

**IN THE CIRCUIT COURT OF BOONE COUNTY
STATE OF MISSOURI**

COLUMBIA MISSOURI NATIONAL)	
EDUCATION ASSOCIATION,)	
)	
And)	
)	
MISSOURI NATIONAL EDUCATION)	
ASSOCIATION,)	
)	
And)	
)	
KATHY STEINHOFF, in her capacity as)	
President of COLUMBIA MISSOURI)	
NATIONAL EDUCATION ASSOCIATION)	
)	
Plaintiffs,)	No.
v.)	
)	Div.
COLUMBIA SCHOOL DISTRICT NO. 93,)	
)	
Defendant.)	

SERVE:

Columbia School District No. 93
Dr. Peter Stiepleman, Superintendent
1818 W. Worley Street
Columbia, MO 65203

PETITION FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

COME NOW Plaintiffs, by and through their attorneys, and for their Petition for Declaratory Judgment and Injunctive Relief state as follows:

PRELIMINARY STATEMENT

1. The Plaintiffs bring this action for declaratory and injunctive relief to prevent the Defendant’s threatened violation of Plaintiffs’ rights under the Missouri Constitution by

engaging in bad-faith collective bargaining in violation of Article I, Section 29 of the Constitution.

2. As explained more fully below, the Missouri Constitution guarantees all employees, including those in the public sector, the right to engage in collective bargaining with their employer through the representative of their choosing. In broad terms, that right means that public sector employees are entitled to freedom of choice in selecting a bargaining representative and that the public employer must recognize that representative and bargain in good faith over a broad array of workplace terms and conditions. In this action, however, the Defendant—a public school district—has failed satisfy this fundamental constitutional mandate. Instead, through the actions of its agents in collective bargaining, it has acted opportunistically and attempted to deprive the school districts’ employees of their chosen union representative. The Defendant’s actions threaten the Plaintiffs with irreparable harm, and must therefore be declared unlawful and enjoined.

PARTIES

3. Plaintiff Columbia Missouri National Education Association (“CMNEA”) is a voluntary unincorporated association and a “labor organization” within the meaning of Section 105.500(5), RSMo. It is headquartered in Boone County, Missouri. CMNEA represents approximately 1,445 full-time certificated instructional personnel employed by Defendant Columbia School District No. 93 (“Columbia SD”), all of whom are “public employees” within the meaning of Section 105.500(7), RSMo. Plaintiff CMNEA brings suit on behalf of its members, and on its own behalf. The members of the CMNEA would have standing to sue in their own right; the interests that the Plaintiff CMNEA seeks to protect are germane to its purposes; and neither the claims asserted, nor the relief requested requires the participation of

CMNEA's individual members. *See, e.g., E. Mo. Coal. of Police v. City of Chesterfield*, 386 S.W.3d 755, 759 (Mo. 2012).

4. Plaintiff Missouri National Education Association ("Missouri NEA"), a Missouri not-for-profit corporation, is a state-wide organization affiliated with the National Education Association, and is headquartered in Jefferson City, in Cole County, Missouri. Missouri NEA is a "labor organization" within the meaning of section 105.500(5), RSMo., which provides services to approximately 32,500 educators, administrators, and other persons working in public K-12 education and higher education throughout the State, all of whom are "public employees" within the meaning of section 105.500(7), RSMo. The members of Missouri NEA belong to 208 local affiliates, some of which—including Plaintiff CMNEA—are party to collective bargaining agreements with public employers that are "public bodies" within the meaning of section 105.500.6, RSMo. Plaintiff Missouri NEA brings suit on behalf of its members, and on its own behalf. The members of the Missouri NEA employed by Defendant Columbia SD would have standing to sue in their own right; the interests that the Plaintiff Missouri NEA seeks to protect are germane to its purposes; and neither the claims asserted, nor the relief requested requires the participation of Missouri NEA's individual members. *See, e.g., City of Chesterfield*, 386 S.W.3d at 759.

5. Plaintiff Kathy Steinhoff is the President of CMNEA, and brings suit in that capacity. She is a resident of Boone County, Missouri, and is employed as a teacher with Columbia SD.

6. Defendant Columbia SD is a public school district organized under Missouri law and located in Boone County, Missouri. It is a "public body" within the meaning of Section 105.500(6), RSMo.

