

IN THE SUPREME COURT OF MISSOURI

No. SC87980

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

Plaintiffs/Appellants,

v.

INDEPENDENCE SCHOOL DISTRICT,

Defendant/Respondent.

APPELLANTS' BRIEF

SCHUCHAT, COOK & WERNER

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JURISDICTIONAL STATEMENT

The sole issue in this appeal is the validity of the interpretation of Article I, Section 29 of the Missouri Constitution of 1945 originally adopted in *City of Springfield v. Clouse*, 206 S.W.2d 539 (Mo. 1947), and followed and extended in *Sumpter v. City of Moberly*, 645 S.W.2d 359 (Mo. 1982). The Trial Court’s holding that Defendant could refuse to bargain and rescind its labor agreements with Plaintiff employee associations rests solely upon *Clouse* and *Sumpter*. Plaintiffs challenge the continuing validity of the interpretation of Article I, Section 29 incorporated in these decisions. This appeal, therefore, lies within the Supreme Court’s exclusive jurisdiction under Article V, Section 3 of the Missouri Constitution. *See Asbury v. Lombardi*, 846 S.W.2d 196, 198 (Mo. 1993) (Supreme Court has exclusive appellate jurisdiction “because the cases involve the validity of a statute and interpretation of a provision of the Constitution of this State”).

STATEMENT OF FACTS

Defendant is a public school district (“District”) governed by a Board of Education (“Board”). (Legal File at 90) (hereafter “L.F. at ___”). Plaintiffs are four groups of District employees and their respective associations: (1) transportation employees represented by Independence-Transportation Employees Association (“ITEA”); (2) custodial employees represented by the Independence-Educational Support Personnel (“IESP”); (3) paraprofessionals represented by the Independence-National Education Association (“INEA”); and (4) teachers, a majority of whom are also represented by the INEA. (L.F. at 88-90, 98-101). The ITEA, IESP, and INEA are certified as the exclusive

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collective bargaining representatives of the first three groups pursuant to Missouri's Public Sector Labor Law, §105.500, R.S.Mo., *et. seq.* (L.F. at 91, 94, 96).

On April 23, 2002, the Board adopted a new "District Decision-Making" (or "Collaborative Team") Policy that established a process for multiple employee groups represented on a single team to discuss employment issues. (L.F. at 90, 108-111). The District did not meet and confer with the associations about this policy or obtain their consent before imposing it. (L.F. at 92, 95, 96, 106-107).

Prior to the new Policy, ITEA and IESP met and conferred separately with a Board bargaining team about proposals relative to their members' salaries and conditions of employment. (L.F. at 91, 92, 94). The results of these discussions were reduced to writing in the form of memoranda of understanding ("ITEA-MOU" and "IESP-MOU") and approved by the Board's authorized representatives. (L.F. at 91, 92, 94, 113-122, 125-139). At the time of the Board's unilateral adoption of the Collaborative Team Policy, both the ITEA-MOU and the IESP-MOU then in effect contained bargaining procedures that differed from the new Policy. (L.F. at 92, 94, 95). In addition, the ITEA-MOU contained other provisions that the District unilaterally rescinded. (L.F. at 93, 113-122). These substantive provisions pertained to union recognition, grievances, scheduling, assignments, association release time, payroll deduction, discipline, and dismissal. (*Id.*). By unilaterally adopting the Collaborative Team policy without meeting and conferring in accordance with the bargaining procedures of the ITEA-MOU and IESP-MOU, and by unilaterally changing other provisions of the ITEA-MOU, the District

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rescinded these agreements and refused to bargain collectively with the ITEA and IESP. (L.F. at 93, 95).

For over twenty years before the adoption of the new Policy, District representatives held separate discussions with the INEA as the "recognized group" for the majority of teachers, pursuant to a "Discussion Procedure" adopted by the Board. (L.F. at 97-106, 357-363). The Board rescinded the Discussion Procedure when it adopted the Collaborative Team Policy. (L.F. at 106-107). By unilaterally adopting the Collaborative Team Policy without meeting and conferring with the INEA as the bargaining representative for the teachers and paraprofessionals, the District refused to bargain collectively with either employee group. (L.F. at 96, 107).

