

IN THE SUPREME COURT OF MISSOURI

CITY OF CHESTERFIELD, MISSOURI,	)	
	)	
Appellant,	)	
vs.	)	Appeal No. SC91736
	)	
EASTERN MISSOURI COALITION	)	
OF POLICE, FRATERNAL ORDER	)	
OF POLICE LODGE 15	)	
	)	
Respondent.	)	

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BRIEF OF *AMICUS CURIAE* CITY OF HAZELWOOD, MISSOURI

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Appeal from the Circuit Court of St. Louis County  
The Honorable Colleen Dolan, Circuit Judge

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## JURISDICTIONAL STATEMENT

Amicus Curiae City of Hazelwood, Missouri (“Hazelwood”) files this Brief with the consent of both parties. Hazelwood adopts Appellant City of Chesterfield, Missouri’s (“Chesterfield”) jurisdictional statement set forth in its Substitute Brief.

## STATEMENT OF FACTS

Hazelwood adopts the statement of facts set forth in Chesterfield’s Substitute Brief.

## STATEMENT OF INTEREST

On February 24, 2011, the St. Louis County circuit court entered an Order and Judgment upholding the validity of the collective bargaining framework Hazelwood adopted for its commissioned police officers.<sup>1</sup> Laborers’ International Union of North America, Local Union No. 1032 (“LIUNA”) appealed the circuit court’s Order, in appeal number ED96635. At the behest of LIUNA, the Eastern District has stayed the appeal pending the outcome of the instant appeal. *Appendix* at A3.

Hazelwood’s policy<sup>2</sup> provides the following with regard to the employees’ rights to select a bargaining representative:

“Each individual officer has a free choice as to the particular representative who shall act on behalf of that particular employee and shall have a free choice as to whether or not he or she is represented by any bargaining

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<sup>1</sup> See *Appendix* at A1.

<sup>2</sup> A copy of which is provided in the *Appendix* at A5.

representative, labor union or organization. In the event the individual officer declines to designate a bargaining representative, nothing contained in these Guidelines precludes the employee from subsequently designating a bargaining representative who shall thereafter act on behalf of that employee.

In the event an individual officer has previously chosen and designated a particular bargaining representative, the individual officer retains the right to either (a) rescind the initial choice of a bargaining representative and designate a new bargaining representative or organization to serve thereafter as the individual officer's representative for collective bargaining, or (b) may rescind the prior designation and elect against designating any other representative or organization to act on behalf of that employee.

Officers are free to choose their own bargaining representative and no employee will 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. *Appendix* at A6-A7.

Hazelwood's framework, therefore, allows officers to select a labor organization, chose an individual as their designee or to choose to represent themselves in the collective bargaining process. *Appendix* at A6-A7. The framework equally allows an

officer, if they so choose, not to participate at all in the bargaining process. *Appendix* at A6-A7. An officer wishing to represent him or herself during the bargaining process or designate an individual or union representative files a notification of that choice with the City Manager. *Appendix* at A7. The Hazelwood framework allows for, but does not mandate, an exclusive representative for its police officers. Further, the framework does not require an election to select a collective bargaining representative.

If the trial court's order in this case were to be affirmed on appeal by this Court, Chesterfield would be required to:

“[E]xpediently establish a framework for collective bargaining that will include: the scope of an appropriate bargaining unit that will include police officers and sergeants; procedures for the election process...including the date, time, and place of election; the procedures for holding an election...”

*Appendix* at A19. (Emphasis added)

Additionally, Chesterfield will be required to recognize an exclusive representative. *Appendix* at A19. Therefore, if the Supreme Court should agree with the trial court, the effect of the ruling would be that public employers must not only establish a collective bargaining framework, but that the framework must require the establishment of an election process and the selection of an exclusive representative. Hazelwood's framework, therefore, is in peril of being incidentally invalidated by this Court, without Hazelwood having an opportunity to address the issues raised herein. Thus, while Hazelwood files this Brief in support of Chesterfield, it also files it to protect its own interests as well as those of other municipalities and school districts who may have

adopted or may wish to adopt a framework similar to Hazelwood's, as well as to serve the interests of judicial efficiency.

## Argument

**I. Article I, Section 29 of the Missouri Constitution grants to each individual employee a right to bargain collectively. It does not however place upon public employers an affirmative duty to adopt a 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.” (Emphasis added).

