

**State of Illinois v. American Federation of State, County and Municipal Employees, Council 31, 2016 IL 118422**

Appellate citation: 2014 IL App (1st) 130262

JUSTICE THEIS delivered the judgment of the court, with opinion.

Chief Justice Garman and Justices Freeman, Thomas, Karmeier, and Burke concurred in the judgment and opinion.

Justice Kilbride concurred in part and dissented in part, with opinion.

In this public employee union case, the Illinois Supreme Court held that multiyear collective bargaining agreements are subject to the appropriation power of the State, a power which may only be exercised by the General Assembly. The court vacated an arbitration award which had held otherwise and which had been affirmed by the circuit court of Cook County and the appellate court.

At issue is a 2% wage increase which was scheduled to take effect from July 1, 2011, through the remaining six months of the State's fiscal year, pursuant to a four-year collective bargaining agreement (with modifications) between the defendant, American Federation of State, County and Municipal Employees, Council 31 (AFSCME), and the Department of Central Management Services of the State of Illinois, the plaintiff here. AFSCME represents employees of executive agencies such as departments, authorities, boards and commissions which are under the authority of the Governor. The Governor's proposed budget for the time period in question would have fully funded these wage increases, but the General Assembly's appropriations bills were insufficient to fund all of them. The acting director of the Department of Central Management Services announced that all of the wage increases could not be implemented on the anticipated date, but funding was subsequently found for many of the executive agencies while the dispute proceeded. By the time the issue was ready for trial in the circuit court, the pay raises for only six agencies remained insufficiently funded.

AFSCME brought the matter to arbitration before the parties' designated arbitrator, whose order was based squarely on the four corners of the collective bargaining agreement. He entered an award in favor of AFSCME, ordering the State to pay. As to the provision of the Illinois Public Labor Relations Act relied on by the State in opposition, the arbitrator said that he was without authority to interpret the statute, and that this was a matter for the courts. He also declined to consider constitutional and public policy arguments made by the State, citing his lack of authority. The State filed a circuit court complaint seeking to vacate this result, but the circuit court confirmed the arbitrator's award in 2012, saying that the State's "contractual obligation remains unsatisfied and continues until paid in full." The appellate court affirmed, and the State appealed to the Illinois Supreme Court.

The 1970 Constitution of Illinois states that the "General Assembly by law shall make appropriations for all expenditures of public funds by the State." Section 21 of the Illinois Public Labor Relations Act states that "(s)ubject to the

appropriation power of the employer, employers and exclusive representatives may negotiate multiyear collective bargaining agreements pursuant to the provisions of this Act.” In this quoted provision, the term “employer” has always been expressly defined to include the State of Illinois. The collective bargaining agreement states that an arbitrator “shall neither amend, modify, nullify, ignore, add or subtract from the provisions” of the agreement. It also states that the “provisions of this contract cannot supersede law.”

In this decision, the supreme court rejected the State’s claims that the arbitrator improperly applied his own personal notion of fairness and justice in lieu of giving effect to the terms of the agreement. The court applied the usual standard of review for an arbitration decision and said that the award drew its essence from the agreement and that the arbitrator was guided by contract principles and acted within the scope of his authority. However, an arbitration award is not enforceable if it is contrary to public policy. Public policy concerns may not be ignored when they are undermined through the process of arbitration.

The supreme court pointed out that collective bargaining agreements are different where public sector employees are involved. Their unions must often engage in political activities in order to achieve what most private sector unions are able to achieve at the bargaining table. It has been recognized that, when labor representatives bargain with executive branch agencies, they do so with knowledge that any agreement reached will be affected by the General Assembly’s appropriation power. This is an inherent feature of collective bargaining in the public sector. Some collective bargaining agreements in the public sector have made pay increases expressly contingent on legislative appropriations, and some, like the one here, have not. This fact does not change the result in this case.

The Appropriation Clause of the Illinois Constitution and Section 21 of the Illinois Public Labor Relations Act evince a well-defined and dominant public policy under which multiyear collective bargaining agreements for State employees are subject to the appropriation power of the State, a power which may only be exercised by the General Assembly. This public policy was violated by this arbitration award, which ordered immediate payment of a wage increase without regard to the existence of corresponding appropriations by the legislature.

The decision today involves a specific contract. It does not create uncertainty as to the State’s obligations, generally, under its contracts.

The arbitration award was vacated and the circuit and appellate courts were reversed.