

IN THE
SUPREME COURT OF MISSOURI

No. SC87980

INDEPENDENCE-NATIONAL EDUCATION ASSOCIATION,
INDEPENDENCE-TRANSPORTATION EMPLOYEES ASSOCIATION,
INDEPENDENCE-EDUCATIONAL SUPPORT PERSONNEL,
RANDI LOUISE MALLET, AND RON COCHRAN

Plaintiffs–Appellants

V.

INDEPENDENCE SCHOOL DISTRICT,

Defendants-Respondents.

APPEAL FROM THE CIRCUIT COURT OF JACKSON COUNTY
SIXTEENTH JUDICIAL CIRCUIT
HONORABLE W. STEPHEN NIXON, JUDGE

BRIEF OF AMICUS CURIAE
MISSOURI SCHOOL BOARDS' ASSOCIATION AND
MISSOURI MUNICIPAL LEAGUE

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STATEMENT OF JURISDICTION

This action involves the question of whether the Missouri Supreme Court's interpretation of Article I, §29 of the Missouri Constitution in *City of Springfield v. Clouse*, 206 S.W.2d 539 (Mo.banc 1947), and the Court's interpretation of the Public Sector Labor Law (§105.500 et seq., RSMo.) are valid. The trial court relied on the precedent adopted by *Clouse* and followed by *Sumpter* to find that the Defendant school district could unilaterally rescind an agreement reached under the meet and confer provisions of the Public Sector Labor Law. §105.520, RSMo.² Plaintiffs' sole issue on appeal is the validity of the Court's interpretation of Article I, §29 which both *Clouse* and *Sumpter* rely upon. This Court, therefore, has jurisdiction in this action under Article V, §3 of the Missouri Constitution. *See Asbury v. Lombardi*, 846 S.W.2d 196 (Mo.banc. 1993) (Supreme Court has exclusive appellate jurisdiction of cases challenging the validity of statutes or interpretation of the Missouri Constitution).

STATEMENT OF FACTS

Amici curiae adopt the statement of facts submitted by the Defendants-Respondents, Independence School District in its brief to this Court.

² All references will be to the 2000 edition of Missouri Revised Statutes unless otherwise noted.

POINTS RELIED ON

I. The circuit court did not err in finding for the Independence School District because the court appropriately relied on Missouri Supreme Court precedent *City of Springfield v. Clouse*, 206 S.W.2d 539 (Mo.banc 1947), in that the initiation of public sector collective bargaining in Missouri would not be a delegation of legislative authority by governmental entities through the legislative process but would instead be a decision mandated by courts on governmental entities that would give an unfair advantage to employees over other interested taxpayers in the decisions made by governmental entities, thereby circumventing the legislative process.

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

II. The circuit court did not err in finding for the District because the court appropriately relied on Missouri Supreme Court precedent *City of Springfield v. Clouse*, 206 S.W.2d 539 (Mo.banc 1947), and *Sumpter v. City of Moberly*, 645 S.W.2d 359 (Mo.banc 1982), in that these cases are not clearly erroneous, manifestly wrong, unjust or absurd and, in fact, the holdings in these cases are still supported by the Missouri public, and the governance of public employee working conditions is actively and effectively regulated through the legislative process.

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

Crabtree v. Bugby, 967 S.W.2d 66 (Mo.banc 1998)

Southwestern Bell Yellow Pages, Inc. v. Director of Revenue, 94 S.W.3d 388

(Mo.banc 2002)

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

§105.500 - .530

§105.520

III. The circuit court did not err in finding for the District because the court recognized the strong public policy against collective bargaining in the public sector in that collective bargaining for public employees would be harmful to public entities.

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

Ronnoco Coffee Comp., Inc. v. Director of Revenue, 185 S.W.3d 676 (Mo.banc

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La Rae G. Munk, J.D., “Collective Bargaining: Bringing Education to the Table,”

(Mackinac Center for Public Policy, 1998)

IV. The circuit court did not err in finding for the District because the court correctly relied on *Sumpter v. City of Moberly*, 645 S.W.2d 359 (Mo.banc 1982), in that the holding in *City of Springfield v. Clouse*, 206 S.W.2d 539 (Mo.banc 1947), is irrelevant if meet and confer agreements

are binding upon the district, and the Public Sector Labor Law still serves a valuable purpose by providing an organized conversation between public entities and their employees.

