

JUN 29 2001

**EXECUTIVE ORDER  
01-09**  
SECRETARY OF STATE

WHEREAS, on the 7<sup>th</sup> day of April, 1998, Governor Carnahan issued a Memorandum pertaining to Unions representing State Employees; and

WHEREAS, on June 19, 2000, Governor Carnahan issued a Memorandum entitled "Addendum to Memorandum on Policies Relating to Unions Representing State Employees" issued on April 7, 1998; and

WHEREAS, I intend to incorporate and build upon the basic concepts of those Memoranda; and

WHEREAS, qualified and well-trained employees are vital to reducing the cost of government, improving its effectiveness and efficiency and achieving the goals of the State; and

WHEREAS, this Administration continues to be committed to the well-being of public employees of the State of Missouri and in continuing and improving good and meaningful relations with the unions that represent them; and

WHEREAS, this Administration continues to be committed to the establishment of a good-faith negotiation framework for the resolution of issues pertaining to all terms and conditions of employment;

NOW THEREFORE, I, BOB HOLDEN, Governor of the State of Missouri, by virtue of the authority vested in me by the Constitution and laws of the State of Missouri, do hereby order by virtue of this Executive Order as follows:

1. State departments and agencies within the Executive Branch and Certified Bargaining Representatives are expected to act in "good faith" when they meet and confer with each other. This requires both the certified bargaining representative and the State Department or Agency to approach negotiations with a sincere resolve to reach an agreement, requires both sides to meet at reasonable times and places to exchange information and to reduce to writing any item that is agreed to by both parties and requires both parties during the meet and confer process and at impasse on any issue involved in negotiation in a Memorandum of Understanding to adhere to the rules of the process contained herein. This Executive Order applies only to those State departments and agencies under the direct control of the Governor.

2. If, after sixty (60) days following the first meet and confer session between the parties in negotiations toward a Memorandum of Understanding, the parties have issues that are unresolved, then either party, through its representative, may, by written notification to the other party, notify said party of which issue or issues remain outstanding and of the notifying party's desire to proceed to impasse negotiation over said issues. The impasse negotiation procedure which State Departments and Agencies shall agree to shall consist of the following:

(a) Assistance by an impartial third party agreed to by both sides to reconcile all impasse issues and, if the parties cannot agree on a third party, then either party may, by written request, submit unresolved issues to Mediation by the Federal Mediation and Conciliation Service established pursuant to 29 U.S.C. 172. Such mediation shall consist only of suggestions and non-binding advice to resolve the impasse; said impasse mediation negotiations shall commence, if possible, within (30) days after receipt of written notification by the non-notifying side.

(b) If, after sixty (60) days from notification of the Federal Mediation and Conciliation Service, certain issues still remain the subject of impasse, the remaining issues may, on the written request of either party, be submitted to Arbitration for a final and determinative recommendation. The Arbitrator shall be chosen from a panel of seven (7) qualified Arbitrators from Missouri, provided by the Federal Mediation and Conciliation Service through its standard

procedures, with the State Department or Agency making the first strike until one name appears, which name shall be the Arbitrator for the parties involved in the dispute. The Arbitrator shall begin his hearings no later than thirty (30) days after the request for Arbitration in accordance with the procedures prescribed by the Board and the provisions of Sections 435.350 to 435.470, RSMo., except when Section 435.460 shall be applicable to said proceedings. The Arbitrator shall render a decision in writing no later than sixty (60) days after conclusion of the hearing. The cost of such Arbitration shall be borne equally by the two parties.

3. In making any recommendation pursuant to the impasse procedures authorized herein, the Arbitrator shall consider the following factors: (a) the effect of an agreement on the ability of the public body to provide public services at current levels; (b) the lawful authority of the public body; (c) the stipulations of the parties; (d) the interest and welfare of the public; (e) the financial ability of the public body to meet the costs of any items to be included in the contract; (f) a comparison of wages, hours and terms and conditions of employment of employees involved in the Arbitration proceedings with the wages, hours and terms and conditions of employment of other persons performing similar services in the public and private sector; (g) the average consumer prices for goods and services, commonly known as the cost of living or the consumer price index; (h) the overall compensation presently received by employees involved in the Arbitration, including, but not limited to wages, hours and terms and conditions of employment achieved through voluntary collective bargaining, mediation, fact-finding arbitration or otherwise.

