

In The Supreme Court of Missouri

SUPREME COURT APPEAL NO. 87911

LARRY REICHERT, ET AL.,

Plaintiffs-Appellants,

vs.

THE BOARD OF EDUCATION OF THE CITY OF ST. LOUIS,

Defendant-Respondent.

APPEAL FROM THE CIRCUIT COURT OF ST. LOUIS CITY

CASE No. 054-01655

THE HONORABLE DAVID L. DOWD

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STATEMENT OF FACTS

Defendant/Respondent is the Board of Education of the City of St. Louis. The supervision and government of the St. Louis Public Schools and the public school property is vested with the Board of Education of the City of St. Louis. See Mo. Rev. Stat. §162.571 (2000).¹ The Board of Education may do all things necessary to accomplish the purposes for which the School District is organized. Id. The Board of Education has general and supervising control, government and management of the public schools and public school property of the St. Louis Public School District and exercises generally all powers in the administration of the public school system. Mo. Rev. Stat. §162.621. The Board of Education may make, amend and repeal rules and bylaws for the government, regulation and management of the public schools and school property in the City of St. Louis for the transaction of its business. Id.

There are twenty-five (25) appellants in this lawsuit. (L.F. 5).² All of the Appellants were employed by Defendant Board of Education as stationary engineers at the time of the filing of their Petition. Each of the Appellants was a non-certificated employee of the Board of Education pursuant to Mo. Rev. Stat. §168.281. (L.F. 40).

Pursuant to Ordinance 65021 of the City of St. Louis, a building owner must use a licensed stationary engineer to maintain and operate high pressure boilers in the City of St. Louis. Ordinance 65021 does not require that a building owner *employ* a licensed stationary engineer to operate or maintain its high pressure boilers, only that the

¹ All statutory citations are to Mo. Rev. Stat. (2000) unless otherwise specified.

² Citations to the Legal File are cited as “L.F.”

maintenance and operation of high pressure boilers be performed by licensed stationary engineers.

At the time this lawsuit was filed, Defendant Board of Education had only nine high pressure boilers at three locations within the St. Louis Public Schools. (L.F. 44). Appellants do not contend that licensed stationary engineers no longer operate and maintain the high pressure boilers in the St. Louis Public Schools or that the Board is not in compliance with Ordinance 65021.

Appellants were public employees represented by the International Union of Operating Engineers, Local 2, a labor organization within the meaning of Mo. Rev. Stat. §105.520. (L.F. 45). In 2003, representatives of the Board of Education and Local 2 met, conferred and discussed certain proposals pertaining to the stationary engineers' salaries and other conditions of employment. Upon completion of the discussions in 2003, the results of such discussions were reduced to writing and presented to the Board of Education in the form of a Policy Statement. The Policy Statement was adopted by Defendant Board of Education in or about July 2003. (L.F. 19). The July 2003 Policy Statement expressly recognized that the management of the school system and the direction of all employees is reserved exclusively to the Board of Education and its designees. (L.F. 19). The July 2003 Policy Statement further acknowledged that the Board or its representatives could make changes to its policies or regulations to the extent that they affect the terms and conditions of employment of employees as addressed in the Policy Statement upon giving "written advance notification to the Union, which would allow sufficient time for discussion thereon prior to action by the Board" (L.F. 20).

The July 2003 Policy Statement does not guarantee employment to the Appellants and does not require the Board of Education to employ one, let alone twenty-five, stationary engineers. (L.F. 19-38).

The Board of Education is authorized to place on leave of absence without pay various noncertificated employees, including stationary engineers, as the Board deems necessary due to insufficient funds, a decrease in pupil enrollment or a lack of work pursuant to Mo. Rev. Stat. §168.291. Gary Hughey, the Chief Operating Officer and Building Commissioner of the St. Louis Public School District, along with Harry Rich, the Chief Financial Officer of the District, and other District personnel, met with representatives of Local 2 on June 29, 2005, to meet and confer in compliance with Missouri statutory requirements and the requirements of the Policy Statement regarding the Board of Education's intent to (1) limit the job duties of stationary engineers to those duties that are required by City Ordinance, (2) reduce the number of stationary engineers based on the Board's determination that it had insufficient funds to continue to employ its own stationary engineers, and (3) outsource the stationary engineers' duties to Sodexo Operations, L.L.C. (L.F. 41). Messrs. Rich and Hughey advised the Union representatives that the administration of the St. Louis Public Schools deemed such actions as necessary due to insufficient funds. (L.F. 41). Following the initial meet and confer session, Mr. Hughey provided a document to the Union showing that the layoff and outsourcing would lead to cost savings for the Board of Education in excess of \$1,000,000 annually. (L.F. 41).

After satisfying any meet and confer requirements imposed by Mo. Rev. Stat. §105.520 or the July 2003 Policy Statement, the Board of Education, at its July 12, 2005 meeting, voted to (1) amend the Board's Policy Statement applicable to stationary engineers thereby limiting the job duties of stationary engineers to those duties that are required by City Ordinance, (2) reduce the number of stationary engineers due to insufficient funds, and (3) outsource the stationary engineer job duties to Sodexo. (L.F. 41-42). The Board of Education adopted two resolutions at its July 12, 2005 meeting regarding the amendment of the July 2003 Policy Statement, the reduction in force and the outsourcing of the stationary engineer duties. (L.F. 42). In its resolutions, the Board found that, "the Board is faced with insufficient funds making it necessary and appropriate to decrease the number of stationary engineer employees pursuant to Mo. Rev. Stat. §168.291 of the Missouri Statutes," and that, "the Board of Education hereby finds and determines that the Board should amend the Management Agreement with Sodexo Operations, LLC. to provide for the outsourcing of the stationary engineer duties to be performed in the School District." (L.F. 42, Supp. L.F. 68-73). By further resolution, the Board of Education found and determined that the July 2003 Policy Statement should be amended to limit the scope of the job duties of stationary engineers to that which is required under Ordinance 65021 and that, "the Board may contract with other entities for the performance of the operation and maintenance of the District's high pressure boilers as well as the District's other boilers and HVAC systems when determined necessary by the Board." (Supp. L.F. 68-71).

At the time the Board of Education adopted its resolutions authorizing the amendment of the July 2003 Policy Statement and the outsourcing of the stationary engineer job duties to Sodexo, the St. Louis Public Schools had been identified by the Missouri Department of Elementary and Secondary Education as a Financially Stressed District pursuant to Mo. Rev. Stat. §161.520. (L.F. 42). As of July 1, 2005, the District had a fund deficit of approximately \$26,500,000. (L.F. 43). In the Fiscal Year 2006 (2005-2006 school year) Budget, the Board of Education planned for overall major expense reductions of approximately \$21,200,000, including reducing the administrative and support costs (\$6,000,000), classroom balancing initiatives (\$4,300,000), restructuring of special education department (\$1,900,000), restructuring of major contracts with Mercer and ADP regarding benefit services and Sodexo regarding outsourcing of custodians and stationary engineers (\$4,500,000), optimizing grant funding (\$2,700,000), and other savings (\$1,800,000) (L.F. 43). The Board, as part of its Fiscal Year 2006 Budget, committed to improving academic achievement, student support and enrichment by making major academic investments totaling \$14,300,000. The investments include increasing teacher salaries to achieve parity with certain St. Louis County Districts (\$6,000,000), purchasing curriculum and reading programs (\$2,100,000), text book alignment (\$2,100,000), and other academic investments (\$4,100,000). (L.F. 43-44). The Board determined that it would be unable to fund these academic investments for Fiscal Year 2006 if it was unable to cut expenses as set forth above, including the elimination of stationary engineer positions and the outsourcing of stationary engineer duties to Sodexo. (L.F. 44). The Board determined that the Board

would save over \$1,200,000 annually due to the elimination of all stationary engineer positions with the District, the placing of Appellants on leave of absence and outsourcing the stationary engineer job duties. (L.F. 44). Appellants offered no evidence contradicting the Board's conclusion that it would save over \$1,200,000 annually.

