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**MISSOURI**  
**Public Sector Collective Bargaining**  
**FACT SHEET**

Missouri law allows for both police and non-police collective bargaining, but before 2018 there were no agency mechanisms to adjudicate a failure to bargain.

In 2018, however, the state passed a statute dramatically constraining public sector unions, but the law exempted police. The Missouri Supreme Court found that exclusion to be an equal protection violation.

**STATUTORY AUTHORITY AND COMMISSION COMPOSITION**

**Statutory Authority**

**Constitution.**

The Missouri Constitution provides “[t]hat employees shall have the right to organize and to bargain collectively through representatives of their own choosing.”<sup>1</sup> In 2007, the Missouri Supreme Court held that this protection extended to public sector workers, giving them a constitutional right to bargain collectively (or not).<sup>2</sup>

**Pre-2018**

There were barebones statutory process provisions before 2018. Among those, the statute provided that an “exclusive bargaining representative” should be designated or selected by a majority of employees in an appropriate unit as the representative of those employees.<sup>3</sup> Further, if issues arose concerning the appropriateness of bargaining units or majority representative status, the state board of mediation resolved the disputes.<sup>4</sup> Finally, the statute defined the obligation of bargaining as follows:

the public body or its designated representative or representatives shall meet, confer and discuss such proposals relative to salaries and other conditions of employment of the employees of the public body with the labor organization which is the exclusive bargaining representative of its employees in a unit appropriate.<sup>5</sup>

There was no administrative mechanism to enforce this obligation.

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<sup>1</sup> MO. CONST., art. I, § 29.

<sup>2</sup> *Indep.-Nat’l Educ. Ass’n v. Indep. Sch. Dist.*, 223 S.W.3d 131, 133 (Mo. 2007) (en banc).

<sup>3</sup> MO. REV. STAT. § 105.500(2) (2016).

<sup>4</sup> MO. REV. STAT. § 105.525 (2016).

<sup>5</sup> MO. REV. STAT. § 105.520 (2016).

While the Pre-2018 statute appeared to exclude police from coverage,<sup>6</sup> it appeared police unions nevertheless were allowed to bargain collectively.<sup>7</sup>

### **HB 1413**

In 2018, the Missouri legislature repealed much of the former law, and enacted HB 1413, which added 21 sections to the Missouri public sector collective bargaining law, most of those sections designed to impede union representation. The statute prohibits voluntary recognition of a union, requiring only a Board administered election, and it also lowers the bar for decertification essentially requiring a presumptive decertification every three years.<sup>8</sup> To prevail in any certification or decertification election, a majority of all of the employees in the bargaining unit must vote “yes.”<sup>9</sup>

The new statute prohibited dues “check off”<sup>10</sup> and required unions to maintain all of the information required under the Federal Labor Management Reporting and Disclosure Act,<sup>11</sup> and it required the annual filing of even more extensive financial and governance information with the Department and to each individual union member.<sup>12</sup> The penalties and liability for failure to comply extended to the union and individual employee or member who is responsible for providing the information.

As to bargaining, the law appeared designed to constrain the role of a union. The law did not grant the right to strike,<sup>13</sup> and did not contain any other impasse procedures.<sup>14</sup> Intended to narrow the scope of bargainable topics, the statute required any agreement to contain a broad management rights clause “reserving to the public body the right to hire, promote, assign, direct, transfer, schedule, discipline, and discharge public employees . . . [and] include[ing] a provision reserving to management the right to make, amend, and rescind reasonable work rules and standard operating procedures”<sup>15</sup> The statute required union ratification before any tentative agreement is brought before a public body for approval,<sup>16</sup> and it also allowed any public body to

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<sup>6</sup> MO. REV. STAT. § 105.510 (2016) (“Employees, *except police, deputy sheriffs, Missouri state highway patrolmen, Missouri National Guard, all teachers of all Missouri schools, colleges and universities, of any public body shall have the right to form and join labor organizations and to present proposals to any public body relative to salaries and other conditions of employment through the representative of their own choosing.*”) (emphasis added).

<sup>7</sup> Petitioners Opening Brief, *Mo. Nat’l Educ. Ass’n v. Mo. Dep’t of Lab. & Indus. Rels. (Mo. NEA)*, 623 S.W.3d 585 (Mo. 2021) (No. SC 98412) (asserting “[n]evertheless, those employees and their chosen union representatives enjoyed all of the rights guaranteed under Article I, Section 29 . . . and they exercised those rights to organize and collectively bargain under local ordinances or policies that satisfied Article I, Section 29”).

<sup>8</sup> MO. REV. STAT. § 105.575 (2016).

