29). Until recently, the Missouri Supreme Court consistently held that this right did not extend to public-sector employees.
- Missouri's first public-employee labor relations statute was not enacted until 1965. The statute provided public employees the right to form and join unions and to present proposals to their employers relative to conditions of employment. However, the statute did not apply to most law enforcement officers or to teachers.
- In 2007, the Missouri Supreme Court overruled its previous decisions and held that the term "employees" in Article 1, Section 29 of Missouri's Constitution applied to public-sector as well as private-sector employees.
- Missouri House Bill 1413, signed into law on June 1, 2018, requires that public-sector unions (1) hold recertification elections every three years and (2) obtain annual authorization from members before deducting union dues from their paychecks. The provisions of this law are being challenged in the courts.

INTRODUCTION

Over the past 70 years, Missouri's law regarding government–labor relations has gone through several changes, most recently with the enactment of Missouri House Bill 1413 (HB 1413), signed by former Missouri Governor Eric Greitens in June 2018. This essay guides the reader through the basics of collective bargaining, the history of government unions both in the federal government and the state of Missouri, and the major changes envisioned with the enactment of HB 1413,* including the new rights and obligations contained in the law.

PAST

History of Government Unions: Federal

The National Labor Union was created in 1866 to convince Congress to limit the workday for federal employees to eight hours. In 1883, the Pendleton Civil Services Reform Act was passed by Congress protecting civil servants from unfair treatment. While it only applied to federal workers, many states followed suit and passed similar legislation. The Pendleton Civil Services Reform Act provided fair conditions for most of the hiring done by the Federal government to prevent favoritism, cronyism, and nepotism. Additionally, workers were provided job security as long as they were not guilty of engaging in illegal acts, acts of moral turpitude, or incompetence. However, federal employees remained unhappy as they saw their private-sector counterparts bargain for pay and benefits that were not always awarded to them as public workers. Due in part to this disparity, the push for public-sector unionization began. Beginning in 1889, the Letter Carriers established the first postal union. Later, in 1918, the American Federation of Teachers was formed along with several independent unions of firefighters merging to form a national union.

However, in the decades that followed, unionization remained uncommon among government employees. In the 1930s a push was made to unionize the Works Progress Administration ("WPA") workers. Even though he was an ardent supporter of collective bargaining in the private sector, President Franklin D. Roosevelt was deeply opposed to unions in the public sector and therefore opposed the efforts. In 1935, President Roosevelt signed into law the National Labor Relations Act, also known at The Wagner Act. The NLRA facilitated labor organizing in the private sector but the NLRA conspicuously did not apply to state or local government employees. Confirming his opposition to collective bargaining unions in the public sector in 1937 President Roosevelt stated:

> *All Government employees should realize that the process of collective bargaining, as usually understood, cannot be transplanted into the public service. It has its distinct and insurmountable limitations when applied to public personnel management. The very nature and purposes of government make it impossible for administrative officials to represent fully or to bind the employer in mutual discussions with government employee organizations. The employer is the whole people, who speak by means of laws enacted by their representatives in Congress. Accordingly, administrative officials and employees alike are governed and guided, and in many instances restricted, by laws which establish policies, procedures, or rules in personnel matters. Particularly, I want to emphasize my conviction that militant tactics have no place in the functions of any organization of government employees. Upon employees in the Federal service rests the obligation to serve the whole people, whose interests and welfare require orderliness and continuity in the conduct of government activities. This obligation is paramount. Since their own services have to do with the functioning of the Government, a strike of public employees manifests nothing less than an intent on their part to prevent or obstruct the operations of Government until their demands are satisfied. Such action, looking toward the paralysis of Government by those who have sworn to support it, is unthinkable and intolerable.*

While Roosevelt's view was shared by many elected officials for several decades, beginning in the 1960s the general attitude towards public unions became more favorable. In 1962, President John F. Kennedy signed Executive Order 10988, EMPLOYEE-MANAGEMENT COOPERATION IN THE FEDERAL SERVICE, 27 FR 551. This order recognized the right of federal employees to collectively bargain over some aspects of their work, including giving them to right to join, form and assist labor organization. However, it did not include the right

* Lawsuits have been filed challenging HB 1413. On March 8, 2019, the St. Louis County Circuit Court granted a preliminary injunction halting the implementation of HB 1413 until it issues a final decision.

to bargain over their pay or benefits and due to the explicit prohibition by the Taft Hartley Act in 1947, strikes were not permitted. In 1969, President Richard Nixon strengthened the bargaining rights that President Kennedy had first offered federal employees by issuing Executive Order 11491, LABOR-MANAGEMENT RELATIONS IN THE FEDERAL SERVICE, 34 FR 17605, which established an institutional framework to govern labor–management relations in the federal government, set forth specific unfair labor practices, and authorized the use of binding arbitration of certain disputes.