Plaintiffs filed suit in March of 2003, challenging Defendant's refusal to recognize and bargain with the Plaintiff associations as the bargaining representatives of their respective groups of employees, and its repudiation of bargained agreements with the associations.

COURT DECISIONS BELOW

On December 10, 2003, the Trial Court sustained the District's motion for summary judgment. (L.F. at 19-20). Plaintiffs appealed. The Court of Appeals affirmed judgment for the District on Count V of the First Amended Petition, which sought reversal of *City of Springfield v. Clouse*, 206 S.W.2d 539 (Mo. 1947), and *Sumpter v. City of Moberly*, 645 S.W.2d 359 (Mo. 1982). *Independence-National Education Ass'n v. Independence Sch. Dist.*, 162 S.W.3d 18 (Mo. Ct. App. 2005). The Court of Appeals

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found factual disputes that precluded summary judgment on the remaining counts and remanded them for trial. *Id.* at 23, 25-26. Subsequently, the parties conducted discovery, Plaintiffs filed a Final Amended Petition (L.F. at 21-35), and the case was tried on a stipulated factual record.

On July 17, 2006, the Trial Court entered judgment for Defendant. (L.F. at 370-389) (see Appendix at A-2 to A-21). On Counts I and II, the Court found that the District unilaterally rescinded the ITEA-MOU and IESP-MOU, but held that *Sumpter* permitted these actions. (L.F. at 385). The Court held, in accordance with the Court of Appeals' 2005 decision, that the District was entitled to judgment on Count IV (the original Count V). (L.F. at 388). Plaintiffs have appealed the judgment in favor of Defendant on Counts I, II, and IV, but they are not appealing the judgment on Count III.¹

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POINTS RELIED ON

I. The Trial Court erred in awarding Judgment for Defendant on Count IV of the Final Amended Petition, because Defendant unlawfully refused to bargain collectively with Plaintiffs ITEA, IESP, and INEA about the bargaining procedure to be used in their negotiations, and *City of Springfield v. Clouse*, 206 S.W.2d 539 (Mo. 1947), which stated that public employees have no Constitutional right to bargain collectively, was wrongly decided and should be overruled, in that Article I, Section 29 of the Missouri Constitution expressly gives public employees collective bargaining rights, and this Court's contrary conclusion in *Clouse* was based on a theory of non-delegation of legislative power that has long since been repudiated by the United States Supreme Court, most other state courts, and this Court in other contexts.

Wimberly v. Labor and Indus. Relations Comm'n, 688 S.W.2d 344 (Mo. 1985)

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ARGUMENT

Introduction

Article I, Section 29 of the Missouri Constitution declares that “employees shall have the right to organize and to bargain collectively.” It does not distinguish between public and private employees, and constitutional debate proposals to exclude public employees failed. Yet *City of Springfield v. Clouse*, 206 S.W.2d 539 (Mo. 1947), held that Article I, Section 29 does not apply to public employees. *Sumpter v. City of Moberly*, 645 S.W.2d 359 (Mo. 1982), extended *Clouse* to permit public employers to rescind legislatively approved labor agreements. The Trial Court’s holding that Defendant could refuse to bargain with all of the Plaintiff associations rests solely on *Clouse*. The Court’s holding that Defendant could rescind its labor agreements with Plaintiffs ITEA and IESP rests exclusively on *Sumpter*.

The time has come to reexamine and overrule the 60 year old anachronistic view of public sector labor relations embodied in these decisions. *Clouse*’s rationale that public employee working conditions “cannot be the subject of bargaining and contract,” 206 S.W.2d at 545, derives from a theory of non–delegation of legislative power that has long since been repudiated by the United State Supreme Court, most other states, and this Court in other contexts. *Clouse* and *Sumpter* are also at odds with the binding nature of individual public sector employment contracts in Missouri, and with the modern recognition that meaningful public sector labor relations promotes the goal of labor peace.