<sup>9</sup> MO. REV. STAT. § 105.575 (2016).

<sup>10</sup> The ability of an employer to agree to withhold dues from an employee’s paycheck and transmit those dues to the union.

<sup>11</sup> Labor Management Reporting and Disclosure Act of 1959, Pub. L. No. 86-257, 73 Stat. 519 (codified as amended in scattered sections of 29 U.S.C.).

<sup>12</sup> MO. REV. STAT. § 105.505 (2016)

<sup>13</sup> MO. REV. STAT. § 105.530 (2016). This section can be enforced through a private right of action by any union member.

<sup>14</sup> There are limited impasse procedures in a different section, MO. REV. STAT. § 295 (2022).

<sup>15</sup> MO. REV. STAT. § 105.585(1) (2016).

<sup>16</sup> MO. REV. STAT. § 105.580 (2016).

reject parts of the agreement while approving other parts.<sup>17</sup> In addition, the statute allowed the public body to modify unilaterally any agreed upon and ratified provision.<sup>18</sup>

Adding to its potency, the provisions of the statute could be enforced in a civil action by any “citizen of Missouri”, to whom attorney’s fees and costs would be available if they are successful.<sup>19</sup>

Finally, and most importantly, the requirements of the statute applied to all public sector unions and their members except “public safety labor organizations and all employees of a public body who are members of a public safety labor organization.”<sup>20</sup> Public safety labor organizations were defined as follows:

a labor organization wholly or primarily representing persons trained or authorized by law or rule to render emergency medical assistance or treatment, including, but not limited to, . . . persons who are vested with the power of arrest for criminal code violations including, but not limited to, police officers, sheriffs, and deputy sheriffs.<sup>21</sup>

## Invalidation

In *Missouri National Education Association v. Missouri Department of Labor and Industrial Relations*, the Missouri Supreme Court found that HB 1413’s exclusion of police unions and their members was an equal protection violation and, on that basis, invalidated the entire law.<sup>22</sup>

The day before HB 1413 was to go into effect, a group of unions representing public employees in Missouri challenged it, arguing the that statute violated Missouri’s constitutional protections for public sector bargaining.<sup>23</sup> The unions argued that HB 1413 impinged on the state constitution’s protections of collective bargaining.<sup>24</sup> The unions also argued that the exclusion of public safety unions violated the state constitution’s equal protection clause by, among other things, creating an advantage for public safety unions.<sup>25</sup> The lower court granted summary judgment for the unions, but I do not know on which basis.<sup>26</sup>

On appeal, the State argued that the lower court erred in concluding that HB 1413 violated the constitutional protection for bargaining collectively and being represented by union of choice.<sup>27</sup> The state contended that HB 1413 enhanced employees’ ability to choose by imposing these requirements designed to enhance employees’ access to information and choices.<sup>28</sup> The State also

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<sup>17</sup> MO. REV. STAT. § 105.508 (2016).

<sup>18</sup> MO. REV. STAT. § 105.585 (2016).

<sup>19</sup> MO. REV. STAT. § 105.959 (2016).

<sup>20</sup> MO. REV. STAT. § 105.503(1) (2016).

<sup>21</sup> MO. REV. STAT. § 105.500(8) (2016).

<sup>22</sup> 623 S.W.3d 585 (Mo. 2021).

<sup>23</sup> *Id.* at 589.

<sup>24</sup> Brief of Plaintiffs/Respondents at 45-63, *Mo. NEA*, 623 S.W.3d 585 (Mo. 2021) (No. SC 98412).

<sup>25</sup> *Id.* at 73-79

<sup>26</sup> *Mo. NEA*, 623 S.W.3d at 590.

<sup>27</sup> *Id.* at 591.

<sup>28</sup> *Id.*

argued that the exclusion of public safety unions met a rational basis review because police unions should be given an advantage in collective bargaining because of the unique safety concerns faced by police officers.<sup>29</sup>

The Missouri Supreme Court affirmed the trial court’s decision but only on the equal protection ground and only applying a rational basis review. The court first found that it need not address the broader constitutional claim:

This Court need not resolve whether article I, section 29 would be violated by a collective-bargaining framework that provides a strong incentive to affiliate with one type of labor organization over another, for even if that were not the case, the bill violates the equal protection provision contained in article I, section 2.<sup>30</sup>

Instead, the court found that because the exclusion focused on the type of union, and not the employees represented, the safety justification was not a rational basis sufficient to support the law. The court was at pains, however, to emphasize that the result could have been different if the exclusion were targeted at the employees represented and not the union: “Whether these [rationales] might have sufficed had the exemption at issue protected public safety employees is not at issue, for it exempts only public safety *labor organizations*.<sup>31</sup> The court also recognized that the exclusion was a part of a last minute compromise made on the floor of the senate as the result of pressure from police unions, but the political motivation was insufficient to produce a rational basis for the exclusion