While federal employees had the right to collectively bargain, they were not afforded the same range of protections as union members in the private sector. The attitude remained that, while public workers received lower wages than their private-sector counterparts, they received in exchange valued intangibles such as job security and, quaint as it sounds now, the honor that came from public service.

Following in the footsteps of President Kennedy and President Nixon, in January of 1979, President Jimmy Carter signed into law the Federal Service Labor Management Relations Statute. The new statute made significant, substantive changes that would alter the dynamics of labor–management relations, including requiring that bargaining agreements contain a specific grievance procedure, that agencies grant official time-off to exclusive bargaining representatives for negotiating collective bargaining agreements, and changing the nature and scope of reserved management rights and the exceptions to those rights.

Due to the changes made during the 1960s and 1970s, public-sector unions grew rapidly. The number of state and local government employees represented by a union quadrupled between the 1950s and the 1970s. By 2010, 8.4 million government workers were represented by unions.

History of Government Unions: State (not Missouri)

Support for public unions gained traction in the states before the federal government. In 1958, New York City Mayor, Robert Wagner, Jr., issued an executive order called the "Little Wagner Act." This act gave city employees certain bargaining rights and gave their unions' exclusive representation of those employees, meaning that the unions alone were legally authorized to speak for all city workers whether or not they were members of the union. During the next two decades the number of city employees doubled. By 1980, New York City had 450,000 public-sector jobs and most were unionized.

Following the actions in New York City, Wisconsin became the first U.S. state to permit collective bargaining by public employees. In 1959, Wisconsin passed a law allowing public-sector representatives to bargain pay and benefits with state and local governments. However, in recent years Wisconsin has also seen a large change regarding their public-sector labor laws with the passage of Act 10. In 2011, Act 10 stated that public-sector unions now had to win support from a majority of employees in the bargaining unit, not just a majority of those voting in the certification election. This is similar to the requirement being put into place with HB 1413. However, Wisconsin now requires that a representation election take place every year for state and local employees represented by unions. Since the inception of Act 10, Wisconsin, the birthplace of public-employee unions, is now in the bottom third of states for unionized workforce.

Modeled after Wisconsin's Act 10, Iowa enacted House File 291 in January 2017. With House File 291, Iowa made sweeping its public-sector labor law. The new law confines collective bargaining to "base wages," requires a recertification vote before each new contract, requires that the cost of elections be paid out of union funds, and requires unions to obtain a majority of the bargaining units votes, not just a majority of the votes of those actually casting a ballot. At the time of enactment it was thought that it would have a domino effect on other states, which we are beginning to see with the enactment of HB 1413 in Missouri as it has enacted many of the same provisions.

Today, collective bargaining for public employees is permitted in three-fourths of U.S. states.

History of Government Unions: Missouri

Missouri's 1945 Constitution gave the right to collectively bargain to employees in the private sector with Article 1 Section 29, which states:

> *Organized labor and collective bargaining.—That employees shall have the right to organize and to bargain collectively through representatives of their own choosing.*

It would take another twenty years for those same rights to be provided to employees in the public sector.

In 1965 the Missouri General Assembly enacted its first governmental employee labor relations statute (Mo. Ann. Stat. §§105.500-.530). The act provided that public employees, other than police, deputy sheriffs, highway patrolmen, members of the national guard, and teachers, had the right to form and join labor organizations and to present proposals to their employers relative to conditions of employment.

The Act was replaced in 1967 by the Public Sector Labor Law, which made two significant changes to the 1965 statute. First, the new act required that the public body at least "meet and confer" with the exclusive bargaining representative of its employees. The 1965 statute stated only that the public body *may* deal with labor organizations. The new law further required that the results of these meetings and discussions be reduced to writing and presented to the appropriate governing body for "adoption, modification or rejection." The second significant change gave the State Board of Mediation the authority to resolve the issues of appropriate bargaining units and majority representation. The circuit courts hold the jurisdiction for appeals from the State Board. As with the 1965 act, the updates in 1967 concluded by stating that "nothing in this act shall be construed as granting a right to strike to employees covered by the act."

In 1969, the Public Sector Labor Law was again amended to provide that those employees who were not given the right to join unions by the prior acts—police, deputy sheriffs, highway patrolmen, members of the National Guard, and teachers—did have the right to form benevolent, social, or fraternal associations (Mo. Ann. Stat. §105.510). This was the state of the law until HB 1413 was signed by former Governor Eric Greitens.