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

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

§105.520

§610.010 - .035

ARGUMENT

I. The circuit court did not err in finding for the Independence School District because the court appropriately relied on Missouri Supreme Court precedent *City of Springfield v. Clouse*, 206 S.W.2d 539 (Mo.banc 1947), in that the initiation of public sector collective bargaining in Missouri would not be a delegation of legislative authority by governmental entities through the legislative process but would instead be a decision mandated by courts on governmental entities that would give an unfair advantage to employees over other interested taxpayers in the decisions made by governmental entities, thereby circumventing the legislative process.

Appellant claims that the non-delegation doctrine is "discredited" because some courts have refused to utilize the doctrine to strike down federal or state statutes. However, Appellant misses the point of *Clouse*, that "no citizen or group of citizens have the right to a contract for any legislation or to prevent legislation." *Clouse*, 206 S.W.2d at 543. Courts allow legislative bodies, including political subdivisions, to delegate authority. This authority only exists, however, when that delegation is made through the legislative process of the governmental body and is clearly authorized by legislative action of the governmental body, a process through which all affected parties, taxpayers as well as employees, can participate.

See Menorah Medical Center v. Health and Educational Facilities Authority, 584 S.W.2d 73, 84 (Mo.banc 1979).

The Court in *Clouse* was not concerned with decisions made by a legislative body through the normal legislative process. The Court was concerned that a narrow group of interested citizens, in this case employees, would exert excessive influence over the decisions of a legislative body and have an unfair advantage over other taxpayers or interested parties and unduly influence the legislative process because mandated collective bargaining would require public entities to reach agreements with their employees. The Appellant is not arguing that the Court uphold a statute that was created through the legislative process by the affected legislative body. The Appellant is arguing that the Court, not a legislative body, should create new law by overruling *Clouse*.

This Court mandate would apply to the state, as well as political subdivisions such as counties, cities, townships, school districts, fire districts, water districts, and all other governmental entities in Missouri. These legislative bodies would not have a choice as to whether or not they could participate. If *Clouse* is overturned, they will be required to do so regardless of whether it is best for the entity, the taxpayers, or the constituents for which the public entity exists. The Court would not be upholding a legislative delegation of authority but would, in fact, create collective bargaining rights where none currently exist. This would limit, not strengthen, the authority of Missouri legislative bodies.

Clouse in no way prohibited legislative bodies from making legislative decisions. In fact, the Court in *Clouse* specifically recognized legislative delegation when it stated that its holding applies to not only state lawmakers but also to "municipalities because their legislative bodies exercise part of the legislative power of the state." *Clouse*, 206 S.W.2d at 545. Municipalities exercise legislative power because it has been given to them through legislation crafted during the legislative process. However, this delegation, once again through the legislative process, can be withdrawn, limited, or rejected in the future by the legislative body, not unlike how policy decisions may be accepted, modified, or rejected by the governmental body in Missouri's Public Sector Labor Law. §105.510 - .530.

The Appellant states that this Court's acceptance of legislative delegations "cannot be squared with a conclusion that a school board cannot delegate to its administrators and individual board members the authority to negotiate with a public employee union, particularly if the board reserves the right to approve the outcome of the negotiations." *Appellant Brief* at 17. However, if the Court were to overturn *Clouse*, it would not be the school board doing the delegating. It would be this Court.

II. The circuit court did not err in finding for the District because the court appropriately relied on Missouri Supreme Court precedent *City of Springfield v. Clouse*, 206 S.W.2d 539 (Mo.banc 1947), and *Sumpter v.*

***City of Moberly*, 645 S.W.2d 359 (Mo.banc 1982), in that these cases are not clearly erroneous, manifestly wrong, unjust or absurd and, in fact, the holdings in these cases are still supported by the Missouri public, and the governance of public employee working conditions is actively and effectively regulated through the legislative process.**

The circuit court appropriately applied *City of Springfield v. Clouse*, 206 S.W.2d 539 (Mo.banc 1947), and *Sumpter v. City of Moberly*, 645 S.W.2d 359 (Mo.banc 1982). The Appellants now ask the Court to reject the judicial principle of *stare decisis* and abolish a 60-year legal precedent that has been repeatedly upheld by this Court.