Standard of Review

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Standard of Review

In a bench-tried case, the appellate court will “sustain the judgment of the trial court unless there is no substantial evidence to support it, unless it is against the weight of the evidence, unless it erroneously declares the law, or unless it erroneously applies the law.” *Furlong Companies, Inc. v. City of Kansas City*, 189 S.W.3d 157, 170 (Mo. 2006) (citing *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. 1976)). This case was tried on a stipulated record and does not require appellate review of factual findings. The Trial Court rested its Judgment on Counts I, II, and IV on established decisions of this Court which Plaintiffs respectfully submit were wrongly decided (or “erroneously declared”) and should be overruled.

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I.

The Trial Court erred in awarding Judgment for Defendant on Count IV of the Final Amended Petition, because Defendant unlawfully refused to bargain collectively with Plaintiffs ITEA, IESP, and INEA about the bargaining procedure to be used in their negotiations, and *City of Springfield v. Clouse*, 206 S.W.2d 539 (Mo. 1947), which stated that public employees have no Constitutional right to bargain collectively, was wrongly decided and should be overruled, in that Article I, Section 29 of the Missouri Constitution expressly gives public employees collective bargaining rights, and this Court's contrary conclusion in *Clouse* was based on a theory of non-delegation of legislative power that has long since been repudiated by the United States Supreme Court, most other state courts, and this Court in other contexts.

Plaintiffs allege in Count IV of their Final Amended Petition (Count V of their First Amended Petition) that Defendant violated their rights under Article I, Section 29 of the Missouri Constitution to bargain collectively. The Trial Court found that Defendant refused to bargain collectively with each Plaintiff association over changes to the bargaining procedure, and imposed the Collaborative Team Policy without bargaining. (L.F. at 374, 376, 377, 384). The Trial Court also found that Defendant refused to bargain collectively with Plaintiffs ITEA and IESP by unilaterally rescinding agreed-upon negotiations procedures set forth in legislatively approved memoranda of understanding then in effect. (L.F. at 374, 376). Finally, the Court found that Defendant refused to

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bargain collectively with Plaintiff ITEA by unilaterally rescinding other provisions of the legislatively approved ITEA-MOU then in effect. (L.F. at 374). The Trial Court held that this conduct was lawful under *City of Springfield v. Clouse*, 206 S.W.2d 539, 543 (Mo. 1947).

Clouse holds that the Missouri Constitution does not afford public sector employees a right to engage in collective bargaining. *Clouse* concedes that Article I, Section 29 was modeled on the National Labor Relations Act (“NLRA”), which provides that is unlawful for an employer “to refuse to bargain collectively with the representatives of his employees” 29 U.S.C. § 158(a)(5). However, *Clouse* concludes that Article I, Section 29 does not apply to public sector employees. This holding requires reexamination and should be overruled. The doctrine of *stare decisis* “is not absolute, and the passage of time and the experience of enforcing a purportedly incorrect precedent may demonstrate a compelling case for changing course.” *Medicine Shoppe Int’l, Inc. v. Dir. of Revenue*, 156 S.W.3d 333, 334-35 (Mo. 2005).

A. Text and Constitutional Debates Compel the Conclusion that Article I, Section 29 of the Missouri Constitution Applies to Public Employees.

Multiple reasons compel the reexamination and overruling of *Clouse*. The first is this opinion’s disregard for the text and context of Article I, Section 29 of the Missouri Constitution. This provision expressly provides that, “employees shall have the right to organize and to bargain collectively through representatives of their own choosing.” On its face, it does not distinguish between private and public employees, but unambiguously

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The initial version of this section presented to the full Constitutional Convention on May 3, 1944, read, “[t]here shall be no abridgement of the right of employees to organize and bargain collectively through representatives of their own choosing.” II Debates of the Mo. Const. Conv. of 1943-44, at 1932 (hereinafter “Debates”) (See Appendix at A-26). In support of this language, Reuben Wood, President of the American Federation of Labor in Missouri, noted that the medical and legal professions

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The first proposed amendment was withdrawn and a second amendment was offered which read, “[p]rovided however that the right of collective bargaining shall not apply to the state or any sub-division or municipality thereof.” Debates, at 1969 (Appendix at A-36). Wood also successfully opposed this amendment. He observed that if the amendment passed, a representative of public employees could never again sit down and discuss employee relations with a public employer. *Id.* Wood clarified that the language he was proposing did not authorize the creation of closed shops in government. Debates, at 1970 (Appendix at A-37). All the proposed language sought to do was guarantee to public employees a process for working out differences with their employer. *Id.* The Convention defeated the proposed amendment and approved Wood’s language.

