

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1644
AN ACT

To repeal sections 105.510 and 290.500, RSMo, and to enact in lieu thereof four new sections relating to the employer-employee relationship.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 105.510 and 290.500, RSMo, are
2 repealed and four new sections enacted in lieu thereof, to be
3 known as sections 105.510, 105.515, 285.075, and 290.500, to
4 read as follows:

105.510. Employees, except [police,] deputy sheriffs,
2 Missouri state highway patrolmen, Missouri National Guard,
3 all teachers of all Missouri schools, colleges and
4 universities, of any public body shall have the right to
5 form and join labor organizations and to present proposals
6 to any public body relative to salaries and other conditions
7 of employment through the representative of their own
8 choosing. No such employee shall be discharged or
9 discriminated against because of his exercise of such right,
10 nor shall any person or group of persons, directly or
11 indirectly, by intimidation or coercion, compel or attempt
12 to compel any such employee to join or refrain from joining
13 a labor organization, except that the above excepted
14 employees have the right to form benevolent, social, or
15 fraternal associations. Membership in such associations may
16 not be restricted on the basis of race, creed, color,
17 religion or ancestry.

105.515. 1. For purposes of this section, the term
2 "first responder" means any firefighter, emergency medical
3 technician, 911 dispatcher, police dispatcher, and police
4 officer.

5 2. Within thirty days after a labor organization has
6 been designated as the exclusive bargaining representative
7 for the first responders in a bargaining unit,
8 representatives of the public body, designated by the public
9 body, and representatives of the labor organization,
10 selected by the labor organization, shall meet and begin
11 bargaining in good faith for an agreement covering the
12 wages, benefits, and other terms and conditions of
13 employment for the first responders within the bargaining
14 unit.

15 3. The labor organization and the public body shall
16 engage in good faith bargaining with each other's designated
17 representatives.

18 4. (1) In the event that an agreement cannot be
19 reached within one hundred eighty days after a labor
20 organization is designated as the exclusive bargaining
21 representative for the first responders in a bargaining
22 unit, the dispute shall be referred to mediation pursuant to
23 this subsection.

24 (2) Within fourteen days after the period in
25 subdivision (1) of this subsection has expired, the parties
26 shall mutually agree on a neutral mediator selected from a
27 panel of neutrals from the United States District Court of
28 either the Western or Eastern District of Missouri. If the
29 parties cannot agree on a neutral mediator within fourteen
30 days, the matter shall be referred to the board and the
31 board shall assign a mediator.

32 (3) If, after the dispute has been referred to a
33 mediator, whether the neutral mediator or the state board of

34 mediation, the dispute has not been resolved within ninety
35 days, the dispute shall be referred to arbitration through
36 an arbitrator as selected pursuant to subsection 5 of this
37 section.

38 (4) Upon mutual agreement of the parties, the
39 obligation to submit the matter to mediation pursuant to
40 this subsection may be waived and the matter may be
41 immediately submitted to interest arbitration in accordance
42 with subsection 5 of this section.

43 5. (1) At any time during the bargaining process, if
44 either the labor organization or the public body determines
45 an impasse has been reached over wages, benefits, hours, or
46 other terms and conditions of employment, the party may
47 submit the matter to interest arbitration.

48 (2) If the parties agree that an impasse has been
49 reached, within seven days of such decision, the public body
50 and labor organization shall attempt to agree upon an
51 impartial arbitrator to resolve the impasse.

52 (3) If an arbitrator cannot be agreed upon within such
53 time period, the party that made the initial determination
54 of impasse or, if agreement was not reached and mediation
55 was unsuccessful or waived, the labor organization, shall
56 request a panel of seven arbitrators from the Federal
57 Mediation and Conciliation Service (FMCS) or, if the FMCS
58 cannot produce a panel of seven arbitrators, the American
59 Arbitration Association (AAA). The parties shall alternate
60 striking from the panel one arbitrator at a time until a
61 single arbitrator is left, with the party that requested the
62 panel striking first. The party striking first shall have
63 an affirmative duty to notify the board that the matter has
64 been referred to interest arbitration pursuant to this
65 subsection.