The principle of *stare decisis* directs courts to follow “earlier judicial decisions when the same point arises again in litigation.” *Tillman v. Cam’s Trucking, Inc.*, 20 S.W.3d 579, 584 n. 9 (Mo.App.S.D. 2000); citing *Black’s Law Dictionary* 1414 (7th ed., West 1999).

The Missouri Supreme Court has repeatedly affirmed the importance of upholding a long-standing precedent stating, “Under the doctrine of *stare decisis*, a decision of this court should not be lightly overruled, particularly where . . . the opinion has remained unchanged for many years.” *Southwestern Bell Yellow Pages, Inc. v. Director of Revenue*, 94 S.W.3d 388, 390 (Mo.banc 2002); quoting *Novak v. Kansas City Transit, Inc.*, 365 S.W.2d 539, 546 (Mo.banc 1963). The Court should not disturb a decades-old precedent without proof that the previous

decisions were “clearly erroneous and manifestly wrong” and change is necessary. *Southwestern Bell*, 94 S.W.3d at 390.

In *Crabtree v. Bugby*, the Court described its allegiance to precedent stating, “Mere disagreement by the current Court with the statutory analysis of a predecessor Court is not a satisfactory basis for violating the doctrine of *stare decisis*, at least in the absence of a recurring injustice or absurd results.” 967 S.W.2d 66, 71-72 (Mo.banc 1998).

Since the Court’s decision in *Clouse*, the issue of collective bargaining in the public sector has come before the Supreme Court numerous times. See *Sumpter v. City of Moberly*, 645 S.W.2d 359 (Mo.banc 1982); *Curators of University of Missouri v. Public Service Emp. Local No. 45, Columbia*, 520 S.W.2d 54 (Mo.banc 1975); *State ex rel. O’Leary v. Missouri State Bd. of Mediation*, 509 S.W.2d 84 (Mo.banc 1974); *State ex rel. Missey v. City of Cabool*, 441 S.W.2d 35 (Mo. 1969); *Glidewell v. Hughey*, 314 S.W.2d 749 (Mo.banc 1958). Each time this Court has considered the issue, the answer has always been the same: there is neither a Constitutional nor statutory authority for collective bargaining in the public sector.

The long list of Supreme Court decisions on the topic prove the holdings in *Clouse* and *Sumpter* are not clearly erroneous, manifestly wrong, unjust nor absurd. Further, the limitation of collective bargaining to the private sector is strongly supported by the public to this day, and the legislative process has proven

to be an effective method of addressing public sector employment issues. Nothing has changed to justify overruling *Clouse*.

A. Missouri voters and legislators still support the holdings in *Clouse* and *Sumpter* prohibiting collective bargaining in the public sector.

The Appellants would like the Court to believe that the reasoning in *Clouse* is outdated. *Appellant Brief* at 18-20. However, Missouri voters and legislators still support the *Clouse* holding that collective bargaining is not appropriate in the public sector.

The Missouri electorate recently defeated a constitutional amendment that would have granted certain public employees collective bargaining rights. Constitutional Amendment #2 on the November 2002 ballot would have allowed firefighters, ambulance personnel, and selected dispatchers to “organize and bargain collectively in good faith with their employers . . . and to enter into enforceable collective bargaining contracts with their employers.” Missouri Secretary of State, *Elections, 2002 Initiative Petitions* <<http://www.sos.mo.gov/elections/2002petitions/ip200201.asp>> (accessed Nov. 27, 2006). Though the proposal specifically prohibited strikes, Missouri voters soundly defeated the ballot measure. Missouri Secretary of State, *Official Election Returns*, <<http://www.sos.mo.gov/enrweb/ballotissuereults.asp?arc=1&eid=87>> (last updated Nov. 27, 2006). The promise that the amendment would not lead to the cessation of services could not convince the public that collective bargaining should be extended to those employed in the public sector.