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According to *Clouse*, the defeat of the amendment providing that the section “shall not apply to the state or any sub-division or municipality thereof” indicated only a “fear that it would prevent public employees from being members of labor organizations to which many already belonged.” 206 S.W.2d at 544. This argument is unpersuasive because Article I, Sections 8 and 9 of the Missouri Constitution protect public employees’ rights “to peaceably assemble and organize for any proper purpose, to speak freely and to present their views and desires to any public officer or legislative body.” *Id.* at 542. *Clouse* also found significant the defeat of a proposal that provided “there should be no abridgment of the right of an officer or employee of the state or any political subdivision to belong to a labor organization.” *Id.* at 544. There are two more plausible explanations for the defeat of this proposal: it covered the same ground as Article I, Sections 8 and 9, and was therefore unnecessary, and it covered the same ground as the final version of Article I, Section 29, guaranteeing to all employees the right to organize and bargain

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A second reason for overruling *Clouse* is that it rests on theories of non-delegation of legislative power and separation of powers that were popular at the time but have long since been discredited. The Court in *Clouse* stated, “[i]t is a familiar principle of constitutional law that the legislature cannot delegate its legislative powers and any attempted delegation thereof is void.” 206 S.W.2d at 545. According to the *Clouse* Court, “the whole matter of qualifications, tenure, compensation and working conditions for any public service... involves the exercise of legislative powers.” *Id.* “Laws must be made by deliberation of the lawmakers,” the Court stated, “and not by bargaining with anyone outside the lawmaking body.” *Id.* The Court concluded that the negotiation of a labor agreement between city officials and public employees offended concepts of sovereignty and separation of powers that prohibit delegation of legislative authority. Accordingly, notwithstanding the express language of Article I, Section 29, the Court read into the provision an implied exclusion of public sector employees. *Id.* at 542, 545-46.

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Outside of the labor law area, the Missouri courts have similarly retreated from their earlier embrace of the non-delegation doctrine, and have approved delegations of power to administrative agencies. *See Menorah Med. Ctr. v. Health and Educ. Facilities Auth.*, 584 S.W.2d 73, 83-86 (Mo. 1979) (upholding against delegation challenge a statute creating a public authority to help nonprofit health and education institutions finance capital improvements); *ABC Sec. Serv., Inc. v. Miller*, 514 S.W.2d 521 (Mo. 1974) (rejecting delegation challenge to statute empowering police board to regulate private watchmen); *Milgram Food Stores, Inc. v. Ketchum*, 384 S.W.2d 510 (Mo. 1964) (Liquor Control Act did not unconstitutionally delegate authority to State Supervisor of Liquor

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Missouri courts, like the federal courts, will uphold a statute or ordinance “which vests discretion in administrative officials” if it “include[s] standards for their guidance.” *ABC Security Service*, 514 S.W.2d at 524. Even if a statute or ordinance lacks standards, it still will withstand a non-delegation challenge if the delegation is made to an administrative body:

- (1) where the ordinance or statute deals with situations which require the vesting of some discretion in public officials, and where it is difficult or impracticable to lay down a definite, comprehensive rule;
- (2) where the discretion relates to the administration of a police regulation and is necessary to protect the public morals, health, safety and general welfare;
- (3) where personal fitness is a factor to be taken into consideration.

Id. at 524-525 (citing *Milgram Food Stores*, 384 S.W.2d at 514). This Court’s acceptance of legislative delegations in other contexts simply cannot be squared with a conclusion that a school board cannot delegate to its administrators and individual board members the authority to negotiate with a public employee union, particularly if the board reserves the right to approve the outcome of the negotiations.