The Missouri Constitution and Supreme Court Case Law

As stated previously, in 1945, the Missouri Constitution was amended to add Article 1 Section 29, which gave employees the right to organize and bargain collectively. However, the plain language of Mo. Const. art. I, § 29 made it unclear whether the article pertained to employees in the private sector, the public sector, or both. But recall that in 1937, President Roosevelt, an ardent supporter of unions, made it absolutely clear that collective bargaining did not belong in the public workplace. So it no surprise that, until 2007, the Missouri Supreme Court would consistently interpret Mo. Const. art. I, § 29 as applying only to private-sector employees.

City of Springfield v. Clouse, 206 S.W.2d 539 (Mo. 1947)

Only 2 years after the enactment of the Mo. Const. art. I, § 29, the Missouri Supreme Court held that this provision did not apply to government employees. In 1947, the Supreme Court of Missouri decided *City of Springfield v. Clouse,* in which the court established new parameters for the bargaining rights of public employees. In its holding, the court acknowledged that the right of public employees to join labor organizations is ensured by the federal and state constitutional guarantees of the right to speak freely, to peacefully assemble, and to petition public bodies, subject to certain regulations for the public welfare. However, the court also stated that Mo. Const. art. I, § 29, which states "that employees shall have the right to organize and to bargain collectively through representatives of their own choosing," was inapplicable to public employees.

The court relied on two rationales in making its decision; the non-delegation doctrine and sovereignty. Regarding non-delegation doctrine, the court stated:

> *a whole matter of . . . working conditions for any public service, involves the exercise of legislative powers. . . . [T]he legislature cannot [constitutionally] delegate its legislative powers. . . . If such powers cannot be delegated, they surely cannot be bargained or contracted away; and certainly not by any administrative or executive officers [who would be the ones bargaining with the public employees if they had the right to bargain collectively.] Thus . . . working conditions of public . . . employees are wholly matters of lawmaking and cannot be the subject of bargaining or contract.*

Besides the non-delegation rationale, the court also reasoned that working conditions of public employees are matters to be handled within the legislature's discretion, and therefore, public employees have no right to bargain and contract with respect to their working conditions because "no legislature can bind itself or its successors to make or continue any legislative act." *City of Springfield* would remain the law in Missouri for the next 60 years before being overturned by *Independence National Education Association v. Independence School District* in 2007.

Sumpter v. City of Moberly, 645 S.W.2d 359 (Mo. 1982)

In 1982, the Missouri Supreme Court issued its decision in *Sumpter v. City of Moberly.* In that case, a group of firefighters brought suit against the City of Moberly, Missouri, claiming that a memorandum of understanding that had been adopted pursuant to the Public Labor Law constituted a binding contract between the union and the city. The firefighters sought relief in order to prevent the city from unilaterally revoking the contract. However, the court denied their request, holding that any agreements between employees and a governmental body pursuant to the Public Sector Labor Law resulted only in "an administrative rule, an ordinance, [or] a resolution." As a result, even if the public entity agreed to adopt the terms of the proposal, the terms could be changed by the public entity at any time without consulting the representative of the employees.

Independence National Education Association v. Independence School District, 223 S.W.3d 131 (Mo. 2007)

In 2007, the Missouri Supreme Court dramatically changed the interpretation of Missouri law regarding public-sector employees in *Independence National Education Association v. Independence School District.* In that case three employees brought action against the public school district, challenging the district's refusal to bargain collectively with them. The court overruled its prior decisions on the basis that they contradicted the plain language of the Missouri Constitution. The court held the term "employees" in art. I, § 29, means all employees, even those in the public sector. Further, the court held that while public employers are not bound to reach work agreements with labor unions representing public-sector workers, once they do, they are bound by those agreements and cannot change them unilaterally without bargaining with public-sector unions.

The court's decision in *Independence National Education Association* disregarded the numerous attempts to amend Mo. Const. art. I, § 29 to specifically include public-sector employees, and overruled over 60 years of its own precedent in cases such as *Sumpter* and *City of Springfield.* The court interpreted the Missouri Constitution as giving all government employees the ability to collectively bargain and reach binding agreements.

The court's decision also required each public-sector employer to adopt labor relations policies for its employees that are exempt from the Public Sector Labor Law. These policies are now subject to legal challenge and may be found illegal by the court if they do not comport with the new interpretations of the Missouri Constitution set forth in *Independence*. Courts often struggle with this task, applying principles from federal labor law and reading substantive duties into very little text.