Likewise, Missouri’s elected officials have frequently refused to extend collective bargaining to public employees. Since the Court’s decision in *Clouse*, the Missouri General Assembly has regularly declined to create public sector collective bargaining rights. In fact, the Legislature enacted the Public Sector Labor Law in 1965 and specifically did not include collective bargaining for public employees. §105.500 - .530, *RSMo*. The Legislature amended the Public Sector Labor Law in 1969, but again refused to include any mention of collective bargaining rights for public employees. *Senate Bill 36 (1969)*.

Not only has the Legislature failed to adopt collective bargaining in the public sector, it has actively rejected such a system. A review of the public records for the Missouri General Assembly since 1981 shows that the legislature has considered and rejected various forms and types of collective bargaining for many, or in some cases all, public employees. The records reflect the following results of the General Assembly’s actions:

- 1981 SB 53 Died³ on Senate Perfection Calendar
- HB 800, 184 & 35 Defeated in House Budget Committee

- 1983 SB 38 Died in Committee

- 1984 SB 442 Died on Senate Perfection Calendar
- HB 887 Defeated

- HB 1581 Died on House Perfection Calendar

³ “Died,” in this context, means the bill was in that status at the end of the legislative session when the General Assembly adjourned.

1985 SB 34 Died on Senate Perfection Calendar
HB 783 Defeated on House floor

1986 HB 1138 Died on House Perfection Calendar

1987 SB 307 Died on Senate Perfection Calendar

1988 HB 1706 Died on House Calendar

1989 SB 183 Died on Senate Perfection Calendar
HB 575 Died on House Perfection Calendar

1990 SB 533 Passed, but vetoed by Governor (local option for firefighters)

1991 HB 371 Died on House Perfection Calendar

1992 SB 629 Died on Senate Perfection Calendar
HB 1054 Died on House Perfection Calendar

1993 SB 333 Died on Senate Informal Perfection Calendar

1994 SB 711 Tabled in parliamentary procedure. Failed to be removed
from the table.

1995 SB 1 Died on Senate Informal Calendar
HB 176 Died in Committee
HB 639 Died in Committee
HB 503 No action taken

1996 SB 550 Died in Committee
HB 1512 Died in Committee
HB 1366 Passed out of Committee. No further action taken

1997 SB 393 Died in Committee

- 1998 SB 471 Defeated on Senate floor
- SB 507 Introduced, but never assigned to committee (school employees only)
- 1999 SB 156 & 185 No action taken
- HB 166 Defeated on House floor
- 2000 SB 547 No action taken
- SB 600 No action taken
- SB 726 Withdrawn
- HB 1500 No action taken
- 2001 SB 120 Died in Committee
- 2002 SB 746 Died in Committee
- HB 1092 Died in Committee
- 2003 SB 96 Died in Committee
- 2004 SB 834 Died in Committee
- 2005 HB 273 Died in Committee
- 2006 HB 1288 Died in Committee

The sheer number of bills defeated on the topic demonstrates that collective bargaining for public employees is not favored in Missouri.

The public's lack of support for public sector collective bargaining, and the Legislature's refusal to adopt public sector collective bargaining legislation reinforces the importance of the precedent set by the Missouri Supreme Court. The Court still has no reason to overrule the *Clouse* and *Sumpter* decisions.

B. The current legislative process is working to address employee wages and working conditions.

Collectively bargained agreements seek to improve wages and working conditions of employees. As stated in *Clouse*, the “qualifications, tenure, compensation and working conditions” of public employees are wholly matters of law making. *Clouse*, 206 S.W.2d at 545. This is evident in the fact that public school employees are highly regulated by both the state and federal legislatures. Employees have clearly had input in the legislative process that has resulted in improved wages and working conditions.

The licensure, employment and working conditions of teachers are highly regulated. *See §168.011* (requiring a license to teach); *§168.015* (creating the “Missouri Advisory Council of Certification for Educators”); *§168.021, RSMo. Supp. 2005* (issuance of teaching certificates); *§168.071, RSMo. Supp. 2005* (revocation, suspension or refusal of a teaching license); *§168.081, RSMo. Supp. 2005* (prohibiting teaching without a certificate); *§168.133, RSMo. Supp. 2005* (requiring a background check on all employees); *§168.221, RSMo. Supp. 2005* (probationary period for teachers in a metropolitan district); *§168.271* (probationary period for all employees in a metropolitan district); *§168.281, RSMo. Supp. 2005* (removal, suspension, demotion or reduction of personnel in a metropolitan district). It is clear from the volume of legislation concerning public school employment that the issues of “qualifications, tenure, compensation and working conditions” of public school employees is a legislative function and that

these decisions are best made through the legislative process at both the state and local level. *Clouse*, 206 S.W.2d at 545.