JURISDICTION AND VENUE

7. The Court has jurisdiction over this action pursuant to section 527.010, RSMo.

8. Venue is proper in this Court pursuant to section 508.010.2(2) and 508.050, RSMo., because Defendant School District is located in Boone County, Missouri

FACTS

A. The Missouri Bill of Rights Guarantees All Employees The Right to Organize and Bargain Collectively

9. Article I, Section 29 of the Missouri Constitution guarantees every employee in the State “the right to organize and bargain collectively” and to do so “through representatives of their own choosing.” These terms must be given their accepted meaning as of the time they became part of the Constitution in 1945. *See Am. Fed’n of Teachers v. Ledbetter*, 387 S.W.3d 360, 366 (Mo. 2012). It is well established that these constitutional protections for collective bargaining extend to all employees, regardless of whether they work in the private or the public sector. *Independence-NEA v. Independence Sch. Dist.*, 223 S.W.3d 131 (Mo. 2007).

10. The constitutional right to organize and bargain “through representatives of their own choosing,” guarantees employees the freedom of choice in the selection of a bargaining representative. It also entails a corresponding duty on the part of public-sector employers to bargain in good faith with its employees’ chosen representative. *Ledbetter*, 387 S.W.3d at 364-68. That duty to bargain requires a public employer to make “a serious attempt to resolve differences” through collective bargaining with its employees’ representative, *id.* at 367, and to “match [the union’s] proposals, if unacceptable, with counter-proposals,” *id.* at 366 (quoting *NLRB v. American Nat’l Ins. Co.*, 343 U.S. 395, 402 (1951)). And an employer violates its duty to engage in good-faith bargaining by withdrawing recognition from a union that continues to enjoy the employees’ support, *see Blue Valley Mach. & Mfg. Co. v. NLRB*, 436 F.2d 649, 650

(8th Cir. 1971), or by insisting that an agreement include provisions that are cannot legally be satisfied, *see NLRB v. BASF Wyandotte Corp.*, 798 F.2d 849, 854 (5th Cir. 1986).

11. Although the right to collective bargaining is secured by the Constitution, the Legislature and other public entities may establish procedures for the exercise of that right. *Independence-NEA*, 223 S.W.3d at 136. Those procedures, however, must “satisfy the constitutional requirements” of Art. I, Sec. 29, *City of Chesterfield*, 386 S.W.3d at 760.

12. Prior to August 28, 2018, the State’s public-sector labor law, chapter 105, Title 108, RSMo., provided those “procedures” for many public employees, but did not cover teachers in Missouri school districts like Columbia SD. *See* section 105.510, RSMo. (2017). Nevertheless, those employees and their chosen union representatives enjoyed—and continue to enjoy—all of the rights guaranteed under Art. I, Sec. 29, *see Independence-NEA*, 223 S.W.3d at 136, and frequently organize and bargain collectively under local ordinances or policies that satisfy constitutional standards.

B. For Several Years Prior to 2018, Defendant Columbia SD Recognized and Bargained with Plaintiff CMNEA as the Exclusive Representative of its Certificated Instructional Personnel

13. Pursuant to a process adopted by Defendant Columbia SD, CMNEA became the exclusive bargaining representative for a group — or “bargaining unit” — of employees consisting of certificated instructional personnel that includes classroom teachers, career center teachers, academic counselors, speech and language pathologists, librarian/media specialists, and clinical associates. Defendant Columbia SD certified CMNEA’s status as the exclusive representative of this bargaining unit following an election conducted by the League of Women Voters on October 11, 2012.

14. Since that initial certification, Plaintiff CMNEA and Defendant Columbia SD have negotiated a series of collective bargaining agreements that set various terms and conditions of employment for the personnel in the bargaining unit. The most recent of these agreements became effective July 1, 2018 and expires on June 30, 2019. That agreement recognizes CMNEA as the exclusive representative of Defendant Columbia SD's certificated instructional personnel based on the results of the 2012 election referenced in the preceding paragraph.¹

C. The Legislature Enacts Sweeping Changes to Public Sector Collective Bargaining in House Bill No. 1413, and the Implementation and Enforcement of Those Changes by State Authorities is Quickly Enjoined by a Circuit Court in St. Louis County

15. On June 1, 2018, then-Governor Eric Greitens signed into law legislation known as House Bill 1413 (HB 1413). This legislation, which initially became effective on August 28, 2018, purported to make drastic changes to the State's laws concerning public-sector collective bargaining. For many public-sector unions and the employees they represent, it sought to alter how those unions are selected and retained, to restrict the scope and conduct of collective bargaining, to impose various restrictions on speech activities, and to create broad new enforcement mechanisms.