66 (4) Once an arbitrator has been selected pursuant to
67 subdivision (2) or (3) of this subsection, the parties shall
68 proceed to resolve whether the matter will be presented to
69 the arbitrator as a total package, issue by issue, or a
70 combination of both. If the parties fail to agree upon a
71 method of presentation to the arbitrator, a prehearing
72 conference shall be held at which each party shall present
73 its position to the arbitrator and the arbitrator shall then
74 determine the method of presentation. If the parties cannot
75 mutually agree upon a date to present their respective
76 arguments, the arbitrator shall set a hearing date at which
77 the labor organization and public body shall each be
78 afforded the opportunity to present its respective case,
79 including a presentation of evidence, data, and testimony,
80 in support of its proposal. The arbitrator shall consider
81 the evidence and render a decision within forty-five days.
82 If the parties do not agree an impasse has been reached, in
83 a singular hearing, the arbitrator shall hear both the
84 procedural and substantive arguments of the parties. Before
85 the arbitrator can render a decision on the parties'
86 substantive arguments, the arbitrator shall first determine
87 whether an impasse has been reached. The decision of the
88 arbitrator shall be binding upon the parties, provided that
89 any provision that would require the enactment of law for
90 its implementation shall not be binding until such time as
91 the law is enacted.

92 (5) All proceedings before the board and the
93 arbitrator shall be recorded with a written transcript being
94 available to each party. The costs of the arbitrator and
95 court reporter shall be borne by both parties equally. Any
96 attorney's fees accrued by any party shall be the
97 responsibility of the party accruing the same.

98 6. For all successor collective bargaining agreements,
99 if at any time during the bargaining process either the
100 labor organization or the public body determines an impasse
101 has been reached over wages, benefits, hours, or other terms
102 and conditions of employment or a successor agreement is not
103 achieved within one hundred eighty days after the expiration
104 of the predecessor collective bargaining agreement, either
105 party may submit the matter to interest arbitration in
106 accordance with subdivision (1) of subsection 5 of this
107 section. Upon submission to interest arbitration, the
108 arbitrator shall be selected and the matter shall be handled
109 pursuant to subdivisions (2), (3), and (4) of subsection 5
110 of this section.

111 7. For purposes of this section, the term "good faith"
112 includes, but is not limited to, approaching negotiations
113 with a sincere intention to reach an agreement, meeting at
114 reasonable times, dealing with the respective parties in an
115 honest and open manner, and matching unacceptable proposals
116 with sincere counter-proposals with the sincere intent to
117 reach an agreement. Acting in good faith includes more than
118 a perfunctory performance of an obligation to meet and
119 confer with the requisite parties.

120 8. If, at any time during the bargaining process for
121 an initial contract as set forth in subsections 2 and 4 of
122 this section or for successor contracts as set forth in
123 subsection 6 of this section, either the labor organization
124 or public body believes the opposing party has engaged in
125 bad faith bargaining in violation of subsection 3 of this
126 section, it may submit the matter to the board for
127 determination. If the board determines a party has engaged
128 in bad faith bargaining in violation of subsection 3 of this
129 section, it shall refer the matter to interest arbitration

130 in accordance with the provisions of subdivisions (3) to (5)
131 of subsection 5 of this section.

132 9. At no time after a labor organization has been
133 designated as the exclusive bargaining representative for
134 the first responders in a bargaining unit, or after an
135 agreement covering the wages, benefits, and other terms and
136 conditions of employment for first responders within a
137 bargaining unit has expired, shall the public body make any
138 unilateral changes to wages, benefits, or other terms and
139 conditions of employment subject to mandatory bargaining.
140 Any such unilateral changes shall be considered a failure to
141 bargain in good faith. If the labor organization believes
142 that the public body has made unilateral changes to wages,
143 benefits, or other terms and conditions of employment
144 subject to mandatory bargaining, the labor organization may
145 seek declaratory relief, injunctive relief, and monetary
146 damages arising from the unlawful unilateral change in an
147 appropriate state or federal court.

2 285.075. 1. Notwithstanding any voluntary agreement
3 entered into between the United States Department of Labor
4 and a franchisee or a franchisor, neither a franchisee nor a
5 franchisee's employee shall be deemed to be an employee of
6 the franchisor for any purpose, unless the franchisor
7 exercises direct and immediate control over the hiring,
8 termination, discipline, and direction of the franchisee's
9 employees.

10 2. For purposes of this section, the terms
11 "franchisee" and "franchisor" have the same meaning as in 16
12 CFR 436.1.