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During the past 60 years, most other states have rejected separation of powers or non-delegation challenges to public sector collective bargaining in general or binding arbitration clauses in particular. *Munic. of Anchorage v. Anchorage Police Dep't Empl. Ass'n*, 839 P.2d 1080 (Alaska 1992); *City and County of Denver v. Denver Firefighters*, 663 P.2d 1032 (Col. 1983); *W. Hartford Educ. Ass'n v. DeCourcy*, 295 A.2d 526 (Conn. 1972); *Frat. Order of Police v. Baltimore County*, 665 A.2d 1029 (Md. 1995); *Town of Arlington v. Bd. of Concil. and Arbit.*, 352 N.E.2d 914 (Mass. 1976); *City of Biddeford v. Biddeford Teachers Ass'n*, 304 A.2d 387 (Me. 1973); *City of Detroit v. Detroit Police Officers Ass'n*, 294 N.W.2d 68 (Mich. 1980), *app. disp'd*, 450 U.S. 903 (1981); *City of Richfield v. Local No. 1215*, 276 N.W.2d 42 (Minn. 1979); *City of Amsterdam v. Helsby*, 332 N.E.2d 290 (N.Y. 1975); *City of Rocky River v. State Emp. Relations Bd.*, 539 N.E.2d 103 (Ohio 1989); *Warwick v. Warwick Regular Firemen's Ass'n*, 256 A.2d 206 (R.I.

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C. Clouse Reflects an Anachronistic Distrust of Public Sector Collective Bargaining

A third reason for reexamination of *Clouse* is its anachronistic view of public sector collective bargaining. *Clouse* cited one previous Missouri decision and three other state court decisions for the broad proposition that “public office or employment never has been and cannot become a matter of bargaining and contract.” 206 S.W.2d at 545 (citing *State ex rel. Rothrum v. Darby*, 137 S.W.2d 532 (Mo. 1940); *Nutter v. City of Santa Monica*, 168 P.2d 741 (Cal. Dist. Ct. App. 1946); *Miami Water Works v. City of Miami*, 26 So.2d 194 (Fla. 1946); and *Mugford v. Mayor and City Council of Baltimore*, 44 A.2d 745 (Md. Ct. App. 1945)). Each of these decisions contained dicta reflecting a then-widespread skepticism that collective bargaining could be compatible with the proper functioning of government. *See also* Westbrook, 30 ST. L. UNIV. L.J. at 355 (see Appendix at A-66).

At the time of these 60-year old decisions, there had been little experience with the Federal Wagner Act regulating collective bargaining in the private sector and virtually no experience with collective bargaining in the public sector. The intervening years have seen a dramatic evolution in thinking about collective bargaining. The Supreme Court has acknowledged a vital state interest in utilizing exclusive bargaining as a means to

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D. In the alternative to overruling *Clouse*, this Court should reject its erroneous dicta regarding the non-delegation doctrine.

In the alternative, if this Court declines to overrule *Clouse*, the Court should still reject the *Clouse* Court's dicta regarding the non-delegation doctrine. The Court in *Clouse* could have resolved the case before it simply by holding that: 1) the governing statutes precluded the City from agreeing to specific provisions of the proposed collective bargaining agreement, and 2) Article I, Section 29 did not override the governing statutes and authorize the proposed collective bargaining agreement, because Article I, Section 29 was not intended by its framers to cover public employees. The Court should have exercised judicial restraint, *Kenney v. Wal-Mart Stores, Inc.*, 100 S.W.3d 809, 814 n.2

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The *Clouse* Court did not stop there. The case did not even present the question whether a public employer could rescind a labor agreement after approving it. Nonetheless, the Court gratuitously declared without any legal authority that, “of course, no legislature could bind itself or its successor to make or continue any legislative act.”

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II.

The Trial Court erred in awarding judgment for Defendant on Counts I and II of the Final Amended Petition, because Defendant unlawfully rescinded approved memoranda of understanding with Plaintiffs ITEA and IESP during their terms, and *Sumpter v. City of Moberly*, 645 S.W.2d 359 (Mo. 1982), which permits public employers to rescind agreements with public employees, was wrongly decided and should be overruled, in that enforcement of such agreements that have been legislatively approved is not precluded by *City of Springfield v. Clouse* or non-delegation principles, and is consistent with enforcement of analogous agreements in other contexts.