*Article I, Section 29* is not in and of itself a collective bargaining framework in the same vein as the Missouri Public Sector Labor Law (“MPSLL”) or the National Labor Relations Act (“NLRA”). It instead is an express right conferred upon employees and contained within the Bill of Rights. This Court, long ago, rejected the very notion that *Article I, Section 29* is a labor relations act. See *Quinn v. Buchanan*, 298 S.W.2d 413, 418 (Mo. banc 1957) (“It should also be pointed out that Sec. 29, Art I is not a labor relations act, specifying rights, duties, practices and obligations of employers and labor organization...”). In *Quinn*, this Court characterized *Article I, Section 29* as:

“a declaration of a fundamental right of individuals. It is self-executing to the extent that all provisions of the Bill of Rights are self-executing, namely: Any governmental action in violation of the declared right is void... However, [*Article I, Section 29*] provides for no required affirmative duties concerning this right and these remedies can only apply to their violation... It is evident that the constitutional provision

guaranteeing employees the right to organize and bargain collectively through representatives of their own choosing does not cast upon all employers a correlative obligation. The constitutional provision was shaped as a shield; the union seeks to use it as a sword. \* \* \* The constitutional provision was intended to protect employees against legislation or acts which would prevent or interfere with their organization and choice of representatives for purpose of bargaining collectively. Thus implementation of the right to require any affirmative duties of an employer concerning it is a matter for the Legislature.” *Quinn* at 418-419 (Emphasis added - internal quotations omitted).

Nothing in this Court’s holding in *Independence-National Education Association v. Independence School District*, 223 S.W.3d 131 (Mo. banc 2007) contradicts this long-held view of *Article I, Section 29*.

In 1965 the Missouri General Assembly enacted the MPSLL<sup>3</sup> (Section 105.500 *et seq.*) pursuant to which many public sector employers are now statutorily mandated to engage in collective bargaining, through a statutorily prescribed framework, supplemented with regulations promulgated by the State Board of Mediation. The MPSLL allows public employees, “except police, deputy sheriffs, Missouri state highway patrolmen, Missouri national guard, all teachers of all Missouri schools, colleges and

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<sup>3</sup> Which was amended in 1967 to its current format.

universities,” to form and join labor organizations to present proposals “through the representative of their own choosing.” *Section 105.510* RSMo.

Fully aware of the use of the plural “representatives” in the Missouri Constitution, the General Assembly elected to establish a framework for those purportedly excluded from the constitutionally granted right using the singular form and added further clarity to its choice of the singular form by using and defining the term “exclusive bargaining representative.” *Section 105.500* RSMo. Interestingly, the MPSLL also states that “[w]henver such proposals are presented by the exclusive bargaining representative to a public body, the public body or its designated representative or representatives...,”<sup>4</sup> therefore, suggesting that the Legislature understood the difference between the use of the singular and the plural to have some meaning.

In 2007 this Court in *Independence*, overruled *City of Springfield v. Clouse*, 206 S.W.2d 539 (Mo. banc 1947)<sup>5</sup> and determined that *Article I, Section 29* applies, as it plainly states, to all employees public and private. However, the decision in *Independence* did not extend the MPSLL to teachers and those expressly excluded by its terms. Instead this Court found the only way to read the MPSLL and *Article I, Section 29* harmoniously was that the MPSLL does not prohibit teachers and those similarly

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<sup>4</sup> *Section 105.520* RSMo (Emphasis added)

<sup>5</sup> Wherein this Court had previously determined that *Article I, Section 29* did not apply to public employees.

situated, such as police officers, from collective bargaining, but that its prescribed procedures do not apply to them. The *Independence* Court stated:

“Instead of invalidating the public sector labor to the extent that it excludes teachers, this Court’s reading of the statute recognizes the role of the general assembly, or in this case, the school district in the absence of a statute covering teachers to set the framework for these public employees to bargain collectively through representatives of their own choosing.” *Id.* at 136. (Emphasis added)

Thus the *Independence* decision is not an expression of what legislative bodies must do, rather it states what they cannot do, namely enact legislation or otherwise act in a manner that would remove the right of an employee to collectively bargain. Further, the use of the word “role” by this Court, instead of “duty,” is indicative of the fact that the decision to implement a collective bargaining framework, and sculpt its terms, is one of legislative policy.

It should also be noted that this Court in *Independence*, presumably intentionally, repeated the use of the plural “representatives” found in *Article I, Section 29*, thereby reemphasizing the proper meaning of the constitutional provision.

## II. Article I, Section 29 of the Missouri Constitution does not mandate exclusive representation

The use of the plural “representatives” in *Article I, Section 29* is a clear demonstration of intent that the grant of the right to collectively bargain to employees allows for multiple representatives. “The primary rule of statutory interpretation is to effectuate legislative intent through reference to the plain and ordinary meaning of the statutory language.” *State v. Graham*, 204 S.W.3d 655, 656 (Mo. banc 2006). This Court in *Independence*, quoting *Webster’s Third International Dictionary (1993)* stated that:

“The dictionary definition says collective bargaining is negotiation for the settlement of the terms of a collective bargaining agreement between an employer or group of employers on one side and a union or number of unions on the other; broadly any union-management negotiation.”

*Independence* at 138, fn.6 (Emphasis added – internal quotes omitted).

