

IN THE
SUPREME COURT OF MISSOURI

No. SC87911

LARRY REICHERT, et al.,

Plaintiffs–Appellants

V.

THE BOARD OF EDUCATION OF THE CITY OF SAINT LOUIS,

Defendant-Respondent.

APPEAL FROM THE CIRCUIT COURT OF ST. LOUIS CITY
CASE NO. 054 - 01655
HONORABLE DAVID L. DOWD, JUDGE

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

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¹ All references will be to the 2000 edition of Missouri Revised Statutes unless otherwise noted.

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STATEMENT OF JURISDICTION

This action involves the question of whether the Missouri Supreme Court's interpretation of the Public Sector Labor Law (§105.500 *et seq.*, *RSMo.*) in *Sumpter v. City of Moberly*, 645 S.W.2d 359 (Mo.banc 1982) is valid. The trial court relied on the precedent adopted 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 One of Appellants' issues on appeal is the validity of the Court's interpretation of the Public Sector Labor Law. 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).

STATEMENT OF FACTS

Amici curiae adopt the statement of facts submitted by the Defendant-Respondent, Board of Education of the City of St. Louis 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 trial court did not err in finding for the Board of Education of the City of St. Louis (“the District”) because the District made a reasonable decision to put Appellants on leave and outsource their jobs in that it is necessary for school boards to have discretion to make management decisions such as outsourcing services, particularly when those decisions involve the complex uncertainty of school funding and strict budgeting laws.

Bell v. Bd. of Educ. of the City of St. Louis, 711 S.W.2d 950 (Mo.App.E.D. 1986)

Boner v. Eminence R-1 School District, 55 F.3d 1339 (8th Cir. 1995)

Frimel v. Humphrey, 555 S.W.2d 350 (Mo.App. 1977)

Saunders v. Reorganized School District No.2 of Osage Cty., 520 S.W.2d 29 (Mo. 1975)

§168.291

II. The trial court did not err in finding for the District because there is no need to address Appellants’ constitutional issues in that §168.291 clearly gives the District the authority to lay off district staff when there are insufficient funds even if a binding agreement exists.

State ex rel. Brown v. Shaw, 129 S.W.3d 372 (Mo.banc 2004)

State v. Self, 155 S.W.3d 756 (Mo.banc 2005)

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

§168.221

§168.281

§168.291

III. The trial 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.

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)

§§105.500 - .530

§§610.010 - .035

IV. The trial court did not err in finding for the District because the court appropriately relied on Missouri Supreme Court precedent *Sumpter v. City of Moberly*, 645 S.W.2d 359 (Mo.banc 1982), in that this decision is not clearly erroneous, manifestly wrong, unjust or absurd and, in fact, the holding in this case is still supported by the Missouri public, and the governance of public employee working conditions is actively and effectively regulated through the legislative process.

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

V. The trial 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 2006)

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

Mo. Const. art. IX, §1(a)

Mo. Const. art. X, §11(c)

ARGUMENT

I. The trial court did not err in finding for the Board of Education of the City of St. Louis (“the District”) because the District made a reasonable decision to put Appellants on leave and outsource their jobs in that it is necessary for school boards to have discretion to make management decisions such as outsourcing services, particularly when those decisions involve the complex uncertainty of school funding and strict budgeting laws.

Appellants claim that the District should not be able to put employees on leave and outsource the work, even when the District is facing a severe budget shortage. The Appellants urge the Court to adopt a narrow interpretation of the phrase “insufficient funds” in §168.291, so narrow that the District, according to Appellants, must apparently prove that it cannot pay a single employee in the job category before the District is able to contract out the work of the department. *See Appellant Brief* at 11 (“How is it that the Defendant has enough funds to pay Sodexo but not enough to pay Plaintiffs?”) This strict and narrow reading of the law is contrary to the statute and threatens the discretion school districts must have to make timely management decisions.

School finance is highly regulated, and districts do not have many statutory tools they can employ when they suffer budget shortages. School districts are limited in the amount of taxes they may levy and must seek voter approval to set a

levy over \$2.75 per one hundred dollars of assessed valuation. *See Mo. Const. art. X, §11(b), (c); §22.* School districts are explicitly prohibited under the Missouri Constitution and state statute from incurring expenses that exceed the district's revenue in any given year, unless specifically authorized to do so by voters. *Mo. Const. art. VI, §26(a), (b); §67.010, .030.* Even when authorized, districts are strictly limited in the amount of debt that is incurred. *Mo. Const. art. VI, §26(b).* Districts are also prohibited from transferring money from one state-mandated fund to another without legislative authority. *§165.011.*

The state imposes serious consequences on financially stressed school districts, as St. Louis was at the time the decision was made to lay off the Appellants. The governor, speaker of the house and president pro tem of the senate are notified. The Board must create a budget and education plan in accordance with forms created by the Department of Elementary and Secondary Education. Assurance must be given that the district will continue educating students. Parents must be notified of the financial condition of the district, and the district must detail the "expenditure reduction measures, revenue increases or other actions to be taken by the school district to address its condition of financial stress." *§161.520.* One method of "expenditure reduction" is to contract out services within the district.