Even if *Clouse*'s interpretation of Article I, Section 29 is correct, the Supreme Court should reexamine and overrule *Sumpter v. City of Moberly*, 645 S.W.2d 359 (Mo. 1982), which the Trial Court cited as the basis for holding that Defendant's repudiation of agreements with Plaintiffs ITEA and IESP was lawful. *Sumpter* not only followed unnecessary dicta from *Clouse*, but misapplied it in a manner that conflicts with other principles of Missouri law.

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A. Sumpter misreads Clouse as prohibiting enforcement of labor agreements that have been authorized by the public employer's governing body.

Sumpter extended *Clouse* to an issue the earlier decision did not address – whether *legislatively authorized* agreements between public employers and public employee unions may be unilaterally changed or repudiated by the employer. Relying exclusively on *Clouse*, *Sumpter* held that a public employer could unilaterally change or repudiate a memorandum of understanding it authorized pursuant to the provisions of the Public Sector Labor Law, Section 105.500 R.S.Mo. *et. seq.* See, *Sumpter v. Moberly*, 645 S.W.2d at 363.

To reach this holding, *Sumpter* erroneously transplanted principles prohibiting contracting away of legislative authority to the distinguishable context of *legislatively approved* action. Legislatively authorized and approved agreements, like those at issue in this case, do not offend the delegation principle. Put simply, the legislative body's discretion has not been improperly delegated, but rather exercised in the statutory authorization of bargaining and the specific approval of a memorandum of understanding by the governing body. See *State ex rel. Missey v. Cabool*, 441 S.W.2d 35, 41 (Mo. 1969) (no unconstitutional delegation of legislative authority when “the prior discretion in the legislative body to adopt, modify or reject outright the results of ” bargaining is untouched).

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To reach this holding, *Sumpter* erroneously transplanted principles prohibiting contracting away of legislative authority to the distinguishable context of *legislatively approved* action. Legislatively authorized and approved agreements, like those at issue in this case, do not offend the delegation principle. Put simply, the legislative body's discretion has not been improperly delegated, but rather exercised in the statutory authorization of bargaining and the specific approval of a memorandum of understanding by the governing body. See *State ex rel. Missey v. Cabool*, 441 S.W.2d 35, 41 (Mo. 1969) (no unconstitutional delegation of legislative authority when “the prior discretion in the legislative body to adopt, modify or reject outright the results of ” bargaining is untouched).

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B. Sumpter is inconsistent with the General Assembly's adoption of the

Public Sector Labor Law and other jurisdictions’ recognition of the binding nature of agreements authorized by analogous “meet and confer” statutes.

The *Sumpter* holding is inconsistent with forty years of legal developments since *Clouse*. In 1965, the General Assembly enacted the Public Sector Labor Law, Sections 105.500 R.S.Mo. *et. seq.*, that *obligated* public employers to recognize and bargain with certified collective bargaining representatives selected by covered public employees, and upon completion of bargaining, present any agreement “to the appropriate administrative, legislative or other governing body in the form of an ordinance, resolution, bill or other form required for adoption, modification or rejection.” §105.520, R.S.Mo. Despite this statutory authorization for a governing body to adopt, modify, or reject a negotiated agreement, *Sumpter* held that an agreement negotiated and “adopted” under Section 105.520 could be legislatively approved one day, but then abrogated the next day on the whim of the governing body. 645 S.W.2d at 363.

Underlying this holding is an untenable construction of the legislative intent of Section 105.520. A legislative action “is presumed to have some substantive effect such that it will not be found to be a meaningless act of housekeeping.” *City of Willow Springs v. Mo. State Librarian*, 596 S.W.2d 441, 445 (Mo. 1980). *See also, Murray v. Mo. Highway & Transp. Comm’n*, 37 S.W.3d 228, 232 (Mo. 2001). Prior to the adoption of Section 105.520, public employees had a Constitutionally protected right to present their views on working conditions to their public employer. *See Clouse*, 206 S.W.2d at 542.

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In view of this non-statutory right, the question is what additional rights were created by Section 105.520.