Because the exclusion of public safety unions could not be severed from the remainder of the statute, the court invalidated all the provisions of HB 1413.<sup>32</sup>

### **Board of Mediation Function and Composition**

Post *Missouri NEA*, The Board of Mediation is still empowered to resolve negotiating disputes among the parties.<sup>33</sup> If the parties to a CBA fail to reach an agreement, the parties each

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 592 (There is no need to evaluate whether or to what extent the exemption for public safety labor organizations infringes upon fundamental rights because this exemption fails even the rational basis test.”).

<sup>31</sup> *Id.* at 592; *see also id.* at 593 (“There may well be situations in which this type of separate treatment can be rational, but that question does not apply here because HB 1413 differentiates groups of employees based on their affiliation with other employees, regardless of job functions of those employees.” (footnote omitted)).

<sup>32</sup> *Id.* at 595 (“By its plain language, section 105.503.2(1) is essentially and inseparably connected with all other provisions of HB 1413; therefore, HB 1413 must be declared void in its entirety.”).

<sup>33</sup> MO. REV. STAT. § 295.080(2) (2024) (“Upon application of either party to a labor dispute or upon its own motion the board may fix a time and place for a conference between the parties to the dispute and the board or its representative, upon the issues involved in the labor dispute and shall take whatever steps it deems expedient to bring about a settlement of the dispute including assisting in negotiating and drafting a settlement agreement.”).

identify a designee, and the Board conducts a public hearing.<sup>34</sup> The findings of the hearing panel are then provided to the governor.<sup>35</sup>

According to its website, the Board is currently only conducting elections; it does not appear to be doing consultations or hearings.<sup>36</sup> The Board is taking the position that, given the decision in *Missouri NEA*, the former exclusions preclude it from processing any petitions for representations from teachers unions (it does not mention police).<sup>37</sup> In addition, the Board takes the position that only licensed attorneys may appear before it.<sup>38</sup>

There are five members on the Board, “two of whom shall be employers of labor, or selected from some association representing employers of labor, and two of whom shall be employees holding membership in some bona fide trade or labor union; the fifth shall be some person who is neither an employee nor an employer of labor and who shall be chairman of said state board of mediation.”<sup>39</sup> The chair is a full time job, compensated as such.<sup>40</sup> The Board has the ability to conduct hearing and issue subpoenas.

Logan Hobbs is currently both the Acting Chair and the Director of the Division of Labor Standards for the State Department of Labor.<sup>41</sup> He previously served as the Department of Labor and Industrial Relations’ legislative liaison, representing the Department’s interests in the state capitol. According to the website, the terms of all other members of the Board have expired.

## MANDATORY SUBJECTS - DECISIONS

There are no current or past unfair labor practice decisions.

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<sup>34</sup> MO. REV. STAT. § 295.120(2) (2024) (“The panel shall promptly proceed and within fifteen days following their designation hold and complete public hearings on the specific changes so requested, to the contract, agreement or understanding.”).

<sup>35</sup> MO. REV. STAT. § 295.150 (2024) (“Within five days after closing such hearings the panel shall file with the governor, in writing, a report setting forth a statement of the controversy, a resume of the evidence submitted to it and its recommendations based thereon.”).

<sup>36</sup> See *State Board of Mediation*, DEP’T OF LAB. & INDUS. RELS., <https://labor.mo.gov/sbm> (last visited Sept. 20, 2024).

<sup>37</sup> Memorandum from Todd Smith, State Bd. of Mediation Chairman, Mo. Dep’t of Lab. & Indus. Rel. (Mar. 13, 2019), <https://labor.mo.gov/media/pdf/sbm-memo-parties> [<https://perma.cc/DSK6-XA8F>].

<sup>38</sup> *State Board of Mediation*, *supra* note 36 (“[P]roceedings before the Board constitute the practice of law. . . . [A]ll new petitions and other motions must be filed by an attorney licensed in the State of Missouri or appearing *pro hac vice*.”).

<sup>39</sup> MO. REV. STAT. § 295.030 (2024).

<sup>40</sup> MO. REV. STAT. § 295.050-.060 (2024).

<sup>41</sup> See *Department of Labor, State Board of Mediation, About the Chair*, <https://labor.mo.gov/sbm>. This dual appointment appears to be inconsistent with MO. REV. STAT. § 295.050 (2024).