In addition to navigating the highly regulated world of school finance, the District's employment practices are also highly regulated. The District is subject to the strictest tenure laws in the state, allowing all non-certificated employees to

gain significant job security after only one year of employment with the District. §168.271. The removal of staff is highly regulated. §§168.221; .281; .291. The District's control over its personnel costs is further eroded by state law that mandates that districts must spend a certain percentage of current operating costs on the certificated staff's salaries and benefits. §165.016.

Because school districts are frequently painted into a corner by the budgetary limitations of state law, the legislature has, by necessity, created statutes that allow school districts flexibility to address serious budget constraints by laying off staff. See §§168.124; .291. School districts need the ability to use these tools without being second-guessed after the fact by courts, particularly in situations where the district is financially stressed.

In fact, courts have historically given school districts discretion to make management decisions. *Saunders v. Reorganized School District No.2 of Osage Cty.*, 520 S.W.2d 29, 35(Mo. 1975) (“School authorities are vested with wide discretion in all matters affecting school management, and a court may not ordinarily interfere unless the power is exercised in an arbitrary, unreasonable or unlawful manner.”); *Bell v. Bd. of Educ. of the City of St. Louis*, 711 S.W.2d 950, 955 (Mo.App.E.D. 1986) (“Indeed, there is a strong presumption of validity in favor of a school board's decision because the courts are reluctant to interfere with a board's broad discretion in matters affecting school management.”)

This discretion has been recognized in upholding decisions to lay off employees made by other districts. *Boner v. Eminence R-1 School District*, 55

F.3d 1339 (8th Cir. 1995); *Frimel v. Humphrey*, 555 S.W.2d 350 (Mo.App. 1977)
(The Board did not act arbitrarily or capriciously or exceed its authority in
furloughing teachers.)

Courts have also recognized this discretion when upholding district
decisions involving other statutes. *Hellmann v. Union School District*, 170
S.W.3d 52, 62 (Mo.App.E.D. 2005) (In determining if teacher is incompetent or
inefficient under the Teacher Tenure Act, “because the operation of the school
system is entrusted to a board of education, each respective board must determine
the level of competency and efficiency required in its district. . . . As a general
matter we are not authorized to second guess the board’s ultimate conclusion.”)

This Court has recognized the uncertainties in the school budgeting process
and has interpreted state statutes to give school districts leeway to make difficult
budgeting decisions in the past. *See Lane v. Lensmeyer*, 158.S.W.3d 218 (Mo.
2005) (“Because establishing a school budget is an inexact process, it will produce
inexact results.”). Amici, on behalf of all school districts in the state, encourages
the Court to recognize that school districts need the managerial discretion to utilize
state statutes to lay off or furlough staff when the district is financially stressed. A
strict and narrow reading of §168.291 is contrary to state law and legislative
intent.

**II. The trial court did not err in finding for the District because there
is no need to address Appellants’ constitutional issues in that §168.291**

clearly gives the District the authority to lay off district staff when there are insufficient funds even if a binding agreement exists.

The Appellant argues that for various reasons *Sumpter v. City of Moberly*, 645 S.W.2d 359 (Mo.banc 1982), should be overruled. However, the Court does not need to reach this argument. Even if *Sumpter* was incorrectly decided and a binding agreement did exist, which amici strongly disputes, §168.291 clearly gives the District the legal authority to break binding agreements with employees when the circumstances of insufficient funds, a decrease in student enrollment or lack of work exist. Because the District clearly was suffering from insufficient funds at the time the decision was made to put the Appellants on an unpaid leave of absence, the District had the legislative authority to break any employment agreement for the good of the district.

The Court should not create advisory decisions not necessary to resolve the dispute before it. *State v. Self*, 155 S.W.3d 756, 761 (Mo.banc 2005); *State ex rel. Brown v. Shaw*, 129 S.W.3d 372 (Mo.banc 2004) (“This Court resolves the issues in these proceedings . . . by statutory interpretation and does not reach the constitutional issue.”)