4. All Memoranda of Agreement between State Departments and Agencies and Certified Bargaining Representatives shall contain a grievance procedure which shall apply to all disputes arising under the Memorandum of Agreement and which shall provide for final and binding arbitration for issues that may be legally binding under the Missouri Constitution and laws. Where resolution of any issue may not be final and binding under the Missouri Constitution and laws, then an Arbitrator must provide a written recommended resolution of all such disputes. No arbitration Award under this Section shall require any additional appropriation of funds and the Arbitrator's award shall be limited to an interpretation of terms of the Memorandum of Agreement.

5. After any negotiated agreement has been agreed to by a State Department or Agency and the exclusive bargaining representative of an appropriate unit of employees of that Department or Agency, any provision of the agreement which requires an additional appropriation of funds or which is found to be in conflict with the Missouri Constitution or laws shall take effect only on required approval of the appropriation of such funds or required legislative or Constitutional enactment. Any State Department or Agency which is governed by an autonomous board must have the approval of said autonomous board before a negotiated agreement is deemed final. That portion of a final agreement which does not require additional action by the General Assembly and does not require additional action by the General Assembly and does not require additional funds not previously appropriated to be expended by the State Department or Agency and does not otherwise conflict with a statute or the Constitution shall take effect immediately upon the agreement being reduced to writing and signed by the parties to the agreement. In case of conflict between the provisions of this Order and any provision of the Missouri Constitution or laws, the provisions of the Missouri Constitution or laws shall prevail and control. If a recommendation submitted by an Arbitrator pursuant to Paragraph 2 herein is not enforceable because it requires additional action such as appropriation of funds or is otherwise contrary to law or requires action from the legislative or executive branch prior to becoming enforceable, then said recommendation shall be entered but shall be of no force and effect until such action is taken.

6. All State Departments and Agencies may, whenever appropriate and feasible in view of all the circumstances, include in applicable Memoranda of Agreement, a provision requiring that all bargaining unit members remit dues, fees, assessments or services fees of any type to the Certified Bargaining Representative except to the extent that agreements between said State Departments and Agencies and the Certified Bargaining Representative shall not require as a condition of employment, the payment of a service fee in an amount greater than the dues which are payable by members of the employee organization to cover the cost of negotiation, contract administration, and other

activities of the employee organization which are germane to its function as the Certified Bargaining Representative. The Certified Bargaining Representative shall, as a condition of receiving such service fees, provide the following protections to persons required to pay such fees that object to paying all or a portion thereof:

- (a) Notice, in writing, of the fee which will be payable, which may be expressed in a dollar amount or a percentage of the dues payable by members, and the basis upon which the Certified Bargaining Representative has determined such fee;
- (b) An opportunity to challenge such determination and receive a prompt decision on such challenge by an impartial decision maker; and
- (c) Escrowing of any portions of the service fee paid by a challenging bargaining unit member which is reasonably in dispute pending the determination.

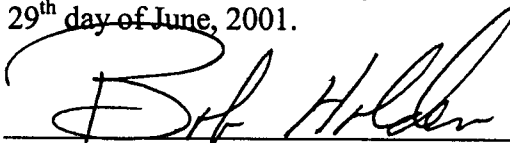
Such an agreement may require the payment of a service fee commencing thirty (30) days after the beginning of employment or the effective date of such agreement, whichever is later. An Agreement entered into between the State Department or Agency and the Certified Bargaining Representative may include a provision for the checkoff of initiation fees and dues to the Certified Bargaining Representative or the payment of a service fee in lieu thereof as authorized in this paragraph.

7. Failure of the General Assembly to approve any portion of a Memorandum of Agreement previously agreed to, but which portion requires General Assembly approval to be valid, shall not constitute bad faith negotiation.

8. In the event that any provision of this order is deemed by a court of competent jurisdiction to be invalid or is invalidated by lawful action of the General Assembly, the remainder of this Order shall remain in full force and effect under general precepts severability.

9. Nothing contained herein shall be construed as encouraging or authorizing employees to strike or engage in any other illegal economic activity.

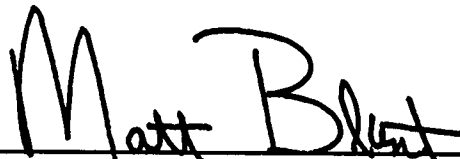
IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 29<sup>th</sup> day of June, 2001.



GOVERNOR BOB HOLDEN



ATTEST:



MATT BLUNT, SECRETARY OF STATE