Employees and employee groups have worked within the framework of the legislative process to improve wages and benefits. Missouri boasts a generous retirement program for its public school employees. §169.010 - .715, *RSMo*. The dedication to those that have taught in Missouri's public schools also extends to a retiree's ability to remain a member of the district's health plan upon retirement. §169.590, *RSMo Supp. 2005*. Further, the legislative process has ensured that teacher salaries are a priority for school boards and administrators. School districts are required to spend a significant percentage of their operating budget on tuition, retirement and compensation for certificated staff. §165.016, *RSMo. 2005 Supp*. The mandatory minimum teacher salary was recently increased. §163.172, *RSMo. 2005 Supp*. All of these substantial benefits were acquired without collective bargaining.

Working conditions have also improved through the legislative process. The Teacher Tenure Act ("the Tenure Act") was enacted in 1969 to offer teachers job security. §168.102 - .130, *RSMo*. The Tenure Act provides a number of protections for teachers that did not exist at the time *Clouse* was decided including: indefinite contracts and job security for teachers with experience (§168.106 and §168.114), a salary schedule applicable to all teachers (§168.110), and rules regarding property rights in employment for probationary teachers (§168.126, *RSMo. Supp. 2005*).

The Safe Schools Act (“the Act”) was enacted in 1996 as a means of making schools a safer place to learn and work, and it has been updated regularly. *See House Bills 1301 & 1298 (1996); Senate Bill 944 (2000); Senate Bills 968 & 969 (2004)*. The Act provides better working conditions for all public school employees in Missouri. *See §160.261, RSMo. Supp. 2005* (includes provisions on training, reporting of school violence, notification to employees of violent students and civil protections for employees); *§167.115* (requires districts to share information on students charged with crimes with employees); *§167.117* (requires districts to report to law enforcement certain crimes and provides civil liability for employees that report); *§167.171, RSMo. Supp. 2005* (lists crimes for which students will be immediately removed from school).

The support of the public and the effectiveness of the legislative process both demonstrate that the precedents of *Clouse* and *Sumpter* are not clearly erroneous, manifestly wrong, unjust or absurd. These decisions are as relevant now as they were when they were written, and the Court should uphold the current law.

III. The circuit court did not err in finding for the District because the court recognized the strong public policy against collective bargaining in the public sector in that collective bargaining for public employees would be harmful to public entities.

There are a number of compelling public policy arguments against the use of collective bargaining in the public sector that support upholding the precedent of *City of Springfield v. Clouse*, 206 S.W.2d 539 (Mo.banc 1947). A change in the state's policy on collective bargaining would not only impact the Independence School District, but would also affect the 524 public school districts in Missouri which employ more than 139,234 full and part-time employees and provide services to over 900,000 schoolchildren. *2000 U.S. Census*. Further, this decision would have a dramatic impact on the 951 units of local government that employ in excess of 18,795 full-time employees and countless part-time workers. *2000 U.S. Census*.

A. Collective bargaining in the public sector would create substantial new costs for all public employers.

Mandatory collective bargaining for public employees would bring with it increased costs: increased compensation packages, the costs of preparing for and actually negotiating the contract, expenses for attempts to make the process less adversarial and the costs of administering the contract. La Rae G. Munk, J.D., *Collective Bargaining: Bringing Education to the Table* 20 (Mackinac Center for Public Policy 1998).