The tenure statutes applicable to the District award employees with “permanent” status after completion of a probationary service. In the case of Appellants, that period is one year. Once “permanent,” employees cannot be terminated, suspended without pay, demoted, or receive a reduction in salary except as detailed in the statute. Employees in “permanent” status are entitled to

detailed due process and a hearing before their status with the district can be changed. *See §§168.221; .281.*

Despite the strong rights conferred through the tenure statutes, the legislature had the foresight to give the District discretion to break the “permanent” status of employees when absolutely necessary due to insufficient funds, a decrease in student enrollment or lack of work exists. *§§168.221.5; .281.3; .291.* The legislature understood that in some circumstances the need to lay off staff is unavoidable and failure to allow the District to respond to these circumstances would ultimately result in the bankruptcy of the District. Employee rights, no matter how strong, do not trump the ultimate purpose of the District, to provide an education to the District’s students.

For this reason, the legislature allows the District to break contracts in certain circumstances with its entire staff: teachers, principals, and non-certificated staff such as the Appellants. The plain language of the authorizing statute makes it clear that the District may put employees on an unpaid leave of absence, “[w]henver it is necessary to decrease the number of employees . . .” *§169.291* (emphasis added). The authority of this statute is not qualified. In fact, the legislature makes it clear that the District’s authority to lay off staff in extreme situations trumps all other legislative rights granted to the District’s employees. *§168.281.3* (“Nothing herein shall in any way restrict or limit the powers of the board of education to make reductions in the number of employees because of

insufficient funds or decrease in pupil enrollment or lack of work.”); *See also* §168.221.5.

Even assuming Appellants are correct and the legislature, through the Public Sector Labor Law, allows for the District to enter into binding agreements with employees, the fact still remains that the legislature has also provided the District the legislative authority to escape the negative impact of employment agreements when the District suffers from insufficient funds. The Public Sector Labor Law does not trump the District’s authority to furlough Appellants when it suffers from insufficient funds to meet its employment obligations, which certainly existed at the time the Appellants were put on unpaid leave. The Court should find for the District based on existing statute.

III. The trial 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 v. City of Moberly*, 645 S.W.2d 359 (Mo.banc 1982), would make *City of Springfield v. Clouse*, 206 S.W.2d 539 (Mo.banc 1947), 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 overrule *Clouse* and mandate public sector collective bargaining. A statute must be read consistently with constitutional interpretation when possible. *City of Hazelwood v. Peterson*, 48 S.W.3d 36, 40 (Mo.banc 2001).

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 are worthless. *See Appellant Brief* at 24-25. Amici respectfully disagree. The meet and confer process articulated in §§105.500 - .530 guarantees public employees a structured 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 until rescinded.

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. 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. 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) (because district's sick leave policy allowed employees to take sick leave days beyond the number granted by the Board, the district was prohibited 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 prohibited from terminating teacher whose absences, while excessive, did not go beyond the district's policy 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, public entities cannot simply forget or abandon an adopted policy. To modify a policy, a Board must take action in a 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 it guarantees structured dialogue between public entities and their employees and the policies and ordinances that result are binding upon the entity until the public body takes the steps necessary to modify or rescind the policy.

IV. The trial court did not err in finding for the District because the court appropriately relied on Missouri Supreme Court precedent *Sumpter v. City of Moberly*, 645 S.W.2d 359 (Mo.banc 1982), in that this decision is not clearly erroneous, manifestly wrong, unjust or absurd and, in fact, the holding in this case is 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 *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 precedent that has been repeatedly upheld by this Court over several decades.

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).

The Appellants would like the Court to believe the decision in *Sumpter* was clearly erroneous, manifestly wrong, unjust or absurd, and adherence to *stare decisis* is wrong. However, legislative and public support of the *Sumpter* precepts shows otherwise. If the *Sumpter* decision were clearly erroneous, manifestly wrong, unjust or absurd, surely the public or the legislature would have taken action to undo the injustice and correct the wrong. In fact, public opinion and legislative action since *Sumpter* are in accordance with, not corrective of, the Court's decision.

A. Missouri voters and legislators still support the holding in *Sumpter* prohibiting binding collectively bargained agreements for public employees.

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 Dec. 5, 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>>

(accessed Dec. 5, 2006). The promise that the amendment would not lead to the cessation of services could not convince the public that collective bargaining, or binding bargained agreements, 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. The Legislature enacted the Public Sector Labor Law in 1965 and specifically did not include public sector collective bargaining or even mention the term collective bargaining. §§105.500 - .530. 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)*.