Since July 31, 2005, Sodexo Operations LLC has provided licensed stationary engineers to operate and maintain the high pressure boilers located in the St. Louis Public Schools. Each of the individuals employed by Sodexo as a stationary engineer to work in the St. Louis Public Schools is a former Board of Education employee and is a named Plaintiff in this lawsuit. Plaintiffs filed their two count Petition in the Circuit Court of the City of St. Louis on or about July 25, 2005, after the Board of Education amended the July 2003 Policy Statement and after the Board of Education determined that it was necessary to place them on a leave of absence due to insufficient funds and lack of work pursuant to Mo. Rev. Stat. §168.291. (L.F. 11). Plaintiffs sought preliminary and permanent injunctions ordering that the Board of Education reinstate all twenty-five Plaintiffs to operate and maintain high pressure boilers at three District locations. (L.F. 11-17). Judge David L. Dowd of the Circuit Court of the City of St. Louis issued his Findings of Fact, Conclusions of Law, Order and Judgment on August 8, 2005, denying Plaintiffs' Motion for Preliminary Injunction and entering Judgment in favor of Defendant Board of Education on Counts I and II of Plaintiffs' Petition.

Plaintiffs appealed the decision of the Circuit Court to the Missouri Court of Appeals, Eastern District. In a *Per Curiam* decision, dated June 13, 2006, the Court of Appeals for the Eastern District affirmed the judgment of the Circuit Court.

On August 9, 2006, Appellants filed an Application for Transfer to the Missouri Supreme Court. On September 26, 2006, Appellants' Application for Transfer was granted and this case was ordered transferred by the Missouri Supreme Court.

STANDARD OF REVIEW

The standard of review of a judge-trying case is generally governed by Rule 73.01(c) of the Missouri Rules of Civil Procedure as construed in Murphy v. Carron, 536 S.W.2d 30, 32 (Mo. 1976). This standard generally applies to review of a trial court's grant or denial of a permanent injunction, West Group Broad., Ltd. v. Bell, 942 S.W.2d 934, 935 (Mo. Ct. App. 1997), when the court, not a jury, decides all factual issues.

The Murphy v. Carron standard states that the judgment of the trial court should be reversed only where there is no substantial evidence to support it, it is against the weight of the evidence, it erroneously declares the law, or it erroneously applies the law. See In re Marriage of Hoffman, 996 S.W.2d 797, 799 (Mo. Ct. App. 1999); West Group Broad. Ltd., 942 S.W.2d at 936. Thus, in reviewing a court-trying civil case, this Court must uphold the decision of the trial court unless there is no substantial evidence to support the decision, the decision is against the weight of the evidence, or the trial court has erroneously declared or applied the law. Murphy, 536 S.W.2d at 32.

ARGUMENT

I. THE TRIAL COURT DID NOT ERR IN ENTERING JUDGMENT IN FAVOR OF DEFENDANT BOARD OF EDUCATION OF THE CITY OF ST. LOUIS BECAUSE APPELLANTS WERE NOT ENTITLED TO A PRELIMINARY OR PERMANENT INJUNCTION IN THAT APPELLANTS WERE PROPERLY PLACED ON LEAVE OF ABSENCE WITHOUT PAY IN COMPLIANCE WITH MO. REV. STAT. §168.291.

Appellants filed their two count Petition in the Circuit Court of the City of St. Louis seeking review of the Board of Education's decision to amend the July 2003 Policy Statement, to layoff the necessary number of stationary engineers as employees of the Board of Education and to contract with Sodexo Operations LLC. for the performance of stationary engineer duties within the St. Louis Public School District. Appellants' Petition seeks a permanent injunction ordering the Board of Education to reinstate Appellants.

Appellants seek judicial review of the Board of Education's decision in a non-contested case pursuant to Mo. Rev. Stat. §536.150 of the Administrative Procedure Act. In a non-contested case, the circuit court conducts a *de novo* review in which it hears evidence on the merits of the case, makes a record, determines the facts, and decides whether, in view of those facts, the agency's decision is unconstitutional, unlawful, unreasonable, arbitrary, capricious, or otherwise involved an abuse of discretion. Mo. Rev. Stat. §536.150.1; Missouri Nat'l. Educ. Ass'n v. Missouri Bd. of Educ., 34 S.W.3d

266, 274 (Mo. Ct. App. 2000). Although review is *de novo*, “the court shall not substitute its discretion for discretion legally vested in the administrative agency.” Id.; See also State ex rel. Crowe v. Missouri State Hwy. Patrol, 168 S.W.3d 122, 126 (Mo. Ct. App. 2005).

On appeal, the appellate court reviews the judgment of the circuit court, not the decision of the Board of Education. Appellate review of the circuit court’s judgment in a non-contested case is essentially the same as the review of a court-tried case. Thus, the scope of appellate review is governed by Rule 73.01 as construed in Murphy v. Carron. Missouri National Educ. Ass’n, 34 S.W.3d at 274-75. Thus, the court of appeals reviews the circuit court’s judgment to determine whether its finding that the agency decision was or was not unconstitutional, unlawful, unreasonable, arbitrary, capricious, or the product of an abuse of discretion rests on substantial evidence and correctly declares and applies the law. Id. at 275. In this case, the Circuit Court of the City of St. Louis based its order and judgment on substantial evidence and correctly declared and applied the law and this Court should affirm the circuit court’s decision.

Defendant Board of Education is empowered with the general supervision and government of the public schools of the City of St. Louis pursuant to Mo. Rev. Stat. §162.571. Plaintiffs in this case attempt to rob the Board of Education of its authority to operate and manage the St. Louis Public Schools. The Board of Education may, except as otherwise provided in Mo. Rev. Stat. §162.621, which is not applicable here, do all things necessary to accomplish the purposes for which the school district is organized. Id. Boards of education have broad powers and discretion in the management of school

affairs. See School Dist. of Kansas City v. Clymer, 554 S.W.2d 483, 487 (Mo. Ct. App. 1977). Absent proof that the Board of Education's exercise of its discretion is arbitrary, capricious or otherwise involved an abuse of discretion, the Board of Education's decisions in operating and maintaining the St. Louis Public Schools should not be overturned by the courts.