The fiscal note attached to the constitutional amendment defeated in 2002 estimated the costs somewhere between \$251,600 and \$3,145,000, though the proposal only provided bargaining rights to a limited number of public employees. Missouri Secretary of State, *Elections, 2002 Initiative Petitions*

<<http://www.sos.mo.gov/elections/2002petitions/ip200201.asp>> (accessed Nov. 27, 2006). Proposed legislation in 2001 carried a much heftier price tag. *Senate Bill 120 (2001)*. The bill, which provided collective bargaining to all but a few excepted public employees, had an estimated fiscal impact to local governments of almost \$23 million in the first fiscal year and more than \$64 million by fiscal year 2004. Missouri General Assembly, *Fiscal Note for Senate Bill 120 (2001)* <<http://www.moga.mo.gov/Oversight/over01/fishtm/0134-01N.ORG.htm>> (accessed Nov. 27, 2006). The impact on public schools was estimated to reach more than \$11 million by fiscal year 2004. *Id.*

The impact of increased costs highlights the intrinsic difference between public and private sector collective bargaining. Employers in the private sector can offset the increased costs of a collectively bargained contract by transferring the costs on to their consumers. The customers of public education are children who are entitled to a free public education in Missouri. *Mo. Const. art. IX, §1(a)*. Public schools cannot charge a fee for their services to offset any increased costs of doing business.

The only options would be for the district to seek a tax increase or decrease instructional programming. School districts are not, however, allowed to raise taxes beyond a certain point without taxpayer approval. *Mo. Const. art X, §11(c)*. It is ultimately the taxpayers or the students who will pay the price for collective bargaining, and the interests of students and taxpayers are best protected by leaving those decisions to the elected officials. Adherence to the doctrine of *stare*

decisis is necessary when it provides stability and predictability to taxpayers. *Ronnoco Coffee Comp., Inc. v. Director of Revenue*, 185 S.W.3d 676, 681, n.11 (Mo.banc 2006). Due to the massive economic impact public sector collective bargaining would have on public entities, the Court should not overturn the 60-year precedent of *Clouse*. That decision is best left to the legislative process.

B. Collectively bargained contracts between a school district and school employees do not factor in the needs of the students, who are not directly represented in the bargaining.

Collectively bargained agreements force school boards to make decisions that, while adhering to the inflexible rules set out in the agreement, are not in the best interests of the students.

Seniority rules that provide protection and benefits to employees that have been employed the longest are one of the most often negotiated issues in collective bargaining agreements. eNotes.com, *Collective Bargaining*, Encyclopedia of Business and Finance <<http://business.enotes.com/business-finance-encyclopedia/collective-bargaining>> (accessed November 27, 2006). Instead of placing the best qualified teacher in a particular classroom, a less qualified but more senior teacher could claim the position based solely on seniority. Missouri currently has a statute on involuntary reduction in force that recognizes that making decisions based simply on a teacher's seniority is bad public policy. When deciding which tenured teacher to place on a leave of absence, the district

must consider both “performance-based evaluations and seniority (however, seniority shall not be controlling).” *168.124, RSMo. 2005 Supp.*

Public school collective bargaining agreements also typically include limits on the form and frequency of teacher evaluations. Munk, *Collective Bargaining: Bringing Education to the Table* at 31-32. Reducing the regularity and manner of teacher evaluations only serves to protect poorly performing teachers from negative reviews that could be used to terminate employment. The result of such a provision is that students suffer and achievement declines.

Collectively bargained contracts do not serve the needs of Missouri’s students. Instead, the focus becomes the employment of adults. Damon Darlin, *To Whom Do Our Schools Belong?*, at 66 *Forbes* (Sept. 23, 1996). The public policy of this state has always been, and should remain, providing a high quality education to our children.

IV. The circuit court did not err in finding for the District because the court correctly relied on *Sumpter v. City of Moberly*, 645 S.W.2d 359 (Mo.banc 1982), in that the holding in *City of Springfield v. Clouse* 206 S.W.2d 539 (Mo.banc 1947), is irrelevant if meet and confer agreements are binding upon the district, and the Public Sector Labor Law, as interpreted by *Sumpter*, still serves a valuable purpose by providing an organized conversation between public entities and their employees.

Overruling *Sumpter* would make *Clouse* meaningless. Applying *Clouse*’s prohibition on public sector collective bargaining to the Public Sector Labor Law,

the Court in *Sumpter* found that adopting a bargaining representative's proposal under the meet and confer process does not create a binding collective bargaining contract. *Sumpter*, 645 S.W.2d at 363. If the Court were to overrule *Sumpter* and make the decisions reached during meet and confer binding upon the public entity, the Court would essentially be overruling *Clouse*.

