

CASE SUMMARIES

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Labor and Employment Law

Illinois Supreme Court Vacates 2% Wage Increase for State Employees

Last week, the Illinois Supreme Court vacated an arbitration award requiring the State to pay a 2% wage increase to certain state employees who are represented by the American Federation of State, County and Municipal Employees, Council 31 (“AFSCME”). The Court’s ruling is likely to have a major impact on the ongoing negotiations between AFSCME and the State regarding a successor collective bargaining agreement (“CBA”), and Illinois taxpayers more generally.

In *State of Illinois v. AFSCME Council 31*, the CBA between the State and AFSCME called for a 4% wage increase for state employees to take effect on July 1, 2011. As part of concession negotiations, and in recognition of the ongoing fiscal crisis then facing the State, the parties entered into two cost savings agreements that included, among other things, a partial deferral of the scheduled increase, amounting to a 2% increase to take effect on July 1, 2011, with the remaining 2% to be implemented on February 1, 2012. In his Fiscal Year 2012 Budget, Governor Pat Quinn included appropriations to fully fund the increases reflected in these agreements. However, the General Assembly did not appropriate sufficient funding to increase all employees’ salaries, and 14 agencies were unable to fully fund the raise.

AFSCME filed a grievance under the CBA and demanded arbitration to resolve the dispute. Before the arbitrator, the State relied heavily upon Section 21 of the Illinois Public Labor Relations Act (“IPLRA”), which provides that all collective bargaining agreements between public employers and the exclusive representatives of their employees are “subject to the appropriation power of the employer...” According to the State, Section 21 mandates that expenditures by the executive branch pursuant to a negotiated collective bargaining agreement are contingent on the existence of appropriations by the General Assembly, and that the Appropriations Clause of the Illinois Constitution contains the same mandate. The State also argued that Section 21 of the IPLRA was incorporated into its CBA with AFSCME. On the other hand, AFSCME

argued that Section 21 should not be read to make collective bargaining agreements subject to the approval of the General Assembly.

The arbitrator sided with AFSCME, finding that the State violated its contractual obligations and ordering the State to pay the salary increases. The arbitrator declined to consider the effect of Section 21 of the IPLRA, concluding that he lacked the authority to interpret this statutory provision. The State sued to vacate the arbitration award in circuit court, and the parties eventually litigated whether the State, in fact, had sufficient funds to honor the salary increases. The court ruled in favor of AFSCME and upheld the arbitrator's award. On appeal, the appellate court likewise affirmed the arbitrator's award and rejected the State's argument that, based on Section 21 of the IPLRA, the CBA was subject to the appropriation power of the General Assembly.

Reversing the arbitrator and both reviewing courts, the Supreme Court ruled in favor of the State and ultimately vacated the award. Recognizing that judicial review of an arbitration award is extremely limited, the Court rejected the State's initial challenge to the arbitration award, finding that, as a matter of law, the award drew its essence from the CBA.

However, the Court vacated the award because its enforcement would violate paramount considerations of public policy: the General Assembly's power to make appropriations. The Court cited both the Appropriations Clause and Section 21 of the IPLRA to hold that, although the State had the authority to bargain over wages with its employees, public policy gives the power to appropriate for the expenditure of public funds to the General Assembly, and only the General Assembly. According to the Court, taken together, Section 21 of the IPLRA and the Appropriations Clause establish "a well-defined and dominant public policy under which multiyear [CBAs] are subject to the appropriation power of the State, a power which may only be exercised by the General Assembly." In light of this public policy, the Court vacated the arbitration award.

The Court's ruling could have far reaching implications for future collective bargaining between the State and its employees. In a dissenting opinion, Justice Kilbride argued that the State may use the Court's ruling as an end-run around future obligations. According to Justice Kilbride, the Court's decision "interjects uncertainty into the State's responsibility for its contracts and will likely impair its ability to secure future contracts with its employees and vendors."