Eastern Missouri Coalition of Police v. City of Chesterfield and City of University City, 386 S.W.3d 755 (Mo. 2012)

American Federation of Teachers v. Ledbetter, 387 S.W. 3d 360 (Mo. 2012)

In 2012, the Missouri Supreme Court decided three cases that would further change the landscape of public employee bargaining in Missouri. In *American Federation of Teachers v. Ledbetter*, the issue was whether a public employer had a "good faith" duty to bargain under the Missouri Constitution. In *Ledbetter*, a school district held multiple bargaining sessions with union representatives even after the district had determined on their own that they would not negotiate any further. The court held the ultimate purpose of bargaining is to reach an agreement and while the law does not compel the parties to reach an agreement, it does contemplate that both parties will approach the negotiations with an open mind and will make a reasonable effort to reach common ground. This parallels §9(c)(A) of the NLRB even though nothing in the Missouri Constitution contains a similar provision or requirement.

In *Coalition of Police v. City of Chesterfield* and *Coalition of Police v. City of University City* the Missouri Supreme Court took their prior decision one step further and held that Mo. Const. art. I, § 29 imposes an affirmative duty on employers with employees that are excluded from the Public Sector Labor Law to bargain with the representatives of their police forces. Both cities were ordered to recognize the unions as the exclusive bargaining representatives for the police and sergeants. They were to collectively bargain by meeting and conferring with the unions.

Public Bargaining Landscape Since 2007

Following the Court's decision in *Independence NEA v. Independence School District*, public agencies, government unions, and the public struggled to makes sense of their rights and obligations under the new law. After the decision, each employer was tasked with the duty of adopting its own labor relations policies for its employees who were exempt from the Public Sector Labor Law. The policies were subject to legal challenge, however, and Missouri courts struggled with interpreting them; often leading to application of principles from federal labor laws.

Following the decisions in *City of Chesterfield* and *American Federation of Teachers*, the duties regarding school districts and police departments were made clearer as it has been determined that the constitution would be interpreted as giving them an affirmative duty to collectively bargain and negotiate in good faith with their employees. However, more questions still remained, including whether the constitution required employers to give their employees the option of exclusive representation and what policies constituted collective bargaining as the term used in the constitution remained unclear.

PRESENT

New Law of Public Bargaining in Missouri

In response to the continuing uncertainty and confusion created by the Missouri Supreme Court's recent decisions, in May of 2018, the Missouri General Assembly adopted a comprehensive rewrite of Missouri's Public Sector Labor Law in House Bill 1413. The bill was adopted and signed into law by former Missouri Governor Eric Greitens on his final day in office, June 1, 2018. The rewrite concentrated primarily on Chapter 105 of the Missouri Revised Statutes. Most notably, the law will require public-sector unions to hold recertification elections every three years and require unions to obtain annual authorization from members to deduct any union dues from their paychecks.

What Changed

House Bill 1413 officially repealed Mo. Ann. Stat. § 105.500, 105.520, 105.525, 105.530 and 208.862, replacing them with twenty-one new sections relating to public-sector labor organizations. These changes fall into roughly four broad categories; The Representation Process, Collective Bargaining, Reporting Obligations and Paycheck Protections.

First, it is important to remember that while HB 1413 is said to cover public-sector employees, there are large groups of employees that are still not covered, most notably, public safety labor organizations and employees of the Missouri Department of Corrections (Mo. Ann. Stat. § 105.503.2). Public safety labor organizations and their members include firefighters, ambulance personnel, dispatchers, registered nurses, physicians, police officers, and sheriffs and their deputies (Mo. Ann. Stat. § 105.500.8). One of the largest groups of public-sector employees that has been affected by this change are public school teachers, including college and university professors. These employees were previously exempt from Mo. Ann. Stat. § 105.500-530, however, as a result of HB 1413, they must now adhere to the procedures and requirements of the State Board of Mediation.

The Representation Process

HB 1413 made significant changes to the union representation process for public-sector employees. New Section 105.575 lays out most of the changes related to the representation process from initial certification of a union to decertification and elections. Notably, no more than one representation election can take place with any bargaining unit within the same twelve-month period (Mo. Ann. Stat. § 105.575.14).

Initial Certification To begin, any labor organization that wishes to represent a bargaining unit must obtain 30

percent of the bargaining unit's support on a petition for representation filed with the State Board of Mediation (SBM) (Mo. Ann. Stat. § 105.575.1). This is consistent with prior policy and only applies for initial certification of a bargaining unit. Next, should the required 30 percent of support be reached, the SBM will consult with both the labor organization and the public employer to agree upon an election date and resolve any bargaining issues that may exist (Mo. Ann. Stat. § 105.575.2). Once the unit has been finalized, a four to eight-week window exists to hold a secret ballot election (Mo. Ann. Stat. § 105.575.2). Ballots may be cast either in person or by mail at the sole discretion of the SBM chairman (Mo. Ann. Stat. § 105.575.2). In order for the labor organization to prevail and become the exclusive representative, it must receive more than 50 percent of the votes of *eligible voters* in favor of certification (Mo. Ann. Stat. § 105.575.8). This "fifty percent of eligible voters" requirement is one of the most significant changes seen with the enactment of HB 1413. Previously, a union seeking to represent a unit of employees needed only a majority of the *valid ballots cast* to become their exclusive bargaining representative. Thus, under HB 1413, labor organizations will have to obtain the support of a majority of all unit members; not just those who vote in a representation election.