In Count I of Appellants' Petition, Appellants claim that the Board of Education lacked authority under Mo. Rev. Stat. §168.291 to lay off all employees in the classification of stationary engineer and to contract with Sodexo Operations LLC. for the operation and maintenance of the Board of Education's few remaining high pressure boilers. Appellants, in their Brief, attempt to confuse the issues by continually referring to Mo. Rev. Stat. §168.221.5 regarding reductions in force of certificated teachers and Mo. Rev. Stat. §168.281 regarding termination of permanent noncertificated teachers. These statutory sections have no bearing in this case. In fact, §168.281.3 expressly states, "[n]othing 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." Mo. Rev. Stat. §168.281.3 (2000).

The sole issue in Count I of Appellants' Petition is whether Defendant Board of Education is authorized to lay off all employees in the classification of stationary engineer and to contract with Sodexo Operations LLC. to operate and maintain the Board's few remaining high pressure boilers upon the Board's finding that it has insufficient funds or lack of work to continue to employ stationary engineers. Section 168.291 of the Missouri Revised Statutes provides, in part:

Whenever it is necessary to decrease the number of employees because of insufficient funds or decrease in pupil enrollment or lack of work the board of education may cause the necessary number of employees, beginning with those serving probationary periods, to be placed on leave of absence without pay, but only in the inverse order of their appointment. Each employee placed on leave of absence shall be reinstated in inverse order of his placement on leave of absence.

Mo. Rev. Stat. §168.291.

Appellants claim in their Brief that this issue appears to be a matter of first impression. Yet, the Missouri Court of Appeals, the United States Court of Appeals for the Eighth Circuit and the Missouri Attorney General have all addressed the authority of boards of education to lay off employees when a reduction in force is deemed necessary. Each has determined that the board of education is the arbiter of necessity.

In Boner v. Eminence R-1 School Dist., 55 F.3d 1339 (8th Cir. 1995), the United States Court of Appeals for the Eighth Circuit addressed a challenge by an employee contending that the board of education did not base its decision to place him on involuntary leave on the statutorily permissible bases. The court in Boner noted that pursuant to Mo. Rev. Stat. §168.124 of the Missouri Teacher Tenure Act, a board of education may place on leave of absence as many teachers as may be necessary because of a decrease in pupil enrollment, school district reorganization or the financial condition of the school district. Id., at 1341. In Mo. Rev. Stat. §168.124, like in Mo. Rev. Stat. §168.291, which applies in the instant case, the placing of employees on leave of absence

is limited to specific reasons and only those employees deemed necessary shall be laid off. The court of appeals in Boner notes that the statute does not define “financial condition” or identify the arbiter of necessity. 55 F.3d at 1341. Likewise, Mo. Rev. Stat. §168.291 does not define “insufficient funds” or identify the arbiter of necessity.

In deciding Boner, the court of appeals cites an opinion of the Missouri Attorney General, stating that whether a school district’s financial resources have been exhausted “is a decision which has been entrusted by the Missouri Constitution and statutes to the reasonable discretion of the school board of a district.” Id., (quoting Op. Mo. Att’y. Gen. No. 501, p. 8 (Sept. 29, 1970)); see also Frimel v. Humphrey, 555 S.W.2d 350, 353 (Mo. Ct. App. 1977) (holding that a school board may place teachers on leave of absence if the school board finds such action necessary); Clymer, 554 S.W.2d at 487 (stating that the Teacher Tenure Act grants boards of education broad powers and discretion in the management of school affairs).

As in the cases cited above, the Board of Education of the City of St. Louis is vested with broad discretion to operate and maintain the public schools within the City of St. Louis. The courts shall not substitute their exercise of discretion for discretion properly exercised by the Board of Education. The Board of Education is the arbiter of when a lay off of employees is necessary and what constitutes insufficient funds or lack of work to warrant the lay off of employees. The Board of Education, in this case, properly exercised its discretion and such decision should not now be overturned.

As of July 2005, the St. Louis Public Schools had been identified by the Missouri Department of Elementary and Secondary Education as a Financially Stressed District

pursuant to Mo. Rev. Stat §161.520. (L.F. 42). As of July 1, 2005, the District had a fund deficit of approximately \$26,500,000. In the Fiscal Year 2006 Budget, the Board proposed overall major expense reductions of approximately \$21,200,000, including reducing administrative and support costs, classroom balancing initiatives, restructuring of the Special Education Department, restructuring of major contracts with Mercer and ADP regarding benefit services and Sodexo regarding outsourcing of custodians and stationary engineers, optimizing grant funding and other savings. (L.F. 43). The Board, in compliance with its obligation to manage and operate the St. Louis Public Schools committed to improving academic achievement, student support and enrichment by making major academic investments totaling \$14,300,000. These investments included increasing teachers' salaries to achieve pay parity with certain St. Louis County Districts, purchasing curriculum and reading programs, text book alignment and other academic investments. (L.F. 43-44). The Board of Education determined that it would be unable to fund these academic investments for Fiscal Year 2006 if it was unable to cut expenses as set forth above, including the elimination of stationary engineer positions and the outsourcing of stationary engineer duties to Sodexo. (L.F. 44). The Board of Education determined that the Board would save over \$1,200,000 annually due to the elimination of all stationary engineer positions within the District, the placing of Appellants on leave of absence and outsourcing of the stationary engineer job duties. (L.F. 44).

Appellants offered no evidence to contradict the Board's determination that it had insufficient funds to continue to employ the stationary engineers. The circuit court expressly found that "Plaintiffs presented no competent evidence contradicting the

Board's determination that it has insufficient funds to continue to employ the stationary engineers, . . . that it is necessary to outsource the stationary engineer job duties to Sodexo, and that upon contracting with Sodexo for the performance of stationary engineer job duties, there remains insufficient work for the stationary engineers employed by the Board of Education to perform." (L.F. 59). There is no evidence in the record demonstrating that the Board of Education's decision is unlawful, unreasonable, arbitrary, capricious, or otherwise involves an abuse of discretion. Further, it is clear, based on the record that the circuit court's Judgment upholding the decisions of the Board of Education and denying the relief sought in Appellants' Petition rests on substantial evidence and correctly declares and applies the law.

Appellants claim in their Brief, without citation to any legal authority, that the word "insufficient" somehow prohibits placing Appellants on leave while contracting with another entity to perform the work previously performed by the Appellants and that the overall statutory scheme to protect permanent noncertificated employees prohibits Defendant's outsourcing. Yet, the Board of Education has previously outsourced all custodial functions, food service functions and the skilled trades without challenge by the Service Employees International Union or the Building and Construction Trades Council.

Appellants now claim that the protections afforded by Mo. Rev. Stat. §168.291 are meaningless if the Board of Education is permitted to contract with outside vendors to perform certain duties within the District. Based on Appellants argument, the Board of Education would have no authority to contract with any outside vendor for the performance of any duties that had ever been performed by an employee of the Board.

Such an interpretation is wholly inconsistent with the broad discretionary powers vested with the Board of Education for the management and government of the District.