16. Unlike the State's public-sector labor law that preceded it, HB 1413 purports to regulate public-sector labor relation between teachers, their chosen unions, and public school districts. A "public employee" for purposes of HB 1413 is "any person employed by a public body." Section 105.500(7), RSMo. A "public body," in turn, includes "the state of Missouri, or any officer, agency, department, bureau, division, board or commission of the state, or any other political subdivision or special district of or within the state." Section 105.500(6), RSMo. And a

¹ A true copy of the 2018-2019 Agreement between Plaintiff CMNEA and Defendant Columbia SD is attached to this Petition as Exhibit 1.

“labor organization” for purposes of HB 1413 includes any organization “in which public employees participate and that exists for the purpose of . . . dealing with a public body or bodies concerning collective bargaining, grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.” Section 105.500(5), RSMo.

17. Certain entities, however, are completely exempt from HB 1413’s requirements. Most significantly, the provisions of HB 1413 “shall not apply” to “[p]ublic safety labor organizations and all employees of a public body who are members of a public safety labor organization.” Section 105.503.2(1), RSMo. A “public safety labor organization” is an organization “wholly or primarily representing persons trained or authorized by law or rule to render emergency medical assistance or treatment, including, but not limited to, firefighters, ambulance attendants, attendant drivers, emergency medical technicians, emergency medical technician paramedics, dispatchers, registered nurses and physicians, and persons who are vested with the power of arrest for criminal code violations including, but not limited to police officers, sheriffs, and deputy sheriffs.” Section 105.500(8), RSMo.

18. HB 1413 significantly purports to alter the way in which non-public safety labor organizations like Plaintiff CMNEA can be selected and retained as a bargaining representative for employees of a public body like Defendant Columbia SD. In particular, HB 1413 provides that a non-public safety labor organization cannot continue to be recognized as the exclusive representative of a public body’s employees without first prevailing in an election to obtain exclusive bargaining representative status. Section 105.575.1–8, RSMo. Once a non-public safety organization is initially certified as the exclusive representative, HB 1413 provides that it must also stand for a recertification election every three years. Section 105.575.12, RSMo. In both the initial certification election and recertification election, a non-public safety organization

prevails only by receiving a majority of votes from the entire unit of employees—not just the votes cast. In other words, non-votes are treated as “no” votes against the proposed representative.

19. According to HB 1413, both the initial certification and recertification elections can *only* be administered by the State Board of Mediation. *Id.* HB 1413 does not authorize any other entity to conduct these elections.

20. HB 1413’s election requirements depart from pre-existing law in significant ways.² Prior to HB 1413, a school district was free to bargain with a union that it recognized as the exclusive representative of its employees based on an election conducted under the traditional standard of a majority of the votes cast or based on any other credible showing of majority support for the union by the employees. And the school district was free to continue recognizing the union as the exclusive representative of its employees unless and until it was removed by a vote initiated by the represented employees.

21. HB 1413’s election requirements are inconsistent with the protections of the Missouri Constitution for public employees to engage in collective bargaining “through representatives of their own choosing.” Mo. Const. art. I, § 29. At the time Article I, Section 29 became part of the Constitution, it was well understood that “[f]reedom of choice” in the selection of a union representative is “the essence of collective bargaining.” *Machinists Lodge No. 35 v. NLRB*, 311 U.S. 72, 79 (1940). In 1945, employees exercised that freedom of choice by

² Because public safety labor organizations are completely exempt from HB 1413’s requirements, they are not subject to its restrictions on their selection or retention as a bargaining representative. For employees who are represented or seek to be represented by a public safety labor organization, their union can be voluntarily recognized, can be selected in an election under the traditional standard of a majority of the votes cast, and can remain as the exclusive representative unless and until removed by a decertification vote initiated by the represented employees.

acquiring recognition of an exclusive representative through (i) an election under the traditional standard of a majority of the votes cast or (ii) the employer's voluntary recognition of the based on a credible showing of majority support by the employees. *See, e.g., Wallace Corp. v. NLRB*, 323 U.S. 248, 251 & n.1 (1944); *W. Union Tel. Co.*, 50 NLRB 729 (1943). And those employees retained the union as exclusive representative unless and until removed by a decertification vote initiated by the represented employees. *See, e.g., Union Colonial Life Ins. Co.*, 65 NLRB 58 (1945).

22. Because HB 1413's election requirements—along with many of its other provisions—violate the Missouri Constitution, Plaintiff Missouri NEA and several other public-sector labor organizations sued in the Circuit Court of St. Louis County to have HB 1413 enjoined in its entirety. The defendants named in the St. Louis County action included the State Board of Mediation, which, again, is the sole entity authorized administer the initial and recertification elections required by HB 1413.