Recertification HB 1413 also requires that public-sector labor unions be recertified. Those labor organizations that are currently certified, prior to the enactment of HB 1413, must stand for an initial recertification election conducted by the SBM between August 28, 2018 and August 27, 2019 (Mo. Ann. Stat. § 105.575.12). This election must be held during the two-week period beginning on the anniversary date of the initial certification (Mo. Ann. Stat. § 105.575.12). Unlike the initial vote, votes must be cast online or by telephone and not in person and/or by mail (Mo. Ann. Stat. § 105.575.12). However, similar to the initial vote, the initial recertification is reached only if the labor organization has received more than fifty percent (50%) of the votes of *eligible voters; not just those who vote* (Mo. Ann. Stat. § 105.575.12). Failure to schedule the election will result in the automatic decertification of the labor organization (Mo. Ann. Stat. § 105.575.12).

Following the initial recertification, labor organizations are subject to a recertification election every three years. This includes all labor organizations; regardless of whether they certified before or after the enactment of HB 1413. The triennial recertification proceeds in the same manner as the initial recertification, and the election must be held during the two weeks beginning on the third anniversary of the initial recertification (Mo. Ann. Stat. § 105.575.12).

Decertification The decertification process of a bargaining unit is similar to the certification process. The labor union will only be decertified if more than fifty percent (50%) of the *eligible voters* vote to terminate the labor organization's exclusive bargaining status (Mo. Ann. Stat. § 105.575.11). If the labor organization does become decertified, the public employer has the ability to alter the terms and conditions of public employment as it deems appropriate (Mo. Ann. Stat. § 105.570.3).

Fees Holding an election imposes a significant cost. Under HB 1413's revisions to Mo. Ann. Stat. § 105.575, labor organizations must now pay a fee to assist in offsetting the cost to the state in conducting initial certification elections, initial recertification elections, and triennial recertification elections. The fee is determined based on the size of the bargaining unit as set forth below:

Bargaining Unit Size	Fee
1–100	$200
101–250	$500
251–1000	$750
1001–3000	$1500
> 3000	$2000

Collective Bargaining

As it did with the overall representation process, HB 1413 made major changes to the way collective bargaining will be accomplished, and one of its stated goals was to enhance public transparency. Some of the most significant changes to public-sector collective bargaining are summarized below.

Timetables When bargaining for an initial collective bargaining agreement, negotiation meetings between the public employer and the labor organization must begin within eight weeks of certification of the labor organization (Mo. Ann. Stat. § 105.580.7). Additionally, after the

first agreement has been adopted, renewal agreements must be bargained for every three years (Mo. Ann. Stat. § 105.580.7). Once an initial contract has been put into place, any successor contract must be completed within 30 days of the end of the public body's fiscal year (Mo. Ann. Stat. § 105.580.7).

Bargaining Procedures Prior to any tentative agreement being presented to an exclusive bargaining representative or a public body for ratification, the tentative agreement must be discussed in detail in a public meeting where members of the public are allowed to provide comment (Mo. Ann. Stat. § 105.583.1). The tentative agreement must also be published on the public body's website at least five business days prior to the public meeting (Mo. Ann. Stat. § 105.583.1).

Once a tentative agreement has been reached, the labor organization must demonstrate that the agreement has been ratified by a majority of its members (Mo. Ann. Stat. § 105.580.5). Once it has established that support, the bargaining agreement is then presented to the public employer for adoption. The public employer may then adopt the agreement either in whole or in part. Should the public employer reject the agreement in part, it then has three choices: (1) return the rejected clauses for further bargaining; (2) adopt replacement clauses on its own design; or (3) advise the labor organization that no substitute for the rejected clause(s) will be adopted (Mo. Ann. Stat. § 105.580.5). Nothing contained in the Public Sector Labor Law obligates a public body to enter into a collective bargaining agreement (Mo. Ann. Stat. § 105.583.2).

Finally, during the bargaining process, the public employer is not permitted to pay any member of a labor organization or any employee of the public body for time spent in the bargaining process (Mo. Ann. Stat. § 105.580.4).

Required Information HB 1413 mandated that the following terms be addressed in a collective bargaining agreement covering public-sector employees:

> **Right to Work:** Right to work (RTW) in the public sector is implemented, insomuch as no employee can be required to sign an authorization to withhold union dues, agency shop fees, or other labor organization fees from paychecks as a condition of employment (Mo. Ann. Stat. § 105.505.5).

