

Summary of SC91766, *American Federation of Teachers, et al. v. Richard Ledbetter, et al.*
Appeal from the St. Louis circuit court, Judge Robert H. Dierker
Argued and submitted Nov. 3, 2011; opinion issued Nov. 20, 2012

Attorneys: The federation was represented by George O. Suggs and J. Christopher Chostner of Schuchat, Cook & Werner in St. Louis, (314) 621-2626; and Ledbetter was represented by Cindy Reeds Ormsby, Amy J. White and Darold E. Crotzer of Crotzer & Ormsby LLC of Clayton, (314) 726-3040. The Missouri Municipal League, which filed a brief as a friend of the Court, was represented by Ivan L. Schraeder and Corey L. Franklin of The Lowenbaum Partnership LLC in St. Louis, (314) 746-4823.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A teachers union appeals a circuit court's grant of summary judgment in favor of a school board in the union's challenge that the board failed to satisfy its state constitutional duty to bargain collectively with the union representatives. In a 5-1 decision written by Judge Patricia Breckenridge, the Supreme Court of Missouri reverses the judgment and remands (sends back) the case. The circuit court erred in finding that the board had no duty to meet and confer with the union and to bargain collectively in good faith. Article I, section 29 of the state constitution – which states that “employees shall have the right to organize and to bargain collectively through representatives of their own choosing” – necessarily requires the district's board to meet and confer with the union, in good faith, with the present intention to reach an agreement. The circuit court further erred in conditionally determining that the board did not bargain in good faith because it considered “good faith” only as that term is understood under federal law. The case must be remanded for adjudication of whether the board negotiated in good faith under Missouri law, including a determination of whether there are disputed issues of fact under this standard.

Judge Zel M. Fischer dissents. He would follow the plain language of article I, section 29 and would hold that this provision serves only to guarantee the right of Missouri employees to organize and to bargain collectively through representatives of their own choosing and that it does not impose any affirmative duty on employers to bargain collectively or to meet, confer and negotiate in good faith with the present intention to reach an agreement. He also finds that the principal opinion's mandate that public schools meet, confer and negotiate in good faith with the present intention to reach an agreement raises serious concerns about separation of powers principles embodied in article II, section 1 of the Missouri Constitution.

Senior Judge James R. Hartenbach, a retired circuit judge from the 21st Judicial Circuit (St. Louis County), sat in this case by special designation to fill the then-vacancy on the Court.

Facts: After receiving formal recognition as the collective bargaining representative for all teachers and other certified employees, the American Federation of Teachers St. Louis affiliate Local 420 met and conferred with the board of education of the Construction Career Center Charter School District on 18 occasions between May 2008 and April 2009 to negotiate a collective bargaining agreement. In January 2009, negotiators reached a tentative agreement for

all issues except salaries, but both parties recognized that the agreement was subject to ratification by the local union members and board members. No agreement was finalized. The board discussed the labor negotiations and the tentative agreement during closed meetings in January, February and March 2009. During the February meeting, the board unanimously rejected the tentative labor agreement and instructed its negotiators to present a revised proposal to the union. At the March meeting, the board resolved not to negotiate teacher tenure with the union and unilaterally adopted teacher salaries for the 2009-2010 academic year. The day after the March 2009 meeting, the board's representatives met with the union but failed to mention salaries for the 2009-1010 school year. During an April 2009 meeting between the board and union representatives, the board announced the teacher salaries for the 2009-2010 school year that it intended to present to teachers the next day. It ultimately agreed to extend its deadline for teachers to sign the contracts by six days to allow the union to respond to the board's decision. Four days later, the union offered a counterproposal, which the board rejected. The union then sued for declaratory judgment, asserting in part that the board failed to satisfy its duty to bargain collectively under article I, section 29 of the Missouri Constitution. The parties submitted the case to the circuit court on cross-motions for summary judgment. The court held the constitution imposes no duty on a public employer to meet and confer or to bargain in good faith with a collective bargaining representative. It further held that, if there is a duty to bargain in good faith, then the board did not bargain in "good faith" as that term is understood under federal labor law. It entered summary judgment in favor of the board. The union appeals.

REVERSED AND REMANDED.

Court en banc holds: Article I, section 29 – which states “employees shall have the right to organize and to bargain collectively through representatives of their own choosing” – necessarily requires the district’s board to meet and confer with the union, in good faith, with the present intention to reach an agreement. The circuit court erred in finding that the board had no duty to meet and confer with the union and to bargain collectively in good faith. It further erred in considering “good faith” only as that term is understood under federal law in its conditional finding that the board had not bargained in good faith. The case must be remanded for adjudication of whether the board negotiated in good faith under Missouri law, including a determination of whether there are disputed issues of fact under this standard.