23. The St. Louis County action is based primarily on claims that HB 1413's various burdens and restrictions—along with its pervasive provisions that discriminate in favor of public safety labor organizations, *see* Paragraph 17, *supra*—violate the rights of the public sector unions and their members under the Article I, Section 29 of Missouri Constitution to organize and bargain collectively; their rights under Article I, Sections 8 and 9 to free speech, association, and petition; and their rights under Article I, Section 2 to equal protection of the law. On the basis of these claims, the plaintiffs in the St. Louis County action moved for a preliminary injunction preventing the administration and enforcement of any part of HB 1413 during the pendency of the lawsuit.

24. On March 8, 2019, Circuit Judge Joseph Walsh granted the plaintiffs' motion for preliminary injunction in the St. Louis County action.³ Judge Walsh agreed that the plaintiffs in the action were likely to prevail in showing that HB 1413 violates their rights to collective bargaining, free speech and association, and equal protection under the Missouri Constitution. Judge Walsh also agreed that the plaintiffs to the action faced irreparable harm, that the unconstitutional provisions of HB 1413 could not be severed, and that the law therefore must be enjoined in its entirety.

25. As a result of Judge Walsh's order, the State Board of Mediation will remain enjoined from administering or enforcing any part of HB 1413 — including the requirement to conduct initial and recertification elections — for at least the pendency of the St. Louis County action.

26. Following the issuance of Judge Walsh's injunction, many public employers that were not defendants to the original St. Louis County action have recognized that HB 1413 cannot be meaningfully implemented while the State Board of Mediation remains enjoined from administering or enforcing the law and, as a result, have conducted and are continuing to conduct their labor relations under pre-HB 1413 standard until the St. Louis County action is ultimately resolved.

³ A copy of Judge Walsh's decision and order preliminarily enjoining HB 1413 is attached to this petition as Exhibit 2.

D. Notwithstanding the Injunction, Defendant Columbia SD Insists that Plaintiff CMNEA Obtain an Election that the State Board of Mediation is Legally Prohibited from Conducting, and Threatens to Revoke Plaintiff CMNEA's Settled Status as Collective-Bargaining Representative Unless the State Board of Mediation Violates the Injunction

27. Defendant Columbia SD, however, has undertaken a course of conduct that is inconsistent with Judge Walsh's injunction, demonstrates bad faith bargaining, and ensures that the Plaintiffs will be deprived of the constitutional rights under Article I, Section 29.

28. As noted above, the current collective bargaining agreement between Plaintiff CMNEA and Defendant Columbia SD expires on June 30, 2019. That agreement recognizes CMNEA as the exclusive representative of the certificated instructional personnel based on the results of the 2012 election referenced in Paragraph 13.

29. In February of 2019—that is, after the St. Louis County action was filed but before Judge Walsh issued the preliminary injunction—Plaintiff CMNEA and Defendant Columbia SD began negotiations for a collective-bargaining agreement for the 2019-2020 school year.

30. At the beginning of those negotiations, Defendant Columbia SD insisted through its agents for the negotiations that any new collective bargaining agreement for the 2019-2020 school year must include a provision stating that “In the event CMNEA is not certified as the exclusive bargaining representative of the [bargaining] unit by the State Board of Mediation on or before June 30, 2019, th[e] Agreement will be void and neither party will continue to be bound by its terms.” Defendant's agents indicated at the time that such a provision was needed to comply with the requirements of HB 1413.

31. Defendant Columbia SD's insistence on this provision has continued even after the issuance of Judge Walsh's injunction prohibiting the State Board of Mediation from conducting such a certification election under HB 1413. Indeed, as recently as a bargaining

session conducted on April 11, 2019, Defendant's chief negotiator, Duane Martin, declared that CMNEA's failure to accede to the Defendant's proposed language was a "deal breaker." Martin also further stated that, because the parties were at an "impasse" over the provision, the parties' collective bargaining agreement would expire and CMNEA would lose its exclusive bargaining representative status on June 30, 2019.

32. In other words, Defendant has insisted in bargaining on a provision that it knows to be legally impossible to satisfy. It has insisted further that, if this legally-impossible demand is not met, the collective-bargaining agreement will expire on the very day a tentative agreement on all other terms is meant to go into effect. And it has insisted even further that it will end recognition of the Plaintiff CMNEA's status as the chosen bargaining representative for Defendant Columbia SD's certificated instructional employees, with no hope of resuming that relationship because Plaintiff CMNEA cannot obtain an election from the State Board of Mediation without it directly violating Judge Walsh's injunction.