Based on the express language of Mo. Rev. Stat. §168.291, there is nothing that prohibits the Board of Education from contracting with an outside vendor to perform certain services within the District and laying off employees due to insufficient funds or lack of work. Such actions by the Board of Education do not make the protections provided by Mo. Rev. Stat. §168.281 or §168.291 meaningless. Only those employees deemed necessary by the Board of Education to be laid off shall be laid off pursuant to Mo. Rev. Stat. §168.291 and such employees shall still have recall rights as provided in the statute. If the Board of Education later determines to terminate its contract with Sodexo and employ stationary engineers to operate and maintain the few remaining high pressure boilers in the District, the Board of Education will be required under Mo. Rev. Stat. §168.291 to reinstate the laid off employees in inverse order of their placement on leave of absence. Further, absent layoff pursuant to Mo. Rev. Stat. §168.291, noncertificated employees still may not be discharged or demoted absent cause as expressed in Mo. Rev. Stat. §168.281.

Appellants argue that the absence of language in Mo. Rev. Stat. §168.291 expressly authorizing the Board to contract with a third party for the performance of tasks previously performed by Board employees should prohibit the Board from reducing staff. Appellants read too much into Mo. Rev. Stat. §168.291. The statute only addresses when a Metropolitan School District may decrease the number of non-certified employees. The statute does not address how the Board should perform its governing and management

duties regarding the operation of the District once it determines that it has insufficient funds to continue to employ certain employees.

Section 162.621 of the Missouri Revised Statutes provides that the Board “shall exercise generally all powers in the administration of the public school system” and “has all the powers of other school districts under the laws of this state except as herein provided.” The clear legislative intent of §162.621 is to provide the Board, like all school boards, with broad discretionary powers to manage the District. Merely because Mo. Rev. Stat. §168.291 does not address what actions a school board can take to operate its school district once it determines that it has insufficient funds to continue to employ certain employees, the Court must not interpret §168.291 to strip a school board of its management rights.

Appellants’ appear to argue that the use of the phrase “insufficient funds” in Mo. Rev. Stat. §168.291 is expressly intended to impose a greater limitation on a board of education in a Metropolitan School District when laying off noncertificated employees than the phrase “financial condition of the district” as used in the Teacher Tenure Act applicable to non-metropolitan school districts. In fact, Appellants admit in their Brief, when interpreting Mo. Rev. Stat. §168.124 applicable to non-metropolitan school districts that, “the financial condition of a district might justify a layoff merely to obtain a lower cost through a subcontractor.” (Appellants’ Brief at 14). Yet, Appellants offer no rational justification for why employees covered by §168.124 in all non-metropolitan school district should be entitled to less protection in his or her job than a stationary engineer or other noncertificated employee in the St. Louis Public School District. Nor

do they attempt to explain why all Missouri districts – except St. Louis – should be permitted to engage in cost savings measures by outsourcing so more funds are available for direct student services.

“Insufficient” means inadequate. Determination of sufficiency of funding must not be done in a vacuum, but must be done by the Board in relation to its overall budget and all of its expense obligations. The Board of Education, when looking at all expenses within the District and balancing its priorities of educating the students over the unnecessary employment of twenty-five stationary engineers to maintain high pressure boilers in only three buildings, correctly determined that it had insufficient funds to continue to employ Appellants.

Further, as noted by Appellants, the circuit court found and determined that upon contracting with Sodexo for the operation and maintenance of the Board’s high pressure boilers, there remained a lack of work for the Appellants. As stated above, there is no prohibition on the Board of Education from contracting with a third party to perform certain tasks within the District. Upon entering into a contract, whereby the operation and maintenance of the high pressure boilers is assigned to a third party, there is no dispute that there then remains a lack of work for the stationary engineers thus warranting placing such employees on leave of absence pursuant to Mo. Rev. Stat. §168.291.

The Board of Education is vested with broad discretion for the operation, government and management of the St. Louis Public School District. As evidenced by the record, including the Board’s Resolutions, the Board of Education properly determined that it was necessary to place the Appellants on leave of absence without pay

due to insufficient funds and lack of work pursuant to Mo. Rev. Stat. §168.291. The Board's actions were not arbitrary or capricious or otherwise involving an abuse of discretion. Further, the circuit court's Judgment upholding the Board of Education's decision is based on substantial evidence and correctly declares and applies the law. For these reasons, the circuit court's Judgment should be affirmed.

II. THE TRIAL COURT DID NOT ERR IN ENTERING JUDGMENT IN FAVOR OF THE BOARD OF EDUCATION OF THE CITY OF ST. LOUIS BECAUSE THE TRIAL COURT PROPERLY HELD THAT THE BOARD OF EDUCATION COULD UNILATERALLY ALTER THE TERMS OF THE JULY 2003 POLICY STATEMENT ADOPTED PURSUANT TO MO. REV. STAT. §105.520 WITH IUOE LOCAL 2 IN THAT THE POLICY STATEMENT IS NOT A BINDING COLLECTIVE BARGAINING AGREEMENT.

The second issue on appeal is whether the trial court erred in holding that the Board of Education is free to amend a Policy Statement with Local 2 when that Policy Statement was adopted pursuant to Mo. Rev. Stat. §105.520 and when the language in the Policy Statement expressly provides that the Board of Education can amend it. The Missouri Supreme Court addressed this identical issue in Sumpter v. City of Moberly, 645 S.W.2d 359 (Mo. 1982). In Sumpter, the Court held that a memorandum of the results of discussions pursuant to Mo. Rev. Stat. §105.520, after approval or adoption of those results by a public employer, does not constitute a binding collective bargaining agreement that is enforceable on the public employer and that such a memorandum may be amended by the public employer in the future. Id. at 363. The Court properly decided this issue in Sumpter and Appellants present no legitimate reason for the Court to overturn this decision.

A. The Doctrine of Stare Decisis Requires The Court To Follow Its Well Reasoned Interpretations of Mo. Rev. Stat. §105.520

The Board of Education’s right to unilaterally revise a policy statement adopted pursuant to Mo. Rev. Stat. §105.520 is governed by this Court's decision in Sumpter v. City of Moberly, 645 S.W.2d 359 (Mo. 1982).

The doctrine of *stare decisis* directs that, once a court has “laid down a principle of law applicable to a certain state of facts, it [must] adhere to that principle, and apply it to all future cases, where facts are substantially the same; regardless of whether the parties and property are the same.” Eighty Hundred Clayton Corp. v. Dir. of Revenue, 111 S.W.3d 409, 412 (Mo. 2003) (Limbaugh dissent), citing Black's Law Dictionary 1406 (6th ed.1990). In this regard, the Court has pronounced on numerous occasions that a decision of the Court should not be lightly overruled, particularly where, as here, the opinion has remained unchanged for many years. Ronnoco Coffee Co., Inc. v. Dir. Of Revenue, 185 S.W.3d 676 (Mo. 2006); Southwestern Bell Yellow Pages, Inc. v. Dir. of Rev., 94 S.W.3d 388, 391 (Mo. 2002); Eighty Hundred Clayton Corp., 111 S.W.3d at 411, n. 3. Further, the importance of *stare decisis* was recently expressed in Ronnoco Coffee Co., Inc., wherein Justice Russell explained: “Adherence to the doctrine of *stare decisis* is helpful in a case such as this because the doctrine offers stability and

predictability. Stability in the law . . . is preferable to avoid confusion about the application of statutes. 185 S.W.3d at 681, n. 11.³

Furthermore, the application of *stare decisis* in the instant case is particularly appropriate because the Appellants are asking the Court to abandon its well reasoned and settled construction of Mo. Rev. Stat. §105.520. As pronounced by the United States Supreme Court, there is a strong presumption that judicial construction of a statute has continued validity:

[T]he burden borne by the party advocating the abandonment of an established precedent is greater where the Court is asked to overrule a point of statutory construction. Considerations of *stare decisis* have special force in the area of statutory interpretation, for here, unlike in the context of constitutional interpretation, the legislative power is implicated, and Congress remains free to alter what we have done.

