



The Missouri State Board of Mediation and Public Sector Labor Law

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Acting Chairman

Some Opening Statistics – US Workforce

2012	% union members	% represented by unions
Private Sector	6.6	7.3
Public Sector	35.9	39.6

Some Opening Statistics – US Public Sector Workforce

2012	% union members	% represented by unions
Federal	26.9	31.4
State	31.3	34.9
Local	41.7	45.2

Some Opening Statistics – State Workforces

2012	% union members	% represented by unions
Missouri		
Private	7.2	7.9
Public	19.2	23.2
Kansas		
Private	4.0	5.0
Public	17.8	21.8

Some Opening Statistics – State Workforces

2012	% union members	% represented by unions
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Iowa

Private	5.5	5.9
Public	34.5	44.0

Illinois

Private	9.3	9.8
Public	49.8	53.4

Missouri State Board of Mediation – Origins

1947 – Established by King-Thompson Act to mediate labor disputes between public utilities and their employees.

1963 – US Supreme Court rules that the portions of King-Thompson Act authorizing state seizure and operation of public utilities and injunctions against public utility strikes are unconstitutional because in conflict with federal labor laws. Board's mediation powers under the Act, however, remain intact.

1967 – Amendments to Missouri's Public Sector Labor Law charge Board of Mediation with role in public sector bargaining.

Missouri State Board of Mediation – Statutory Function

Issues with respect to appropriateness of bargaining units and majority representative status shall be resolved by the state board of mediation. . . .

The state board of mediation shall use the services of the state hearing officer in all contested cases.

Mo. Rev. Stat. § 105.525.

Missouri State Board of Mediation – Public Sector Labor Law Comparison

Missouri

Mo. Rev. Stat. §§ 105.500 to 105.530

5 statutory sections; 542 words

Kansas

Kan. Stat. Ann. §§ 75-4321 to 75-4337

17 statutory sections; 7143 words

Missouri State Board of Mediation – Public Sector Labor Law Comparison

Iowa

Iowa Code §§ 20.1 to 20.31

31 statutory sections; 8970 words

Illinois

5 Ill. Comp. Stat. Ann. 315/1 to 315/28

32 statutory sections; 22,679 words

Missouri State Board of Mediation – Public Sector Labor Law Comparison

All four states establish a Public
Employment Relations Board.

All four states provide administrative
procedures for determining
appropriate bargaining units and
exclusive bargaining representatives.

Missouri State Board of Mediation – Public Sector Labor Law Comparison

Kansas, Iowa, and Illinois set out
declarations of policy.

Missouri does not.

Missouri State Board of Mediation – Public Sector Labor Law Comparison

Kansas, Iowa, and Illinois establish procedures for resolution of bargaining impasses.

Missouri does not.

Kansas, Iowa, and Illinois establish prohibited activities or unfair labor practices and provide administrative means to correct violations.

Missouri does not.

Missouri State Board of Mediation – Membership

Under the authority of Mo. Rev. Stat.
§ 295.030:

The governor, with the advice and consent of the senate, appoints the five Board members.

Missouri State Board of Mediation – Membership

Two members shall be employers of labor, or selected from some association representing employers of labor.

Two members shall be employees holding membership in some bona fide trade or labor union.

The fifth member shall not be an employee or an employer of labor and shall be chairman of the state board of mediation.

Missouri State Board of Mediation – Dissolved/Revived

2005 – Board of Mediation dissolved by executive order and its duties and powers transferred to the Labor and Industrial Relations Commission.

2007 – Board of Mediation revived with rescission of the 2005 executive order.

Missouri State Board of Mediation – Practice

When petition filed, Chairman holds conference with parties.

If parties agree to description of bargaining unit, Chairman conducts election.

If majority of voters in unit vote for representation by labor organization, order issued certifying it as the unit's exclusive bargaining representative.