Wages and Benefits: Wages, benefits and other terms and conditions of employment that have been agreed upon may be included in the agreement (Mo. Ann. Stat. § 105.580.7).

Term: There is a three-year limit on the duration of the agreement, although the parties may agree to extend noneconomic provisions beyond three years (Mo. Ann. Stat. § 105.580.7-8).

Management's Rights: The agreement must spell out certain specific management rights (Mo. Ann. Stat. § 105.585.1). This includes the right of management to schedule, discipline, discharge, hire, promote, assign, direct, and transfer.

No Striking/Picketing: Every agreement shall expressly prohibit all strikes, concerted refusals to work and/or picketing, and prescribes that immediate termination may result for an employee who violates these prohibitions (Mo. Ann. Stat. § 105.585.2).

Duty of Fair Representation: The labor organization must fulfill its duty of fair representation and bargain in the best interests of all bargaining unit employees; not just those who are members of the union (Mo. Ann. Stat. § 105.585.3).

Labor Organization Business: The agreement must prohibit payment to labor organization representatives and public employees for time spent on union business, with two exceptions: Employees may use accrued, unused paid time off for these purposes, and employees may be paid by their public employer for time spent in grievance handling (Mo. Ann. Stat. § 105.585.4).

Right to Refrain/Right to Oppose: The agreement must state that employees have the right to refrain from and, in fact, to oppose labor organization activity (Mo. Ann. Stat. § 105.585.5).

Budget Shortfalls: The agreement must give the public employer the right to require modification of the economic terms of the agreement in case of budget shortfall. The agreement must state that, for good cause, the public employer can give the labor organization 30 days to bargain over necessary economic adjustments and, agreement failing, the

public employer can make the necessary adjustments on its own (Mo. Ann. Stat. § 105.585.6).

Overall, HB 1413 brings about many changes and clarification to the collective bargaining process and the final agreement negotiated by public agencies and labor organizations that represent its employees. Many believe that because collective bargaining is more are open to the public, unions may be more civil at the bargaining table and submit more reasonable contract proposals, thereby facilitating quicker resolution of bargaining issues and saving taxpayer dollars.

Reporting Obligations

Once a labor organization is established, it is required to file with the Missouri Department of Labor and Industrial Relations a constitution and bylaws. HB 1413 lays out the many requirements that must be contained within (Mo. Ann. Stat. § 105.533.1-5). The requirements include:

- The name of the labor organization, its mailing address, and any other addresses at which it maintains its principal office;
- The name and title of each of its officers;
- The initiation fee or fees required from a new or transferred member and fees for work permits required by the reporting labor organization;
- The regular dues or fees or other periodic payments required to remain a member of the labor organization, as well as agency fees or any other fees required for nonmembers, if any; and
- Detailed statements, or references to specific provisions of documents filed under this subsection that contain such statements, showing the provisions made and procedures followed with respect to each of the following:
    - Qualifications for or restrictions on membership
    - Levying of assessments
    - Participation in insurance or other benefit plans
    - Authorization for disbursement of funds of the labor organization
    - Audits of financial transactions of the labor organization
    - The calling of regular and special meetings
    - The selection of officers and stewards and of any representatives to other bodies composed of the labor organization's representatives, with a specific statement of the manner in which each officer was elected, appointed, or otherwise selected
    - Discipline or removal of officers or agents for their breaches of trust
    - Imposition of fines, suspensions, and expulsions of members, including the grounds for such actions and any provision made for notice, hearing, judgment on the evidence and appeal procedures
    - Authorization for bargaining demands
    - Ratification of contract terms and
    - Issuance of work permits

Another significant change made by HB 1413 is the public reporting of financial reports and other recordkeeping requirements imposed on public-sector labor organizations. These changes can be found in Mo. Ann. Stat. §§ 105.533 and 105.505. With the enactment of HB 1413, every covered labor organization must now file annually a detailed financial report with the Department of Labor and Industrial Relations. This includes line items relating to political contributions, including obtaining informed consent in advance of using union funds for political purposes, and the right of all members to examine the books and records from which the report was prepared. All Department reports must be backed up by records that must be retained and available for inspection for five 5 years after the reports have been filed (Mo. Ann. Stat. §105.545).

Because of the Sunshine Law, all reports that are filed with the Department are open records available to the public which cannot be closed (Mo. Ann. Stat. §105.540). In

addition, every labor organization must maintain financial records commensurate with the records required by 29 U.S.C.A. § 431(b), and these records must be provided to all bargaining unit members represented in a searchable electronic format.

The new rules will likely make it easier for bargaining unit members to track union political contributions and weigh-in on whether their earnings should be used to support a union's political viewpoint.