Appellants argue that the Legislature's intent in adopting the Public Sector Labor Law was to create a system where political subdivisions could enter into binding agreements with their employees. *See Appellant Brief* at 24. If the *Sumpter* Court mistakenly interpreted the Legislature's intent in passing the Public Sector Labor Law, as Appellants argue, surely the Legislature would have responded by adopting legislation correcting the Court's error. However, a review of the public records for the Missouri General Assembly since 1983 shows that the legislature has repeatedly 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:

1983	SB 38	Died ³ in Committee
1984	SB 442	Died on Senate Perfection Calendar
	HB 887	Defeated
	HB 1581	Died on House Perfection Calendar
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

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

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

In the 26 years since the *Sumpter* decision, the Legislature has refused to adopt public sector collective bargaining or to clarify the Public Sector Labor Law. The sheer number of bills defeated during that time disproves the Appellants' theory.

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

Further evidence that the *Sumpter* decision is not clearly erroneous, manifestly wrong, unjust or absurd is that many of the terms and conditions of employment that are typical topics of collective bargaining agreements are currently addressed by the post-*Sumpter* legislative process in which employees and employee groups play a significant role.

Employees and employee groups have worked within the framework of the legislative process to improve employee benefits. Missouri boasts a generous retirement program for its public school employees. §§169.010 - .715. The dedication to those that have worked 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. Missouri's retirement system was created and maintained without collective bargaining.

Non-certificated staff in the District have lobbied for and received the strongest tenure rights of any school employee group in the state. They are able to obtain "permanent" status or tenure by working for the District for only one year,

whereas non-certificated staff in other districts have no tenure rights. *See* §168.271; .281. Non-certificated staff in the District such as the Appellants even have more rights than certificated staff who are required to work five years as probationary employees before enjoying permanent status. *See* §168.221.

The legislative process has also addressed working conditions in Missouri's public schools. 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* (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* (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 precedent of *Sumpter* is not clearly erroneous, manifestly wrong, unjust nor absurd. This decision is as relevant today as the day it was written, and the Court should uphold the current law.

V. The trial 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 *Sumpter v. City of Moberly*, 645 S.W.2d 359 (Mo.banc 1982). A change in the state's policy on collective bargaining would not only impact the St. Louis City School District, but would affect all of 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 substantial 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 Dec. 5, 2006). Legislation proposed in 2001 carried a much heftier price tag. *Senate Bill 120 (2001)*. The bill, which provided collective bargaining to all but a few 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 Dec. 5, 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 *Sumpter* and, in effect, *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 taxpayers and the students, who are not directly represented in the bargaining process.

Because agreements with school districts would affect more than the employer and the employees, these agreements should not be favored by law. The taxpayers and the students are the parties most directly affected by these agreements and yet taxpayers and students do not have direct representation at the bargaining table.

Clouse correctly noted 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. The Court in *Clouse* was concerned that a narrow group of interested citizens, in this case employees, would exert excessive influence over the decisions of legislative bodies such as school districts and have an unfair advantage over taxpayers, students, or other interested parties. Employees could unduly influence the legislative process because mandated collective bargaining

would require the legislative body or municipality to reach an agreement with the employees.

Employees, though essential to the operation of school districts, are not the most vulnerable group in the system, the students are. If the Court recognizes binding collectively bargained agreements, amici fear that the greater rights afforded the employees will dwarf the needs of the students in the educational system.

For instance, collectively bargained agreements routinely address limiting the form and frequency of employee evaluations. Munk, *Collective Bargaining: Bringing Education to the Table* at 31-32. Though this would save employees and school districts the hassle of the evaluation process, poorly performing employees would be allowed to continue in the system longer, resulting in poorer student achievement. Likewise, the more resources employees demand in the form of salary and benefits, the fewer resources are available for library materials and computers. If employees with greater seniority negotiate the right to transfer, students in low-income and poorly performing schools are less likely to benefit from experienced staff members.

Public sector bargaining differs from private sector bargaining because there are more interested parties involved. Because these parties do not all have a place at the bargaining table, the best method of making decisions is through the established legislative process, through decisions made by elected officials such as school board members. *Clouse*, 206 S.W.2d at 545 ("The members of the

legislative branch represent all the people, and speak with the voice of all of the people, including those who are public officers and employees").

Collectively bargained contracts do not serve the needs of Missouri's students and, in fact, may compete with student needs. 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, to provide a high quality education to our children.

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 grant public school districts the discretion necessary to make important financial decisions and to uphold the legislative authority granted to the District in §168.291 to put employees on unpaid leave when District finances necessitate the decision. 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 December 6, 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 8,822 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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