Missouri State Board of Mediation – Practice

If parties cannot agree to description of bargaining unit

or

If parties challenge the conduct of the election

then

The Board will hold a formal hearing at which the parties may present evidence and legal arguments.

Missouri State Board of Mediation – Practice

Hearing conducted before one or more Board members.

Non-attending members may base their determinations on review of record.

Missouri State Board of Mediation – Practice

Decision requires a quorum of three.

Fair practice dictates that an equal number of employer and employee members take part – so decision is made by Chairman and either two or four of other members.

Missouri State Board of Mediation – Practice

Generally cases heard by Chairman, one employer representative, and one employee representative.

All five members generally take part in deciding a case only when a novel issue is presented.

Missouri State Board of Mediation – Practice

A written decision is issued.

If the question decided concerned the
make up of the bargaining issue,

Then an order directing an election in the
unit determined as appropriate is
entered.

Missouri State Board of Mediation – Practice

If the question decided concerned the conduct of an election,

Then the order may certify the election or direct a new election consistent with the decision.

Any party may appeal the Board's decision to state circuit court.

Missouri State Board of Mediation – Practice

Board also handles petitions to decertify a labor organization previously certified as the exclusive bargaining representative of a bargaining unit.

In that case, if petition is valid, Board holds a decertification election, subject to same challenges and processes.

Missouri State Board of Mediation – Practice

Board also handles petitions for amendment of certification.

These are used to amend existing certifications to reflect changed circumstances (such as merger or affiliation or reorganization of the employer's operations) in a unit where no question concerning representation exists.

Missouri State Board of Mediation – Practice

Until recently, Board applied two factors in assessing whether to grant an amendment of a certification:

- (1) Whether or not there is substantial continuity of the bargaining representative, and
- (2) Whether or not the election concerning the amendment of certification was conducted with adequate “due process” safeguards.

Missouri State Board of Mediation – Practice

But in 2011, the Board adopted the position of a 2008 NLRB decision and now uses only the first factor – Whether there is substantial continuity of the bargaining representative.

SEIU, Local 1 v. City of St. Joseph, Case No.AC 2011-005 (SMB 2011) (relying on *The Raymond F. Kravis Center for the Performing Arts*, 351 N.L.R.B. 143, 146-47 (2007), enforced, 550 F.3d 1183 (D.C. Cir. 2008))

Missouri State Board of Mediation – Practice

When examining whether there is a lack of continuity of representation after an affiliation, merger, or reorganization, the focus is on whether the reorganization resulted in a change that is “sufficiently dramatic” to alter the union’s identity.

Missouri State Board of Mediation – Practice

This inquiry will include a review of such factors as:

- whether the reorganized union retains the autonomy the pre-existing union had,
- whether local officers have changed, and
- whether the established procedures are altered.

Missouri State Board of Mediation – Practice

Board also handles petitions for unit clarification.

These petitions are filed when there is a dispute concerning whether or not certain employee classifications should be included within an existing unit.

Missouri State Board of Mediation – Practice

The Board's jurisdiction to determine bargaining units and to certify bargaining representatives extends to almost all public employees, including those employed by:

- the state and its agencies,
- counties,
- cities, school districts,
- fire departments, and
- other special districts .

Missouri State Board of Mediation – Practice

The Board, however, does not have jurisdiction to resolve such matters for:

- police officers,
- deputy sheriffs,
- Missouri Highway Patrol officers,
- Missouri National Guard members, or
- teachers at schools, colleges, and universities.

Missouri State Board of Mediation – Practice

Law enforcement officers, National Guard members, and teachers still have the right to organize and bargain collectively.

But the Board has no authority to play a role when they are doing so.

Missouri State Board of Mediation – Practice

The Board has no authority to assist in attempting to resolve impasses in negotiations between a public employer and its public employees.



Missouri State Board of Mediation – Practice

The Board has no authority to hear and resolve claims of unfair labor practices.