Paycheck Protection

A final change made with the enactment of HB 1413 is the requirement that the public-sector labor unions obtain annual authorization from their members prior to deducting any dues or fees from their paycheck. The authorization must be obtained on a yearly basis either in writing or by electronic authorization (Mo. Ann. Stat. §105.505.1).

FUTURE

Mark Janus v. American Federation of State, County, and Municipal Employees, Council 31, et al.

In June of 2018, the United States Supreme Court held that compulsory payment of agency or "fair share" fees to a union by non-union public-sector employees is unconstitutional. In *Janus v. AFSCME, Council 31, et. al.*, 585 U.S._____ (2018), the court overruled their prior ruling in *Abood v. Detroit Board of Education*, which had approved the collection of such fees for the supposed purpose of covering the union's collective bargaining costs. However, this 1977 decision disallowed compulsory dues supporting "ideological causes." The court reasoned that public-sector employees possess a property interest in their jobs and governmental actors cannot deprive them of that interest due to a refusal to support unions' ideological causes.

The *Abood* decision raised many questions, including what the distinction between political and non-political activities were in the public sector. The court sought to address these questions in the 2016 case, *Fredrichs v. California Teachers Association.* However, due to the recent death of Justice Scalia the court deadlocked in a 4-4 decision, which resulted in maintaining the lower court's decision relying on *Abood.* It was predicted that *Abood* would be overturned in *Janus* as the appointment of Neil Gorsuch provided for a conservative majority on the court.

Mark Janus was a child support specialist for the Illinois Department of Healthcare and Family Services. While Janus was not a member of the American Federation of State, County and Municipal Employees local chapter, he was required to pay "fair-share" fees in the amount of $45.00 per month. Illinois and twenty-one other states required employees to pay "fair-share" fees even if they declined to join the union because they would still benefit from the union's bargaining activities. However, nonmembers were not required to contribute to a union's political lobbying activities or backing of political candidates.

In his case, Janus argued that because public-sector unions enter into bargaining agreements with the government, all of their activity should be seen as political. Specifically, Janus was angry that the union was pushing for increased benefits at a time when Illinois was facing a budget crisis fueled by mismanagement of the state's pension program. Because of his disagreements with the political activity, he wanted to be able to opt out of paying any fees to the union. He stated that anything less would be an infringement on his First Amendment rights.

The Supreme Court agreed with Janus and held that the compulsory agency fees were a violation of a public-sector worker's free speech rights. Specifically, the court held "the First Amendment is violated when money is taken from non-consenting employees for a public-sector union; employees must choose to support the union before anything is taken from them. Accordingly, neither an agency fee nor any other form of payment to a public-sector union may be deducted from an employee, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay such fees."

The court held that forcing public employees to pay dues that would pay for political activity in favor of causes

they found objectionable raised serious First Amendment concerns and that agency fees compel a person to subsidize the speech of other private speakers. Further, the court held that the *Abood* decision's justifications for agency fees failed to override the court's overwhelming First Amendment concerns. Specifically, with respect to the argument that such fees promote an interest in labor peace, the court noted that the *Abood* court's reasoning that conflict or disruption would occur if employees were represented by more than one union was unfounded inasmuch as an exclusive representative of all employees in a unit and the payment of agency fees are not inextricably linked. Further, the court majority noted that the Federal government and twenty-eight states have laws prohibiting agency fees and that millions of public employees are represented by unions in those jurisdictions that effectively serve as the exclusive bargaining representatives of all employees, union and non-union alike. Thus, the court observed it has been clearly demonstrated since the *Abood* decision that despite such laws, labor peace has been readily achieved through less restrictive means than the assessment of agency fees.

Addressing the argument that individuals not paying such fees would get a "free ride" for union representation, the court pointed out that such risk is not a compelling interest and that free rider arguments are insufficient to overcome First Amendment objections. The court again noted that in non-agency fee jurisdictions, unions are quite willing to represent non-members in the absence of agency fees and that their duty of fair representation is a necessary concomitant of the authority that a union seeks when it chooses to be the exclusive representative of public employees.

The majority was written by Justice Alito and was joined by Chief Justice Roberts, as well as Justices Kennedy, Thomas and Gorsuch. Justices Kagan, Sotomayor, Ginsburg and Breyer joined in dissent.

Writing for the dissent, Justice Kagan stated: "Public employee unions will lose a secure source of financial support. State and local governments that thought fair-share provisions furthered their interests will need to find new ways of managing their workforces." While it is not readily known how many of these public employees are nonunion members paying agency fees, the potential impact on union budgets of losing agency fees is great and is expected to have a substantial impact on their operations.