Patterson v. McLean Credit Union, 491 U.S. 164, 172-73 (1989).⁴

The Board of Education acknowledges, however, that adherence to precedent is not absolute. In Crabtree v. Bugby, the Court described its allegiance to precedent

³ See also Medicine Shoppe Int'l., Inc. v. Dir. of Revenue, 156 S.W.3d 333, 334-35 (Mo. 2005) (stating the doctrine of *stare decisis*-to adhere to decided cases - promotes stability in the law by encouraging courts to adhere to precedents).

⁴ The Missouri Supreme Court echoed the United States Supreme Court in Medicine Shoppe Int'l., 156 S.W.3d at 335, n. 5.

stating, “[m]ere 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. 1998). Yet, there is simply no principled distinction between Sumpter and the facts and legal issues presently before the Court that provides the Court with a compelling reason to deviate from its previous decisions. Accordingly, the Appellants are unable to satisfy their “greater burden” insofar as the Court’s consistent and well reasoned construction of Mo. Rev. Stat. §105.520 does not result in recurring injustice or absurd results.

B. The Court Has Properly Ascertained the Missouri Legislature’s Intent of Mo. Rev. Stat. §105.520 and, Therefore, Its Prior Interpretations Are Correct

A review of the history of Mo. Rev. Stat. §105.520 unequivocally establishes that the Court has on several occasions properly ascertained the intent of the Missouri legislature. The primary object of statutory interpretation is to determine the legislature’s intent when it enacted Mo. Rev. Stat. §105.520. Tribune Pub. Co. v. Curators of Univ. of Missouri, 661 S.W.2d 575, 583 (Mo. Ct. App. 1983) (quoting Edwards v. St. Louis County, 429 S.W.2d 718, 722 (Mo. 1968)). “All canons of statutory interpretation are subordinate to the requirement that the Court ascertain the intent of the legislature from the language used and give effect to that intent, if possible, and to consider the words used in their plain and ordinary meaning.” Butler v. Mitchell-Hugeback, Inc., 895

S.W.2d 15, 19 (Mo. 1995) (citing Trailer-Crop. v. Dir. of Revenue, 783 S.W.2d 917, 920 (Mo. 1990)).

The genesis of the dispute is Article I, Section 29 of the Missouri Constitution which provides: “employees shall have the right to organize and to bargain collectively through representatives of their own choosing.” Mo. Const. art. I, §29. The Court has held that Section 29 does not apply to public employees. City of Springfield v. Clouse, 206 S.W.2d 539, 543-45 (Mo. 1947) (“[Article I, Section 29] was intended to safeguard collective bargaining as that term was usually understood in employer and employee relations in private industry. . . . [u]nder our form of government, public office or employment never has been and cannot become a matter of bargaining and contract.”). In Clouse, the Court further states, “no legislature could bind itself or its successor to make or continue any legislative act.” Id. at 545; see also Null v. City of Grandview, 669 S.W.2d 78, 80 (Mo. Ct. App. 1984) (the legislative function remains unimpaired to alter the subject of agreement by successive ordinance).

The holding in Clouse was based on Article II, § 1 (addressing separation of powers between the three branches of government) and Article III, § 1 (vesting all legislative power in the Missouri General Assembly). Id. at 544-45. The clear and unambiguous holding in Clouse was that only the legislative branch can set wages, hours and working conditions for public employees and those powers cannot be delegated to the collective bargaining process. “If such powers cannot be delegated, they surely

cannot be bargained or contracted away; and certainly not by any administrative or executive officers who cannot have any legislative powers.” Id. at 545.⁵

Appellants attempt to displace Clouse by asserting that the Missouri Supreme Court's holding in Clouse was recited as *dicta* in the opinion, and further assert that the case was decided without citation to any authority. In reality, however, this Court’s opinion in Clouse is a thoughtful, carefully reasoned treatise that fully takes into consideration the unique place a public employer holds in society. Furthermore, the opinion also takes into consideration the special powers that the public entity is permitted to exercise, including the power to legislate. The Court stated:

[T]he whole matter of qualifications, tenure, compensation and working conditions for any public service, involves the exercise of legislative powers. Except to the extent that all the people have themselves settled any of these matters by writing them into the Constitution, they must be determined by their chosen representatives who constitute the legislative body. It is a familiar principal of constitutional law that the legislature

⁵ The Court’s opinion in Clouse is consistent with the United States Supreme Court’s pronouncements. NLRB v. Allis-Chalmers Mfg. Co., 388 U.S. 175, 180 (1967) (“Congress has seen fit to clothe the collective representative with powers comparable to those possessed by a legislative body to create and restrict the rights of those whom it represents.”); see also 29 U.S.C.A. §159(a)).

cannot delegate its legislative powers and any attempted delegation thereof is void.

Clouse, 206 S.W.2d at 545. The Court also cited to a letter by an ardent friend of labor unions, the late president Franklin D. Roosevelt, which was read in the Missouri debates regarding Article I, Section 29. This letter states:

All Government employees should realize that the process of collective bargaining, as usually understood, cannot be transplanted into the public service. It has its distinct and insurmountable limitations when applied to public personnel management. The very nature and purposes of Government make it impossible for administrative officials to represent fully or to bind the employer in mutual discussions with Government employe [sic] organizations. The employer is the whole people, who speak by means of laws enacted by their representatives in Congress. Accordingly, administrative officials and employes [sic] alike are governed and guided, and in many instances restricted, by laws which establish policies, procedures, or rules in personnel matters.

Id. at 542.

Since Clouse, the Supreme Court has reaffirmed its well reasoned decision. In Glidewell v. Hughey, the Court was faced with the enforceability of a collective bargaining agreement with certain city employees that the city council had ratified. 314 S.W.2d 749, 750-51 (Mo. 1958) citing Clouse, the Court held that “the matter of

qualifications, tenure, compensation and working conditions . . . involves the exercise of legislative powers” and “cannot become a matter of bargaining and contract.” Id. at 756.