Missouri State Board of Mediation – Practice

Public employees are entitled to relief against a governmental body committing unfair labor practices.

City of Webster Groves v. Institutional and Public Emp. Union, 524 S.W.2d 162, 165 (Mo. App. St. L. D. 1975).

Complaints of unfair labor practices are to be resolved by the courts.

State ex inf. Ashcroft v. Kansas City Firefighters Local No. 42, 672 S.W.2d 99, 108 (Mo. App. W.D. 1984).

Recent Developments

Independence-NEA v. Independence School Dist., 223 S.W.3d 131 (Mo. banc 2007).

Provision of state constitution guaranteeing “employees” the “right to organize and to bargain collectively” (Mo. Const. art. I, § 29) applies to public employees as well as private-sector employees.

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

Recent Developments

Independence-NEA v. Independence School Dist.,
223 S.W.3d 131 (Mo. banc 2007).

Public bodies do not have the right to unilaterally rescind agreements reached with labor organizations.

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

Recent Developments

Does *Independence-NEA* make a difference?

Right to organize – Public employees already have right to organize under First Amendment freedom of association.

Vorbeck v. McNeal, 407 F. Supp. 733, 738 (E.D. Mo. 1976) (three-judge court), *aff'd w/o op.*, 426 U.S. 943 (1976).

Recent Developments

Does *Independence-NEA* make a difference?

Right to bargain collectively – Although not a right to bargain collectively, public employees already had right to present their views and desires to any public officer or legislative body under First Amendment and Mo. Const. art. I, § 9.

State ex rel. Missey v. City of Cabool, 441 S.W.2d 35, 41 (Mo. 1969).

Recent Developments

Does *Independence-NEA* make a difference?

Right to enforce labor agreements that are reached between public employers and their employees – This is significant.

But specific provisions in a labor agreement could preserve a public employer's ability to unilaterally alter the agreement. See *Reichert v. Bd. of Educ.*, 217 S.W.3d 301, 305 (Mo. banc 2007).

Recent Developments

Eastern Mo. Coalition of Police, Fraternal Order of Police, Lodge 15 v. City of Chesterfield, 386 S.W.3d 755 (Mo. banc 2012).

Provision of state constitution guaranteeing “employees” the “right to organize and to bargain collectively” imposes on employers (including public employers) an affirmative duty to bargain collectively.

Overruling *Quinn v. Buchanan*, 298 S.W.2d 413 (Mo. banc 1957).

Recent Developments

Eastern Mo. Coalition of Police, Fraternal Order of Police, Lodge 15 v. City of Chesterfield, 386 S.W.3d 755 (Mo. banc 2012).

While public employers must meet and confer with majority representative of its employees, they may not be ordered to establish a procedure to govern the meet and confer process.

Recent Developments

Eastern Mo. Coalition of Police, Fraternal Order of Police, Lodge 15 v. City of Chesterfield, 386 S.W.3d 755 (Mo. banc 2012).

Public employer not required to organize an election to determine whether a labor organization is the exclusive bargaining representative for a unit of its employees.

If public employer not covered by Public Sector Labor Law, majority representative status can be challenged in court.

Recent Developments

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

Missouri's Constitutional guarantee of the right to organize and to bargain collectively "necessarily requires [public employers] to meet and confer with the union [that represents its employees], in good faith, with the present intention to reach an agreement."

Resources

Missouri regulations applicable to matters before the Missouri State Board of Mediation can be found at:

<http://www.sos.mo.gov/adrules/csr/current/8csr/8c40-2.pdf>

Decisions of the Missouri State Board of Mediation can be found at:

<http://www.labor.mo.gov/sbm/Decisions/index.asp>

Resources

Active labor agreements between Missouri state agencies and their employees may be found at:

<http://content.oa.mo.gov/personnel/state-agencies/active-labor-agreements>



Conclusion

Thank you for your attendance
and your patience