Missouri’s public sector labor law, codified in section 105.500, *et seq.*, RSMo 2000, creates a procedural framework for collective bargaining for most public employees, but it expressly excludes certain professionals such as law enforcement officers and teachers. In a case specifically involving teachers, this Court held that article I, section 29 grants public employees – including excluded employees – the right to bargain collectively. *Independence National Educational Association v. Independence School District*, 223 S.W.3d 131, 136 (Mo. banc 2007). That decision noted that a public employer is not excused from meeting its duty to collectively bargain with public employees not covered by the public sector labor law because the public employer has the ability to enact any necessary framework. *Id.* Although the employer is free to reject any proposal, *id.* at 136, the right to bargain collectively still requires “negotiations between an employer and the representatives of organized employees to determine the conditions of employment,” *id.* at 138 n.6.

Unlike most states, Missouri does not have a statutorily imposed duty to bargain collectively in good faith. Because constitutional provisions have a more permanent nature, they are given a broader construction. Without an interpretation that imposes a duty to negotiate in good faith, the article I, section 29 right to bargain collectively would be nullified or redundant, which are unreasonable results. The ultimate purpose of bargaining is to reach an agreement and to result in binding contracts between unions representing employees and their employer. *Independence*, 223 S.W.3d at 137-38. If public employers were not required to negotiate in good faith, they could act with intent to thwart collective bargaining so as never to reach an agreement – frustrating the very purpose of bargaining and invalidating the right. Moreover, if the right did not include a duty for the public employer to negotiate in good faith, article I, section 29 would be reduced to the right to petition an employer for redress of grievances, which – as for government employers – already is guaranteed by the First Amendment of the federal constitution and article I, sections 8 and 9 of the state constitution. While debating the application of article I, section 29 to public employees, delegates to Missouri’s constitutional convention noted this distinction, finding that the right to bargain collectively was separate and different from the rights of petition.

Most importantly, as a technical term, “collective bargaining” always has been construed to include a duty to negotiate in good faith, even before good faith was explicitly required by statute, and there is evidence of that understanding throughout the history of collective bargaining in the United States, beginning in 1918. By the time article I, section 29 was adopted as part of Missouri’s current constitution in 1945, the words “bargain collectively” commonly were used for negotiations conducted in good faith and looking toward a collective agreement. Since then, the courts of other jurisdictions have found that collective bargaining requires good-faith negotiations. Because article I, section 29 of Missouri’s constitution imposes on employers a duty to meet and confer with collective bargaining representatives, employers also must engage in the bargaining process in good faith.

Under Missouri law, “good faith” is not an abstract concept but is a “concrete quality, descriptive of the motivating purpose of one’s act or conduct when challenged or called in question.” *Krone v. Snapout Forms Co.*, 230 S.W.2d 865, 869 (Mo. 1950). Parties act in “good faith” when they act “without simulation or pretense, innocently and in an attitude of trust and confidence” as well as when they act “honestly, openly, sincerely, without deceit, covin, or any form of fraud.” *State ex rel. West v. Diemer*, 164 S.W.517, 521 (Mo. 1914). While there is an inherent tension between the duty to bargain with a serious attempt to resolve differences and the employer’s freedom to reject any proposal, this tension serves to strike the balance intended by Missouri voters in their adoption of article I, section 29.

Dissenting opinion by Judge Fischer: (1) The author would follow the plain language of article I, section 29 and would hold that this provision serves only to guarantee the right of Missouri employees to organize and to bargain collectively through representatives of their own choosing and that it does not impose any affirmative duty on employers to bargain collectively or to meet, confer and negotiate in good faith with the present intention to reach an agreement.

(a) While a court reads a constitutional provision broadly, it cannot ascribe to it a meaning that is contrary to that clearly intended by the drafters; additionally, it should ascribe to the words the meaning the people understood them to have when the provision

was adopted. The plain language of this provision, a review of the constitutional debates from the time the provision was adopted and a review of this Court's cases do not impose an affirmative duty on employers. The purpose of article I, section 29 was to declare that collective bargaining rights were established in this state such that employees have the right to organize and function for the purpose of collective bargaining. This view that the supporters of article I, section 29 envisioned that this right would be free from legislative interference is supported by the debates over the 1945 state constitution. The principal opinion dramatically expands the clear and express language of article I, section 29 into a "labor relations act." But this Court consistently has held that article I, section 29 is not a labor relations act, specifying rights, duties, practices and obligations of employers and labor organizations, and it never before has been interpreted or construed to require any affirmative duty on the part of an employer, public or private.