33. Defendant has resisted every attempt Plaintiff CMNEA has offered to negotiate an agreement that respects Judge Walsh's injunction and does not require CMNEA to seek an election that the State Board of Mediation is prohibited from providing by court order.

34. Defendant's actions threaten Plaintiff CMNEA and its members with immediate and irreparable harm in the form of a loss of their rights to right to "organize and bargain collectively through representatives of their own choosing." Mo. Const. art. I, § 29.

**COUNT ONE: Bad Faith Bargaining in Violation of
Article I, Section 29 of the Missouri Constitution of 1945**

35. Plaintiffs incorporate and re-allege each and every allegation contained in the foregoing paragraphs of the Complaint, as though fully set forth herein.

36. Article I, Section 29 of the Missouri Constitution guarantees every employee “the right to organize and bargain collectively” and to do so “through representatives of their own choosing.” The Constitution therefore guarantees employees the freedom of choice in the selection of a bargaining representative, and it creates a corresponding duty on the part of public-sector employers to bargain in good faith with its employees’ chosen representative. *Ledbetter*, 387 S.W.3d at 364-68.

37. The constitutional nature of this guarantee means that it cannot be overridden by statute.

38. The duty to bargain in good faith created by Article I, Section 29 requires a public employer to make “a serious attempt to resolve differences” through collective bargaining with its employees’ representative, *Ledbetter*, 387 S.W.3d at 367, and to “match [the union’s] proposals, if unacceptable, with counter-proposals,” *id.* at 366 (quoting *American Nat’l Ins. Co.*, 343 U.S. at 402).

39. An employer violates its duty to engage in good-faith bargaining under Article I, Section 29 by withdrawing recognition from a union that continues to enjoy the employees’ support, *see Blue Valley Mach. & Mfg. Co.*, 436 F.2d at 650, or by insisting that an agreement include provisions that are cannot legally be satisfied, *see BASF Wyandotte Corp.*, 798 F.2d at 854.

40. By insisting as a precondition to agreement that Plaintiff CMNEA obtain a certification election that the State Board of Mediation is prohibited by court order from administering, Defendant Columbia SD has violated the duty under Article I, Section 29 to engage in good-faith bargaining.

41. By threatening to withdraw recognition from Plaintiff CMNEA as its employees' chosen representative, Defendant Columbia SD has also violated the duty under Article I, Section 29 to engage in good-faith bargaining.

42. Plaintiffs will be irreparably harmed if Defendant's bad-faith bargaining is not enjoined. The deprivation of these core constitutional rights, even momentarily, is an irreparable injury. Moreover, Plaintiffs will have no adequate remedy at law to compensate for the infringement of their constitutional rights.

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Award Plaintiffs such preliminary injunctive and ancillary relief against Defendant, its officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them as may be necessary to avert irreparable injury during the pendency of this action and to preserve the possibility of effective final relief;

B. Enter a preliminary injunction preventing any public school district employer from conditioning collective bargaining on compliance with Section 105.575, RSMo. while the State Board of Mediation is enjoined from enforcing it;

C. Enter judgment declaring that Defendant, by its actions referenced in Paragraphs 30 through 34, has engaged in bad-faith bargaining in violation of Article I, Section 29 of the Missouri Constitution;

D. Enter a permanent injunction preventing Defendant, its officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them from engaging in bad-faith bargaining by insisting as a precondition to agreement that Plaintiff CMNEA obtain a certification election that the State Board of Mediation is prohibited by court

order from administering, or by threatening to withdraw recognition from Plaintiff CMNEA as the chosen representative of Defendant Columbia SD's certificated instructional personnel;

E. Enter a permanent injunction preventing any public school district employer from conditioning collective bargaining on compliance with Section 105.575, RSMo. while the State Board of Mediation is enjoined from enforcing it;

F. Award Plaintiffs' costs incurred herein; and

G. Grant such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

SCHUCHAT, COOK & WERNER

/s/ Sally E. Barker
Sally E. Barker (M.B.E. #26069)
Loretta K. Haggard (M.B.E. #38737)
1221 Locust Street, Second Floor
St. Louis, MO 63103
(314) 621-2626
FAX: (314) 621-2378
Emails: seb@schuchatew.com
lkh@schuchatew.com

NATIONAL EDUCATION ASSOCIATION

/s/ Jason Walta
Jason Walta (District of Columbia #479522)
1201 16th Street, NW
Washington, DC 20036-3290
(202) 822-7035
Email: JWalta@nea.org
Pro Hac Vice Motion pending

Attorneys for Plaintiffs