Appellants argue that without making meet and confer agreements binding upon the public employer, the Public Sector Labor Law is meaningless and the agreements reached under meet and confer worthless. *See Appellant Brief* at 24-26. Meet and confer post-*Sumpter* is important because it guarantees public employees a dialogue with their employer concerning wages and working conditions, and the policies the public entity agrees to or adopts are still binding on the entity while they are in effect.

Missouri's Public Sector Labor Law allows public employees to join labor organizations and choose representatives to discuss employment issues with the public body. §105.510, *RSMo*. These representatives may "meet, confer and discuss" proposals with the public entity concerning "salaries and other conditions of employment" presented by the bargaining representative. §105.520, *RSMo*. The resulting agreement must be put in writing and presented to the public body. *Id.* The law created an organized method of ensuring employees designated representation and input in the decision-making process. Though employees of public entities routinely influenced decisions prior to the law, the Public Sector Labor Law guaranteed public employees a voice in a structured decision-making

process that did not previously exist. *Sumpter's* ruling that the agreements reached in the meet and confer process could be unilaterally modified or rescinded by the legislative body did not affect the mandatory conversation and structure the law instilled.

The binding nature of school Board policy also makes the Public Sector Labor Law meaningful post-*Sumpter*. Missouri courts have bound school districts to their Board-adopted policies on numerous occasions. See *Sherwood National Educ. Ass'n v. Sherwood-Cass R-VIII School Dist.* 168 S.W.3d 456 (Mo.App.W.D. 2005) (district was required to pay teachers according to Board-adopted salary schedule); *Hubbard v. Lincoln Co. R-III School Dist.*, 23 S.W.3d 762 (Mo.App.E.D. 2000) (Board bound by its policy in exercising discretion regarding extended sick leave); *Stewart v. Bd. of Educ. of Ritenour Consolidated School Dist. R-3*, 574 S.W.2d 471 (Mo.App. 1978) (district's sick leave policy, which allowed employees to take sick leave days beyond the number granted by the Board, prohibited the district from terminating teacher for excessive absences); *Meredith v. Bd. of Educ. of Rockwood R-6 School Dist.* 513 S.W.2d 740 (Mo.App. 1974) (district's 180-day sick leave policy prohibited termination of teacher whose absences, while excessive, did not go beyond the policy's limits).

While *Sumpter* allows school Boards to unilaterally modify or rescind policies adopted pursuant to the meet and confer process, the policy is binding upon the district until such modification or repeal occurs, making the meet and confer process meaningful. Further, to modify a policy, a Board must take action

in a Board meeting governed by the process set forth in Missouri's Open Meetings and Records law. §610.010 - .035. The *Sumpter* decision in no way negates the binding nature of school Board policy nor the effect of the Public Sector Labor Law.

The *Sumpter* decision is well-reasoned and should not be overturned. Overturning *Sumpter* would render the Court's decision in *Clouse* meaningless and mandate a system of collective bargaining in the public sector. Further, the Public Sector Labor Law remains important after the *Sumpter* decision because of its mandated, structured dialogue between public entities and their employees and the resulting policies and ordinances that are binding upon the entity until the public body takes the steps necessary to modify or rescind the policy.

CONCLUSION

For the foregoing reasons, the Missouri School Boards' Association and the Missouri Municipal League pray this Court uphold the trial court's decision to rely on the long-standing precedent against public sector collective bargaining created in *Clouse* and extended by *Sumpter*. The decisions reached in *Clouse* and *Sumpter* appropriately place the onus for creating a system of public sector collective bargaining upon the legislative process and are not clearly erroneous, manifestly wrong, unjust nor absurd. Therefore, this Court has no reason to upset the precedent and violate the judicial principle of *stare decisis*. Changing the law now would have drastic, expensive and negative repercussions on not only school districts, but all state agencies and municipalities such as counties, cities, fire

districts, water districts, libraries and all other Missouri public entities. Such a drastic alteration of the law should be left to the legislative process.

CERTIFICATE OF SERVICE

I hereby certify that on November 27, 2006, I served a copy of the foregoing pleading via first class mail upon the following counsel of record:

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RULE 84.06 CERTIFICATION

I hereby certify that this brief complies with the limitations contained in Rule 84.06(b) and contains 8,160 words. The disk submitted with this brief has been scanned for viruses and to the best of my knowledge is virus-free.

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