13 3. Notwithstanding any other provision of law to the
14 contrary, this section shall not be construed to affect
15 employee or employer status under Article I, Section 29, of
the Missouri Constitution or the National Labor Relations

16 Act, 29 U.S.C. Section 151, et. seq., or its successor
17 provisions.

209.500. As used in sections 290.500 to 290.530, the
2 following words and phrases mean:

3 (1) "Agriculture", farming and all its branches
4 including, but not limited to, the cultivation and tillage
5 of the soil, dairying, the production, cultivation, growing
6 and harvesting of any agricultural commodities, the raising
7 of livestock, fish and other marine life, bees, fur-bearing
8 animals or poultry and any practices performed by a farmer
9 or on a farm as an incident to or in conjunction with
10 farming operations, including preparation for market,
11 delivery to storage or to market or to carriers for
12 transportation to market;

13 (2) "Director", the director of the department of
14 labor and industrial relations or his authorized
15 representative;

16 (3) "Employee", any individual employed by an
17 employer, except that the term "employee" shall not include:

18 (a) Any individual employed in a bona fide executive,
19 administrative, or professional capacity;

20 (b) Any individual engaged in the activities of an
21 educational, charitable, religious, or nonprofit
22 organization where the employer-employee relationship does
23 not, in fact, exist or where the services rendered to the
24 organization are on a voluntary basis;

25 (c) Any individual standing in loco parentis to foster
26 children in their care;

27 (d) Any individual employed for less than four months
28 in any year in a resident or day camp for children or youth,
29 or any individual employed by an educational conference
30 center operated by an educational, charitable or not-for-
31 profit organization;

32 (e) Any individual engaged in the activities of an
33 educational organization where employment by the
34 organization is in lieu of the requirement that the
35 individual pay the cost of tuition, housing or other
36 educational fees of the organization or where earnings of
37 the individual employed by the organization are credited
38 toward the payment of the cost of tuition, housing or other
39 educational fees of the organization;

40 (f) Any individual employed on or about a private
41 residence on an occasional basis for six hours or less on
42 each occasion;

43 (g) Any handicapped person employed in a sheltered
44 workshop, certified by the department of elementary and
45 secondary education;

46 (h) Any person employed on a casual basis to provide
47 baby-sitting services;

48 (i) Any individual employed by an employer subject to
49 the provisions of part A of subtitle IV of title 49, United
50 States Code, 49 U.S.C. §§ 10101 et seq.;

51 (j) Any individual employed on a casual or
52 intermittent basis as a golf caddy, newsboy, or in a similar
53 occupation;

54 (k) Any individual whose earnings are derived in whole
55 or in part from sales commissions and whose hours and places
56 of employment are not substantially controlled by the
57 employer;

58 (l) Any individual who is employed in any government
59 position defined in 29 U.S.C. §§ 203(e)(2)(C)(i)-(ii);

60 (m) Any individual employed by a retail or service
61 business whose annual gross volume sales made or business
62 done is less than five hundred thousand dollars;

63 (n) Any individual who is an offender, as defined in
64 section 217.010, who is incarcerated in any correctional

65 facility operated by the department of corrections,
66 including offenders who provide labor or services on the
67 grounds of such correctional facility pursuant to section
68 217.550;

69 (o) Any individual described by the provisions of
70 section 29 U.S.C. 213(a) (8);

71 (p) Any individual who has entered into a contract to
72 play baseball at the minor league level and who is
73 compensated pursuant to the terms of a collective bargaining
74 agreement that expressly provides for wages and working
75 conditions;

76 (4) "Employer", any person acting directly or
77 indirectly in the interest of an employer in relation to an
78 employee;

79 (5) "Learner and apprentice", any individual under 20
80 years of age who has not completed the required training for
81 a particular job. In no event shall the individual be
82 deemed a learner or apprentice in the occupation after three
83 months of training except where the director finds, after
84 investigation, that for the particular occupation a minimum
85 of proficiency cannot be acquired in three months. In no
86 case shall a person be declared to be a learner or
87 apprentice after six months of training for a particular
88 employer or job. Employees of an amusement or recreation
89 business that meets the criteria set out in 29 U.S.C. §
90 213(a) (3) may be deemed a learner or apprentice for ninety
91 working days. No individual shall be deemed a learner or
92 apprentice solely for the purpose of evading the provisions
93 of sections 290.500 to 290.530;

94 (6) "Occupation", any occupation, service, trade,
95 business, industry, or branch or group of industries or
96 employment or class of employment in which individuals are
97 gainfully employed;

98 (7) "Wage", compensation due to an employee by reason
99 of his employment, payable in legal tender of the United
100 States or checks on banks convertible into cash on demand at
101 full face value;

102 (8) "Person", any individual, partnership,
103 association, corporation, business, business trust, legal
104 representative, or any organized group of persons;

105 (9) "Man-day", any day during which an employee
106 performs any agricultural labor for not less than one hour.