This decision is a significant victory for non-union public-sector employees in states where laws have compelled such non-union employees to pay fees to a union that they did not belong to and, in many cases, expressed political opinions contrary to the employee's political opinions.

Petition for Writ of Certiorari, Uradnik v. Inter Faculty Organization et al. (2018) (No. 18-719)

Kathleen Uradnik, a professor at St. Cloud State University, has brought suit challenging the Inter Faculty Organization's authority to speak on behalf of her and other workers who are not members of the union. Uradnik alleges that as a nonunion member she was discriminated against, as non-members were barred from faculty search services, governance committees, and the faculty senate. Uradnik claims these restrictions impair nonmembers from obtaining tenure, advancing in their careers, and fully participating in academic life. Uradnik alleges her constitutional rights were violated because she is being forced to accept union representation. The Buckeye Institute, which represents Uradnik, states that "these capable public servants have the right to speak for themselves and should be released from forced association with unions and advocacy with which they disagree."

The matter is now pending before the U. S. Supreme Court after the Eight Circuit Court of Appeals affirmed the federal district court's denial of Uradnik's request for a preliminary injunction. If the U.S. Supreme Court grants certiorari, the court could find that the First Amendment precludes public-sector unions from representing nonmembers, thereby preserving the associational and free speech rights of employees. The Buckeye Institute has filed similar federal lawsuits on behalf of public employees in Maine and Ohio, challenging a union's authority to act as the sole representative for all workers in a bargaining unit.

Missouri National Education Association, et al. v. Missouri Department of Labor and Industrial Relations, et al.

Recently, labors unions have brought suit against the Missouri Department of Labor and Industrial Relations, the SBM, and a number of school districts, cities, and other organizations regarding the newly enacted HB 1413. Lawsuits have been filed in St. Louis County Circuit Court and Jackson County Circuit Court, and both essentially allege HB 1413 is unconstitutional for a variety of reasons. At this time, the attorney general is defending the constitutionality of the HB 1413.

In Jackson County Circuit Court a judge has issued an order prohibiting a public entity from requiring a contractual provision of "no picketing" to be inserted into any collective bargaining agreement between the parties. Regardless of the merits of the court's decision, the court's order seems to be inconsequential because, according to the Missouri Supreme Court, a public entity is not required to enter into any contractual agreement with a union. In other words, nothing prohibits a public entity from refusing to enter into a collective bargaining agreement unless the union agrees to a "no picketing" provision.

More significantly, a judge in St. Louis County Circuit Court has issued a preliminary injunction suspending the enforcement of HB1413 until a final decision is issued in the case.

RECOMMENDATIONS FOR ADDITIONAL REFORM IN MISSOURI

State Right to Work Movements

While the *Janus* opinion only has an immediate impact on governmental employees, it speaks to the greater right-to-work movement in many states. Early in 2017, Missouri passed a law that would prohibit employers from requiring employees to join a union or pay union dues as a condition of employment, commonly referred to as "Right to Work." However, the law was prevented from taking effect when opponents collected enough petition signatures to force a referendum on the matter. On August 7, 2018, RTW was on the Missouri ballot and, as expected, opponents voted to prevent RTW from taking effect. If Missouri's law had gone into effect, the state would have joined 27 others that have banned union security agreements between unions and companies that require nonunion members to pay "fair share" fees. One would anticipate that in the coming years RTW will be back on the ballot in Missouri.

Local Governments

As stated above, there are a number of public employees that are excluded from HB 1413 and therefore their unions are not required to disclose their financial records. However, nothing precludes a local government from adopting procedures and provisions similar to those contained in HB 1413 by ordinance. One possible framework that local governments can use is the ordinance approved in *W. Cent. Missouri Region Lodge #50 of Fraternal Order of Police v. City of Grandview*, 460 S.W.3d 425 (Mo. Ct. App. 2015). In that matter, the Missouri Court of Appeals for the Western District held that cities had the ability to set the framework for collective bargaining for their employees. Specifically, they stated that "[E]ach city has the ability to establish a procedural framework for collective bargaining with its excluded employees if necessary to effectuate its duty." This left open the option of each city determining the process they prefer. As a result, the framework adopted by the City of Grandview is seen by some public entities as the model on how to address procedural and substantive public-sector union issues.

CONCLUSION

The Missouri legislature, through the enactment of HB 1413, has taken a common-sense approach to clarifying and simplifying the public-sector collective bargaining process. Although many unions believe that HB 1413 was enacted to eliminate unionization, a review of this essay demonstrates just the opposite—the procedures and provisions in HB 1413 are aimed to disclose as much information as possible to the members of the union and the public so they can decide if they want to support the union and their proposed contractual terms. At this time, however, it appears Missouri courts will have the final say in how fully the reforms of HB 1413 are realized.

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