(b) The principal opinion's new interpretation of article I, section 29 to require employers to meet, confer and negotiate in good faith with the present intention to reach an agreement goes beyond the plain language of the provision and imposes an affirmative duty where one never before has existed. The plain language of article I, section 29 does not require employers to negotiate at all, let alone in good faith. It does not include the words "meet and confer," nor the words "duty to negotiate," "good faith" or any other phrase imposing an affirmative duty on employers. The principal opinion relies on a number of federal laws and agency decisions in reaching its conclusion that collective bargaining always has been understood as including good-faith negotiations. There is a fundamental difference, however, between those federal acts and agency decisions and article I, section 29 of the Missouri Constitution. Further, the federal authority the principal opinion quotes was put in place by Congress to facilitate the process of collective bargaining. To facilitate bargaining, the federal government made a policy choice to require good-faith negotiations – expressed through statute or agency decisions, not judicial mandate based on a judicial philosophy. And article I, section 29 was not adopted to facilitate the process of collective bargaining. Rather, it was designed to protect from legislative or employer interference the right of employees to organize and bargain through a representative of their own choosing. Further, the longstanding understanding of article I, section 29 does not render it a nullity because it serves to protect the right to bargain collectively not previously authorized by law rather than to set out the scheme through which such bargaining should occur. It is not appropriate for this Court to ascribe a new meaning that is contrary to what was intended by the drafters and those who approved its adoption. In addition, the principal opinion's redefining of article I, section 29 now to create an affirmative duty on all employers to meet and confer with the union and to negotiate in good faith with the present intention to reach an agreement fails to consider all the practical ramifications now placed on statewide private employers, in addition to public employers.

(c) This Court's precedent demonstrates that article I, section 29 has meaning and utility – and is not rendered redundant or a nullity – without requiring any affirmative duties on employers. See *Quinn v. Buchanan*, 298 S.W.2d 417 (Mo. banc 1957). Employees in Missouri are free to organize and to choose a representative through whom to bargain. In this role, the constitutional provision protects employees' right to organize from coercion

by employers and undesired unions and from legislative interference. There is nothing in the text of article I, section 29 or this Court's prior interpretation of that provision that suggests this Court should not continue to follow *Quinn*, which was not overruled or modified in any way by this Court's holding in *Independence-National Education Association v. Independence School District*, 223 S.W.131 (Mo. banc 2007). *Independence* holds article I, section 29 protects public employees to the same extent it protects private employees. It does not hold that article I, section 29 requires employers to bargain with their employees. In reaching its conclusion, the *Independence* Court discussed three points. First, it found that extending article I, section 29 to public employees does not constitute delegation of the employer's legislative function because employers are not required to agree to any proposals made by employees and instead can reject all proposals. Second, the Court evaluated the provision's plain language, noting it does not have authority to read words into the constitution when the meaning is clear. Third, it discussed the extent of the constitutional right, finding that neither law nor cases interpreting it define "collective bargaining." Although it noted that the point of bargaining is to reach agreement, it stopped short of holding that article I, section 29 requires an employer to bargain with employees, noting instead that an employer need not agree with any employees. The language in *Independence* that the principal opinion cites in relation to the procedural frameworks for bargaining, the duty to bargain, and the need to "meet and confer" come from the *Independence* Court's discussion of the public sector labor law in chapter 105, RSMo, not article I, section 29.

(2) The author finds that the principal opinion's mandate that public schools meet, confer and negotiate in good faith with the present intention to reach an agreement raises serious concerns about separation of powers principles embodied in article II, section 1 of the Missouri Constitution. This Court's role in reviewing the constitutional validity of a legislative action traditionally has been to declare whether the action is constitutional. This function derives from the Court's duty to make final determinations about questions of law. It is the legislature's function, however, to make policy decisions or, when there are multiple answers to a question, to choose the best one. The principal opinion goes beyond its authority and arguably requires more of the school boards than is required under the public sector labor law of all other public employers. It also fails to consider existing statutory obligations imposed on public schools that may limit a school board's ability to bargain in the same fashion as private employers. It is for the local school boards to decide, as a matter of policy, if and when they desire to negotiate with the representative selected by the teachers to bargain collectively. This Court does not have the authority to mandate the creation of the procedural framework.