After Clouse and Glidewell, in 1965 the Missouri General Assembly responded with the enactment of Mo. Rev. Stat. §105.500, *et seq.* (the "Public Sector Labor Law") that expanded public employees' rights. While obviously considered inadequate by today's unions, the Public Sector Labor Law gives public employees substantive rights that they did not enjoy prior to the enactment of the law.⁶ The expanded rights, for the first time, required public bodies to "meet and confer" with a duly recognized representative of a labor union and further provided that the results of such discussions

⁶ While Appellants advocate for a broad interpretation and, *vis-à-vis*, judicial adoption of the Federal labor law rules for public employees in the State of Missouri, they correctly recognize that the Missouri legislature chose not to adopt the language of Section 8 of the National Labor Relations Act (amended to 29 U.S.C.A. § 158, *et seq.*), which requires a public employer to bargain with the collective bargaining representative of its employees. The Public Sector Labor Law has never been interpreted as a collective bargaining statute, and all subsequent Missouri case law confirms this interpretation. Parkway Sch. Dist. v. Parkway Ass'n of Educ., Support Personnel, PA-ESP, Local 902/MNEA, 807 S.W.2d 63, 66 (Mo. 1991). As a result, Missouri courts have properly concluded that there is no duty, as there is under federal law, for the public employer to bargain in good faith, but only a duty to meet and confer.

shall be reduced to writing. It is further clear that the ordinance or regulation incorporating the product of the discussions is binding until amended or repealed.⁷

After the passage of the Public Sector Labor Law, the Supreme Court was asked in State ex rel. Missey v. City of Cabool to decide the constitutionality of the Act in light of the separation of powers prohibition against collective bargaining for public employees 441 S.W.2d 35 (Mo. 1969). The Court held that the Act provides only for “meet and confer” sessions and does not “purport to give to public employees the right of collective bargaining. . . .” Id. at 41. The Court upheld the constitutionality of the Act because it “provides only a procedure for communication between the organization selected by public employees and their employer without requiring adoption of any agreement reached.” Id. (emphasis added). “The public employer is not required to agree but is required only to meet, confer and discuss. . . .” Id., citing Clouse, 206 S.W.2d at 542-43. In a clear pronouncement of legislative intent, the Court stated: “without indication to the contrary, the General Assembly must have had the intent to enact this legislation in accord with constitutional principles previously enunciated in City of Springfield v. Clouse . . . and reiterated in Glidewell v. Hughey, Mo. . . . For these reasons, it is constitutional.” Id. (emphasis added); see also Butler v. Mitchell-Hugeback, Inc., 895 S.W.2d 15, 19 (Mo. 1995) (stating that the General Assembly is presumptively aware of the Court's prior decisions). Thus, the Court in City of Cabool expressly noted that the Missouri Legislature’s enactment of the Public Sector Labor Law “does not constitute a delegation or a bargaining away to the union of the legislative power of the public body,

⁷ Sumpter, 645 S.W.2d at 363.

and therefore does no violence to City of Springfield v. Clouse . . . because the prior discretion in the legislative body to adopt, modify or reject outright the results of the discussions is untouched.” 441 S.W.2d at 41.

In the same vein, the Court held in Curators of the Univ. of Mo. v. Pub. Serv. Employees Local No. 45, Columbia that the Act was constitutional as applied to state employees because of the critical distinctions between the “meet and confer” requirements of the Act and collective bargaining 520 S.W.2d 54 (Mo. 1975). As the Supreme Court interpreted the Act, it is constitutional because it does not require a binding agreement to be reached:

Generally, the public body will designate a representative to meet with the representative of the employees. In this event, the public body's representative acts essentially as a hearer and a receptor of the employees' petitions and remonstrances. His duty is to discuss them with the bargaining representative, and to fully apprise himself of the nature and extent of the proposals and grievances presented. . . . We believe the requirements of the Public Sector Labor Law, as delineated above, merely provide a procedural vehicle for assertion by defendants of their constitutional rights to peaceably assemble and to petition for redress of grievances.

Id. at 57-58. The Supreme Court made clear, though, that any extension of the rights granted in the Act beyond that permitted by Clouse, such as Appellants seek here, would

be subject to constitutional attack. Id. at 58. In a strongly worded finish to the opinion, the Court stated:

The General Assembly of Missouri may see fit in the future to amend the Public Sector Labor Law and to extend its requirements beyond the boundaries set in Clouse. . . . If so, and an attack on the constitutional aspects of the Clouse holding is made, we will consider the questions at that time. We need not, and should not, attempt to resolve them now.

Id. at 58.

Finally, in Sumpter v. City of Moberly the Court squarely addressed the identical issue presently before the Court 645 S.W.2d 359 (Mo. 1983). The Appellants in Sumpter contended, as Appellants appear to do here, that the last sentence of Mo. Rev. Stat. §105.520, while authorizing the public body to reject or modify a bargaining representative's proposal, also authorizes a binding agreement between the public body and its employees when it authorizes adoption of the proposal by ordinance, resolution, bill or other form required for adoption. Id. at 362-63. The Sumpter Court rejected such interpretation of Mo. Rev. Stat. §105.520, stating:

It seems clear, therefore, that the General Assembly was saying in Mo. Rev. Stat. §105.520 only that when a proposal is submitted to a public body (whether it be an administrative, legislative or other governing body), it has a duty to consider and act on such proposal. It may reject, modify or adopt. If it decides to adopt the proposal, it does so by ordinance, resolution or other appropriate form, depending on the nature of the public body. The

result will be an administrative rule, an ordinance, a resolution, or something else which governs wages and working conditions, but it will not be a binding collective bargaining contract.

Id. at 363 (emphasis added). As stated by the Court in Sumpter, “if the legislature had intended by the last sentence of Mo. Rev. Stat. §105.520 to provide for and authorize a binding contract under some but not all circumstances mentioned in the statute, it would have so stated.” Id. The Court further notes, “Mo. Rev. Stat. §105.520 says nothing whatsoever about a public body entering into or executing a contract if it decides to adopt the representative’s proposal.” Id. The Court further rejected the repudiation of the non-delegation doctrine, as advocated by Appellants, when it explained:

[O]ur conclusion is that under the present charter of the city the whole matter of qualifications, tenure, compensation and working conditions in the city's public utilities involves the exercise of legislative powers and cannot become a matter of bargaining and contract. . . . Clearly, the decision in Clouse says that an administrative body cannot decide to and then enter into a collective bargaining agreement. Such action would violate applicable constitutional restrictions regarding separation of powers.

Sumpter, 645 S.W.2d at 361, 363 (emphasis added); see also Null v. City of Grandview, 669 S.W.2d at 80 (Mo. Ct. App. 1984) (“The matter of compensation and conditions of work in public employment is a legislative exercise, and under the doctrine of separation of powers, may not be ceded by delegation or contract.”); Morrow v. City of Kansas City, 788 S.W.2d 278, 280-81 (Mo. 1990) (collective bargaining agreement may be

disregarded as unconstitutional). Following its analysis, as summarized above, the Court held that Mo. Rev. Stat. §105.520 did not authorize a public employer to enter into a collective bargaining contract. Id. at 363.