The *Independence* Court further considered the definition of “collective bargaining” in *Black’s Law Dictionary* which provides that:

“collective bargaining means negotiations between an employer and the representatives of organized employees to determine the conditions of employment, such as wages, hours, discipline, and fringe benefits.” *Id.*

(Emphasis added – internal quotations omitted).

Neither dictionary definition of “collective bargaining” adopted by this Court in *Independence* suggests that exclusive representation is mandated by *Article I, Section 29*.

“The plain and ordinary meaning of a word is derived from the dictionary.” *State ex rel Nixon v. Quiktrip Corp.*, 133 S.W.3d 33, 37 (Mo. banc 2004). Consequently, this Court need not look any further than these dictionary definitions of collective bargaining, which it has previously quoted, to dispel any notion that collective bargaining, by definition, requires exclusive representation.

**III. Absent state legislation mandating exclusive representation, public employers have discretion over what framework they wish to establish for collective bargaining**

The Missouri legislature in enacting the MPSLL has expressly permitted a system of collective bargaining whereby the will of the majority of employees may trump the rights of individual employees. The MPSLL expressly authorizes a “majority of employees” to designate the exclusive bargaining representative. *Section 105.500(2) RSMo.* The MPSLL expressly provides that it is not applicable to police officers. *Id.* Absent state legislation requiring the will of the majority of employees to defeat the rights enjoyed by the individual employees pursuant to *Article I, Section 29*, public employers are free to determine whether they wish to adopt a framework that requires exclusive representation or a system that respects each individual employee’s right to choose his or her representative. Hazelwood’s framework acknowledges that the right to collectively bargaining belongs to each employee and has chosen not to legislate in a manner that would allow the majority to trump the rights of the minority. There is no requirement under *Article I, Section 29* that Hazelwood or other public employers define and qualify the right to collective bargaining in the same manner as set forth in the MPSLL and the accompanying regulations of the State Board of Mediation. As noted by this Court in *Independence*, where the state legislature has chosen not to act, it is the role of public employers such as Hazelwood to adopt, when they so choose, a collective bargaining framework consistent with *Article I, Section 29*. *Independence* at 136. Therefore, the establishment of a collective bargaining framework is tasked to the public

employer, not to the courts. Judicial review of collective bargaining frameworks should be limited to a consideration as to their constitutionality, and not to examine the legitimate choices made by the public employers in establishing frameworks.

The trial court's order in the instant case if affirmed, or even if partially affirmed in the manner adopted by the Eastern District, would mandate exclusive representation and, therefore, would remove from the public employers, not covered by the MPSLL, the right to determine for themselves the form of collective bargaining framework they wish to establish.

**IV. Article I, Section 29 of the Missouri Constitution does not require a collective bargaining framework to provide an election to select collective bargaining representatives**

As discussed *supra*, *Article I, Section 29* does not constitute a comprehensive labor relations act. Instead, it is a “shield” to protect the rights of employees, not a “sword” to be wielded by labor organizations. *See Quinn, supra*, at 418-419. Thus, the constitutional provision contains no requirement, express or implied, that would require a formal election process to establish either exclusive or multiple bargaining representatives. Hazelwood’s process allows each employee to fill out a notification stating their chosen representative, and the framework requires that Hazelwood shall meet with all such representatives. *Appendix* at A7; A8-A9. The trial court’s order in the instant case effectively mandates the establishment of an election process in conjunction with the collective bargaining process. Thus, the trial court has done the very thing this court properly refused to do in *Independence*: extend the scope of the MPSLL to those groups of public employees expressly excluded from its provisions.

The election process is derived from regulations promulgated by the State Board of Mediation, pursuant to a grant of authority stated in *Section 105.525 RSMo* and not from *Article I, Section 29*. *Section 105.525 RSMo* provides that the State Board of Mediation shall resolve all “[i]ssues with respect to appropriateness of bargaining units and majority representative status.” Charged with this duty, the State Board of Mediation has created an election procedure for determining the exclusive representative of the public employees covered within the ambit of the MPSLL. *8 C.S.R. 40-2.010 et seq.*

This election process exists solely through the MPSLL and the related state regulations and not through *Article I, Section 29*. The State Board of Mediation's procedure is not applicable to those outside of the scope of the MPSLL, and while public employers may choose to adopt similar procedures, they are not obligated to do so. Hazelwood has instead chosen to adopt a procedure whereby each employee designates their choice of representative, if any. *Appendix at A7*.

Again, if the trial court's order is affirmed with regard to the compulsion of holding an election to select a bargaining representative, Hazelwood's framework would essentially and improvidently be invalidated.