Sumpter's answer to this question is that Chapter 105 created **no** additional substantive rights. This view reduces the enactment of Section 105.520 to a meaningless exercise as observed by Judge Seiler in his *Sumpter* dissent:

The principal opinion states the results [of bargaining] 'will be . . . an ordinance . . . or something else which governs wages and working conditions . . .' How a proposal can be adopted by ordinance which "governs" wages and working conditions and yet has no binding effect is a new and puzzling concept in the law of contracts. All the negotiations which preceded the proposal, the proposal itself, and its adoption all become an exercise in futility. I do not believe the legislature intended such a meaningless outcome of the written instrument which §105.520 permits to be presented to the governing body for adoption, once it has been adopted, as was done in this case.

645 S.W.2d at 364.

The better view is that the General Assembly intended to expand the rights of public employees by requiring enforcement of public employee union agreements authorized by Section 105.520 and approved by a governing body. This view is also the one adopted by other state supreme courts that have interpreted "meet and confer" statutes analogous to Chapter 105. *See, Hetland v. Bd. of Educ.*, 207 N.W.2d 731, 733-34

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C. *Sumpter's* refusal to enforce public employee labor agreements is inconsistent with Missouri courts' enforcement of other legislatively approved agreements.

With the exception of *Sumpter*, moreover, Missouri courts have enforced agreements that are properly authorized by public bodies. In 1969, the General Assembly enacted the Teacher Tenure Act that requires the enforcement of school board-approved employment contracts with individual teachers and administrators. §§168.104, R.S.Mo. *et seq.* Section 168.110 of the Tenure Act defines the limited circumstances under which a school district may unilaterally modify an employment contract with a tenured teacher,³ and Sections 168.114 through 168.118 define the limited circumstances

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under which such a contract may be terminated. Such provisions would be superfluous if the delegation principle permitted school districts to modify or terminate such contracts at any time and for any reason.

This Court has specifically held that tenured teacher employment contracts may not be unilaterally modified or terminated except as expressly provided in the Tenure Act. *See, Dial v. Lathrop R-II Sch. Dist.*, 871 S.W.2d 444, 450 (Mo. 1994) (board of education “may modify an indefinite contract in only two ways . . . school board does not have the option to arbitrarily alter the terms of their employment of a permanent teacher.”) There is no way to harmonize *Dial’s* holding with *Sumpter’s* view that the delegation doctrine prohibits binding contracts with public employers.

In addition to Tenure Act contracts, this Court has also held that a public school district’s agreement with a teachers’ association to follow a defined procedure for discussions about terms and conditions of employment is binding. In *Peters v. Bd. of Educ.*, 506 S.W.2d 429, 433 (Mo. 1974), this Court held enforceable such an agreement. *See, Sumpter*, 645 S.W.2d at 366, (Seiler, J. dissenting) (citing *Peters* as authority for the proposition that Chapter 105 labor agreements should also be binding). *See also, Finley*

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Missouri courts have also not applied the non-delegation doctrine to other kinds of contracts with governmental entities. They have recognized that when properly authorized, such contracts are binding. *See, e.g., Veling v. City of Kansas City*, 901 S.W.2d 119, 121 (Mo. Ct. App. 1995) (personal services contract between public agency and individual); *Bartlett v. Bi-State Development Agency*, 827 S.W.2d 267 (Mo. Ct. App. 1992) (public agency's contract with private company to provide public transportation services); *St. Louis Terminals v. City of St. Louis*, 535 S.W.2d 593 (Mo. Ct. App. 1976) (city's contract with private company to operate municipal dock).

Finally, *Sumpter* overlooks the modern recognition that public employee input into their working conditions promotes good labor relations and labor peace. *See, Finley*, 522 S.W.2d at 303 ("loss of teacher input into the school district's policy is admittedly grievous"); James T. O'Reilly, *More Magic with less Smoke: a Ten Year Retrospective on Ohio's Collective Bargaining Law*, 19 DAYTON L. REV. 1, 2 (1993) (concluding that a decade of public sector bargaining has facilitated relative labor peace) (See Appendix at A-97).

Sumpter's holding, therefore, is an anomaly that is rooted in the discredited non-delegation doctrine. It should be overruled.

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CONCLUSION

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CERTIFICATE OF COMPLIANCE WITH RULE 84.06

The undersigned certifies 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 7,949 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.

Loretta K. Haggard

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