The Sumpter Court further addressed Judge Seiler's dissent in which he criticized, as do the Appellants here, the non-binding effect of public employee/union agreements. The Court found that its interpretation does not lead to unreasonable, oppressive or absurd results insofar as the ordinance [approving the union agreements], just as any city ordinance, governs and is binding until changed by appropriate action. Id. (emphasis added). The Court also affirmed the long line of cases that have consistently held that §105.500, *et seq.*, is “‘a meet, confer and discuss’ law which merely provided a specific procedure whereby public employees could implement their constitutional rights to meet, talk and petition and which also assured that the public body would consider and take action of some kind (reject, modify or adopt) on the proposals.” Id. at 362-63. The Court then quoted its Curator's decision which held that the Public Sector Labor Law went no further, and that if any changes were to be made, they should be made by the Missouri Legislature. Sumpter, 645 S.W.2d at 363.

An examination of the history of Public Sector Labor Law further supports the Supreme Court’s interpretation. As observed by the Appellate Court for the Southern District, a subtle but significant difference is noted between the 1965 legislation and the 1967 legislation. Strunk v. Hahn, 797 S.W.2d 536, 540 (Mo. Ct. App. 1990). The 1965 version of §105.520 read:

Any public body may engage in negotiations relative to salaries and other conditions of employment of the public body employees, with labor organizations. Upon the completion of negotiations the results will be reduced to writing and presented to the governing or legislative body in the form of an ordinance or resolution for appropriate action. (emphasis added.)

Mo. Rev. Stat. §105.520 (Supp. 1965). The Strunk court correctly explained that the 1965 legislation, in using the term “negotiations,” used a term commonly used in the private sector of employer-labor relations. 797 S.W.2d at 540. However, the 1967 legislation takes a “step backward when it retreated from the word “negotiations” and, in lieu thereof, mandated that the “public body . . . shall meet, confer and discuss such proposals relative to salaries and other conditions of employment. . . .” Id. (emphasis added). Thus, the 1967 legislation moved away from affording public employees federal labor law contractual rights that Appellants now ask this Court to judicially create. Stated affirmatively, the Missouri Legislature never intended to public employees with binding contractual rights and, therefore, any contrary interpretation of Mo. Rev. Stat. §105.520 would be inconsistent with the legislative intent.

C. Appellants’ Modern Attack On The Non-Delegation Doctrine Is Irrelevant To The Court’s Interpretation of Mo. Rev. Stat. §105.520

Recognizing that their interpretation of Mo. Rev. Stat. §105.520 is contrary to well established Court precedent, Appellants attack the judicial underpinning of Clouse by asserting that the non-delegation doctrine has been “criticized by scholars.” See Appellants’ Br., p. 22. Yet, the viability of the non-delegation doctrine is irrelevant to the

Court's interpretation of Mo. Rev. Stat. §105.520. As set forth above, it is well-established that when enacting the Public Sector Labor Law, the Missouri Legislature's intent was to comply with Clouse and its progeny. State ex rel. Missey v. City of Cabool, 441 S.W.2d at 41; See also Butler, 895 S.W.2d at 19 (stating that The General Assembly is presumptively aware of the Court's prior decisions). Further, the Supreme Court's prior interpretations of Mo. Rev. Stat. §105.520 have given full effect to the aforementioned intent. Affirmatively stated, an attack in the year 2006 on the non-delegation doctrine does not, in any way, alter or modify the Missouri Legislature's intent in the years of 1965 and 1967 when enacting and amending the Public Sector Labor Law. Once again, as stated by this Court in Sumpter, "[i]t seems clear, therefore, that the General Assembly was saying in Mo. Rev. Stat. §105.520 only that when a proposal is submitted to a public body (whether it be an administrative, legislative or other governing body), it has a duty to consider and act on such proposal." Sumpter, 645 S.W.2d at 363 (emphasis added).

Appellants' reliance on a 1986 Saint Louis University Law Review article to support their proposition that Missouri's Public Sector Labor Law has been "criticized by scholars" is equally misguided. This article is nearly 20 years old and consequently fails to address cases in this jurisdiction that discuss, mention or affirm the Missouri Supreme

Court's long-standing interpretation of the Public Sector Labor Law, which are far more recent.⁸

Appellants' reference to various other state court's decisions dealing with the non-delegation doctrine are equally misplaced because the cases are not on point insofar as they deal with the enforceability of mandatory arbitration agreements and, most importantly, are not interpreting the language and legislative intent of the Missouri Public Sector Labor Law.⁹

⁸ See Strunk v. Hahn, 797 S.W.2d 536, 539 (Mo. Ct. App. 1990); Phipps v. Sch. Dist. of Kansas City, 645 S.W.2d 91, 106 (Mo. Ct. App. 1982); Kinder v. Holden, 92 S.W.3d 793, 797 (Mo. Ct. App. 2002); Thruston v. Jefferson City Sch. Dist., 95 S.W.3d 131, 134 (Mo. Ct. App. 2003); Int'l Bhd. of Elec. Workers, Local Union 53 v. City of Independence Power & Light Dept., 129 S.W.3d 384, 386 (Mo. Ct. App. 2003); Schaffer v. Bd. of Educ. of the City of St. Louis, 869 S.W.2d 163, 168 (Mo. Ct. App. 1993); and Independence-National Educ. Ass'n v. Independence Sch. Dist., 162 S.W.3d 18 (Mo. Ct. App. 2005).

⁹ See Littleton Educ. Ass'n v. Arapahoe County Sch. Dist. No. 6, 553 p.2d 793, 796-97 (Colo. 1976); Chicago Div. of the Ill. Educ. Ass'n v. Bd. of Educ., 222 N.E.2d 243, 251 (Ill. App. Ct. 1966); Gary Teachers' Union Local No. 4 v. School Dist. of Gary, 284 N.E.2d 108 (Ind. 1972); Louisiana Teachers' Ass'n v. Orleans Parish Sch. Bd., 305 So.2d 541 (La. 1975); and Dayton Classroom Teachers Ass'n v. Dayton Bd. of Educ., 323 N.E.2d 714 (Ohio 1975).

In conclusion, as consistently held by the Missouri Supreme Court, the Missouri General Assembly drafted Mo. Rev. Stat. §105.500 *et seq.* with the clear intent of surviving a constitutional challenge and thereby never intended Mo. Rev. Stat. §105.520 to authorize binding collective bargaining agreements on public employers, and every case addressing that issue concurs with the Court's well settled interpretation. Therefore, under the doctrine of *stare decisis*, the Court should apply its prior precedents and hold that the Policy Statement was not a binding collective bargaining agreement.¹⁰

¹⁰ Assuming *arguendo*, however, that this Court's prior interpretations are now somehow incorrect, the General Assembly is the proper place for amendment to the statute. Medicine Shoppe Int'l., Inc., 156 S.W.3d at 339; Curators of the Univ. of Missouri, 520 S.W.2d at 58. In this regard, 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*. Crabtree, 967 S.W.2d at 71-72.