**V. Until the Missouri General Assembly chooses to establish a framework for those excluded from the Missouri Public Sector Labor Law, it is for public employers, if they so choose, to adopt a framework that complies with Article I, Section 29 of the Missouri Constitution**

Until such time as the state legislature elects to extend the scope of the MPSLL, or otherwise provide a framework for collective bargaining for peace officers and teachers, it is the prerogative of public employers to develop a framework for collective bargaining, where, like Hazelwood, they so choose to act.

**A. *Independence* prohibits public employers from impeding the rights of its employees to collective bargaining**

*Independence, supra*, unquestionably affirms the plain language contained in *Article I, Section 29* that public employers cannot seek to quell the efforts of those employees, outside the scope of the MPSLL, to bargain collectively. However, this does not mean that they must preemptively prescribe a framework, especially not in the manner required by the trial court's order in the instant case. What a public employer is required to do is meet and confer with its public employees when the employees demonstrate an interest to do so. In *State ex rel. Missey v. City of Cabool*, 441 S.W.2d 35, 41 (Mo. 1969), this Court in considering the MPSLL in conjunction with *Article I, Section 29* recognized that “[t]he public employer is not required to agree but is required only to ‘meet, confer and discuss,’ a duty already enjoined upon such employer prior to

the enactment of [the MPSLL].”<sup>6</sup> The lack of any obligation for a public employer to agree or contract with its employees was reiterated no less than eight times by this Court in *Independence*. *Independence* at 133 (twice); 136 (twice); 137, 138 and 139 (twice).

The *Cabool* Court was referring to its own words in *Clouse*, *supra*, a case that undoubtedly represents the low water mark in the collective bargaining rights of public employees, where it stated, in denying the right to collective bargaining to all public employees:

“This ruling does not mean, as defendants’ counsel seems to fear, that public employees have no right to organize. All citizens have the right, preserved by the First Amendment to the United States Constitution and Sections 8 and 9 of Article I of the 1945 Missouri Constitution, Sections 14 and 29, Art 2. Constitution of 1875, to peaceably assemble and organize for any proper purpose, to speak freely and to present their views and desires to any public officer or legislative body.” *Clouse* at 542.

Thus, a public employer cannot take steps to prevent its employees from attempting to meet and confer with it.

**B. Hazelwood’s framework provides a mechanism through which its employees are encouraged to exercise their collective bargaining rights**

Hazelwood’s policy provides an expedient mechanism through which its police officers may indicate to the City who their chosen representatives are, if any, and engage

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<sup>6</sup> Cited by the *Independence* Court. *Independence* at 136.

in the meet and confer process. *Appendix* at A5-A12. The police officers are free to remove themselves from the collective bargaining procedure, change their chosen representative at any time or represent themselves in the bargaining discussions. *Appendix* at A6-A7. If the only representative that is selected by Hazelwood's police officers is LIUNA, or another labor organization, then Hazelwood will meet exclusively with that organization. What Hazelwood's Framework does not do is compel the choice of an exclusive representative upon those employees who do not wish to be represented by that representative. Hazelwood's policy, therefore, does not infringe upon the right to bargain collectively conferred upon each and every employee, public or private, by *Article I, Section 29*.

## Conclusion

*Article I, Section 29* of the Missouri Constitution creates no affirmative duty on the part of public employers to establish a framework for collective bargaining for those public sector workers excluded from the MPSLL. However, *Article I, Section 29* absolutely prohibits acts of local government that infringe upon the employees rights to bargain collectively. As such, when a public employer, like Hazelwood, determines to adopt a framework for collective bargaining, it cannot do so in a manner that violates *Article I, Section 29*.

Further, if this Court should conclude that *Article I, Section 29* does create an affirmative duty to establish a framework, Hazelwood respectfully requests that this Court recognize that the requirement of an exclusive representative and/or an election to select a representative are procedures established by the MPSLL, not *Article I, Section 29*. As such, to mandate exclusive representation or an election process for police officers in effect would be to rewrite the MPSLL to include police officers within its scope.

WHEREFORE, *Amicus Curiae* City of Hazelwood, Missouri, respectfully requests that this Court reverse the trial court's order requiring that Chesterfield adopt a collective bargaining framework. Alternatively, if this Court should determine that Chesterfield is obligated to establish a collective bargaining framework, *Amicus Curiae* respectfully requests that this Court modify the trial court's order to remove the requirement that Chesterfield establish an election procedure to select an exclusive

bargaining representative, instead requiring that Chesterfield create a framework that complies with *Article I, Section 29*.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Two copies of the foregoing Brief, together with a CD-ROM containing the same were served on Appellant this 13<sup>th</sup> day of June, 2011, by placing the same in the U.S.

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this brief includes the information required by Rule 55.03 and complies with the requirements contained in Rule 84.06. Relying on the word count of the Microsoft Word program, the undersigned certifies that the total number of words contained in this brief is 3,440, excluding the cover, table of contents, table of authorities, signature block, and certificates of service and compliance.

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