III. THE TRIAL COURT DID NOT ERR IN ENTERING JUDGMENT IN FAVOR OF THE BOARD OF EDUCATION BECAUSE THE BOARD OF EDUCATION LAWFULLY AMENDED THE POLICY STATEMENT IN THAT THE AMENDMENT WAS DONE IN ACCORDANCE WITH THE EXPRESSED TERMS OF THE POLICY STATEMENT AND MO. REV. STAT. §162.621

The Policy Statement was lawfully modified pursuant to Missouri law and the expressed terms of the Policy Statement. The Policy Statement adopted by the Board of Education is similar to all other policies and regulations of the Board of Education. As such, the policies contained in the Policy Statement are binding on the Board of Education until formally repealed or amended. Mo. Rev. Stat. §162.621. Governmental, legislative and administrative bodies routinely adopt ordinances, resolutions, policies and regulations that are binding upon such body until such time as they are amended or repealed. Missouri courts have recognized the general rule of law that “[t]he power to amend and repeal legislation as well as to enact is . . . vested in the legislature, and a legislature cannot restrict or limit its right to exercise this power . . .” State ex rel. Phillip v. Pub. Sch. Retirement Sys. of St. Louis, 262 S.W.2d 569, 579 (Mo. 1953). Missouri courts have also recognized the right of political subdivisions to amend or rescind their laws. See, e.g. Fraternal Order of Police Lodge # 2 v. City of St. Joseph, 8 S.W.3d 257, 263 (Mo. Ct. App. 1999); Mid-State Distrib. Co. v. City of Columbia, 617 S.W.2d 419, 431 (Mo. Ct. App. 1981).

This general rule of law is stated in Corpus Juris Secundum as follows: “Power to enact ordinances and bylaws necessarily implies power in the same body to amend its enactments” 62 C.J.S. Municipal Corporations § 291. The C.J.S. cites case law from multiple jurisdictions in support of this contention. See Miami-Dade Water & Sewer Auth. v. Metro. Dade County, 503 So.2d 1314, 1316 (Fla. Dist. Ct. App. 1987); City of Salisbury v. Arey, 29 S.E.2d 894, 898 (N.C. 1944); City of Litchfield v. Hart, 29 N.E.2d 678, 679-80 (Ill. App. Ct. 1940); Michigan City v. Brossman, 11 N.E.2d 538, 543-44 (Ind. Ct. App. 1937).

This same principle is addressed by the Missouri Supreme Court in Clouse, wherein the Court states: “no legislature could bind itself or its successor to make or continue any legislative act.” Clouse, 206 S.W.2d 539, 545 (Mo. 1947); see also Null, 669 S.W.2d at 80 (Mo. Ct. App. 1984) (the legislative function remains unimpaired to alter the subject of agreement by successive ordinance).

As established above, the Board of Education did not enter into a binding contract with the Union regarding terms and conditions of employment for the stationary engineers. Because the Board adopted a Policy Statement in relation to working conditions for stationary engineers, as contemplated by Mo. Rev. Stat. §105.520, the Board was authorized to amend the Policy Statement when deemed necessary. That is what it did in this case.

Furthermore, the Board’s Policy Statement amendment complied with any meet and confer requirements as set forth in the Policy Statement. The unequivocal terms of the Policy Statement expressly permit the Board of Education to make changes to its

policies or regulations affecting the terms and conditions of employment of the stationary engineers as long as the Board first gives written advance notification to the Union that allows sufficient time for discussion prior to action by the Board. (L.F. 20). The Board of Education complied with this requirement. On June 29, 2005, the Board's Chief Operating Officer and Chief Financial Officer, along with other district personnel, met with representatives of the Union, in compliance with Missouri statutory requirements regarding the Board's intent to (1) limit the job duties of stationary engineers to those duties that are required by City Ordinance, (2) reduce the number of stationary engineers based on the Board's determination that it had insufficient funds to continue to employ its own stationary engineers, and (3) outsource the stationary engineers' duties to Sodexo. (L.F. 41).

The Policy Statement is a legislative document of the Board of Education and the first rule of statutory construction is to give effect to the intent of the legislative body. State v. Burnau, 642 S.W.2d 621, 623 (Mo. 1982). While it is proper to consider history of legislation where ambiguity exists, Kieffer v. Kieffer, 590 S.W.2d 915, 918 (Mo. 1979), no ambiguity exists here. Words used in legislation must be accorded their plain and ordinary meaning. Burnau, 642 S.W.2d at 623. The plain language of the Policy Statement expressly permits the Board of Education to modify or amend the Policy Statement. Where the language of the legislation is plain and admits of but one meaning, there is no room for construction. State ex rel. Missouri State Bd. Of Registration for the Healing Arts v. Southworth, 704 S.W.2d 219, 224 (Mo. 1986). Accordingly, the Court must construe the Policy Statement as it stands and give effect to it as written England v.

Eckley, 330 S.W.2d 738, 744 (Mo. 1959). State v. Patton, 308 S.W.2d 641, 644 (Mo. 1958). To engraft onto the Policy Statement language that “the Policy Statement is a binding collective bargaining agreement that cannot be modified with the consent of the Union” would be to disregard the maxim of statutory construction that the legislative intent, insofar as possible, is to be determined from the language of the legislation itself. Southworth, 704 S.W.2d at 224-25; State v. Sweeney, 701 S.W.2d 420, 423 (Mo. 1985).

The Board of Education adopted a Policy Statement regarding working conditions for its stationary engineers. The Board of Education followed such Policy Statement until such time as it was amended. The Board of Education is authorized to amend such Policy Statement and did so in accordance with Mo. Rev. Stat. §§105.520 and 162.621 and the language of the Policy Statement. The Board of Education’s actions were proper here and the circuit court correctly entered judgment in favor of the Board of Education and against Plaintiffs-Appellants on Count II of their Petition.

CONCLUSION

The Board of Education of the City of St. Louis, which is charged with the management and government of the St. Louis City Public Schools, properly determined that it had insufficient funds to continue to employ twenty-five stationary engineers and that all such stationary engineers should be placed on unpaid leave of absence due to insufficient funds and lack of work. The Board of Education’s decisions complied with Mo. Rev. Stat. §168.291. Further, there is no prohibition in Mo. Rev. Stat. §168.291 or any other statute pertaining to the Board of Education that prohibits the Board from contracting with a third party to perform the operation and maintenance of the high

pressure boilers within the St. Louis Public Schools. Thus, for these reasons, the Judgment of the circuit court must be affirmed.

The circuit court also did not err in holding that Defendant Board of Education could modify the terms of its Policy Statement regarding working conditions for stationary engineers adopted pursuant to Mo. Rev. Stat. §105.520, as such Policy Statement is not a binding collective bargaining agreement. For these reasons, the Judgment of the circuit court should be affirmed.

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CERTIFICATE OF COMPLIANCE

The undersigned certified that:

- (1) this brief contains the information required by Rule 55.03;
- (2) this brief complies with the limitations contained in Rule 84.06(b);
- (3) there are 11,099 words in this brief;
- (4) the floppy disk containing a copy of this brief filed contemporaneously herewith has been scanned for viruses and is virus free.

James C. Hetlage

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document plus a copy of the document on a floppy disk pursuant to Rule 84.06(g) was mailed, via First Class U.S. Mail and this 6th day of December, 2006, to: George Suggs, Esq., SCHUCHAT, COOK & WERNER, 1221 Locust Street, Second Floor, St. Louis, Missouri 63103, Attorney for Plaintiffs-Appellants.

James C. Hetlage