

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD DIVISION**

**Council 31 of the American Federation of State,
County and Municipal Employees, AFL-CIO,**

Plaintiff,

v.

Pat Quinn, the Governor of the State of Illinois;
Malcolm Weems, the Acting Director of the
Illinois Department of Central Management
Services, and the **State of Illinois**,

Defendants.

Case No. _____

COMPLAINT

The Plaintiff, the American Federation of State, County and Municipal Employees, Council 31, hereby brings this lawsuit for injunctive and declaratory relief against the Defendants. The purpose of this lawsuit is obtain an order requiring the Defendants to rescind an order freezing the pay of 30,000 employees who work in 14 departments, authorities, boards and/or commissions of the State of Illinois, because Defendants have violated the Federal and State constitutional provisions against the impairment of contracts, because the nature of the pay freeze constitutes a denial of the equal protection of laws under the Federal and State constitutions, and because the pay freeze violates the collective bargaining agreement between the State and AFSCME Council 31. Plaintiff complains against Defendants as follows:

PARTIES

1. The Plaintiff in this case is Council 31 of the American Federation of State, County and Municipal Employees, AFL-CIO (“AFSCME” or “Council 31”). Council 31 is a labor union. Council 31 has approximately 75,000 members in the State of Illinois. It is the exclusive bargaining representative of over 40,000 employees of the State of Illinois. These employees work in approximately 51 departments, boards, authorities and/or commissions that are subject to the authority of the Governor. Council 31 brings this lawsuit on behalf of itself and its members.

2. Defendant Pat Quinn is the Governor of the State of Illinois. As Governor, Quinn directs the activities of the departments, boards, authorities and/or commissions in the executive branch of the government of the State of Illinois.

3. Defendant Macolm Weems is the acting director of the Illinois Department of Central Management Services (“DCMS”). As acting director of DCMS, Weems represents the State of Illinois in collective bargaining negotiations with Council 31 and with other labor organizations. Defendant Weems has the responsibility of directing the administration of the collective bargaining agreements between the State and the labor organizations which represent State employees. Weems also has the responsibility of directing the administration of the Personnel Code of the State of Illinois, the Personnel Rules of the State of Illinois, and the Pay Plan of the State of Illinois.

4. Defendant State of Illinois is an employer as defined by the Illinois Labor Relations Act, 5 ILCS 315/3(o). Defendant State of Illinois is a party to a pendant State-law cause of action which arises from a core of operative facts essentially the same as those alleged in this Complaint and which is brought pursuant to Section 16 of the Illinois Public Labor Relations Act, 5 ILCS 315/16. Under Section 25 of that Act, 5 ILCS 315/25, the State waived sovereign immunity, and the

court therefore has jurisdiction to consider a claim against the State pursuant to 28 U.S.C. Section 1367.

JURISDICTION AND VENUE

5. Counts I and II of this Complaint are claims that arise out the United States Constitution. This Court has jurisdiction over those claims under the Declaratory Judgment Act, 28 U.S.C. Section 2201; the Civil Rights Laws, 42 U.S.C. Section 1983 and 28 U.S.C. Section 1343; and under the Federal-question jurisdiction of this Court, 28 U.S.C. 1331.

6. Counts III, IV, and V are State-law claims that arise out of the same core of operative facts. Accordingly, this court has supplemental jurisdiction over them under 28 U.S.C. Section 1367.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. Section 1391(b).

THE CONTRACTS BETWEEN COUNCIL 31 AND THE STATE

8. Since 1975, the State and AFSCME have negotiated 18 successive multi-year master collective bargaining agreements for the bargaining units of employees represented by AFSCME. Council 31 currently represents 9 bargaining units of employees under the current master collective bargaining agreement with the State. It also represents a unit of Correctional Lieutenants in a bargaining unit called CU-500. The contract for this unit is separate from the master contract.

9. The current collective bargaining agreements have terms that began on September 5, 2008, and expire on June 30, 2012. The agreements comprehensively cover the wages of the employees in the bargaining units, establishing their base rates of pay, annual increases, increases

by virtue of progression through a “step plan,” and increases by virtue of an employee’s longevity if the employee has reached the top step of the step plan. The master agreement is attached hereto as Exhibit A. The CU-500 agreement is attached hereto as Exhibit B.

10. The parties to the collective bargaining agreements agreed to a 4% wage increase effective on July 1, 2011. In addition, they agreed that employees covered by the contracts would be eligible to receive step and longevity increases when they reached their “anniversary date” during the 2012 fiscal year, which began on July 1, 2011, and will end on June 30, 2012.

11. In January 2010, the State and Council 31 met to resolve issues that had arisen because of a budgetary shortfall in the 2011 Fiscal year, which began on July 1, 2009, and ended on June 30, 2010. The meetings produced a mediated resolution. Among other things, the mediated resolution limited the number of layoffs the State could make in the 2011 Fiscal year. In exchange, AFSCME agreed to defer one-half of a 2% general wage increase due on July 1, 2010, to June 1, 2011, and to defer one-half of a 2% general wage increase due on January 1, 2011, to the same date. The mediated resolution also contained a voluntary furlough days program and an agreement to meet to identify \$70 million in savings in the State’s health insurance program.

12. The State saved over \$300 million dollars in the 2011 Fiscal year due to this mediated resolution.

13. In the Fall of 2010, the State and AFSCME met to resolve issues that might arise because of potential budgetary shortfalls in the 2012 Fiscal year, which encompasses the period from July 1, 2011, to June 30, 2012. These meetings produced cost-savings agreements. The agreements identified \$50 million in cost savings that could be implemented in order to avoid layoffs in the 2012 fiscal year. One of the cost savings was to defer 2% of the 4% raise due on July 1, 2011, to February

2012. The cost-savings agreements are attached hereto as Exhibit C. The cost-savings agreements also contained a provision for the parties to work together to identify an additional \$50 million dollars in cost savings for the 2012 Fiscal year.

THE DISPUTE BETWEEN THE PARTIES

14. On June 30, 2011, Defendant Quinn approved the budget for the State for Fiscal Year 2012. In his statement regarding this action, Defendant Quinn identified \$376 million dollars in budget cuts that he was implementing by line item veto. This statement is attached as Exhibit D hereto.

15. On July 1, 2011, the Acting Director of CMS issued a memorandum which stated that the general wage increase due under the contracts and cost-savings agreements to AFSCME-represented employees would not be paid in 14 State departments. The memorandum also indicated that the AFSCME-represented employees in these departments would not receive the step and longevity increases required by the contracts. This memorandum is attached as Exhibit E. At the same time, the Acting Director of DCMS notified AFSCME that it would not honor the wage increases required by the collective bargaining agreements. This notification is attached as Exhibit F.

16. This pay freeze affects approximately 30,000 AFSCME-represented employees.

17. The State estimates that the cost of paying the wage increases required by the contracts is approximately \$75 million dollars.

18. There are many departments, authorities, boards and/or commissions that are subject to the Governor's authority for which wage increases required by collective bargaining agreements

are being paid. These other departments, authorities, boards and/or commissions employ individuals in the same classifications as in the departments subject to the pay freeze. They also employ individuals who have nearly identical duties as employees whose pay has been frozen.

19. The Defendants have justified their refusal to honor the collective bargaining agreements by stating that it believed that the legislative appropriation for personal services in the 14 departments was not sufficient to implement the contractually required wage increases for the entire fiscal year.

20. The personal services appropriations in the agencies subject to the pay freeze are sufficient to pay the contractually required wage increase for the vast majority of the 2012 Fiscal year. The following alternatives are available to make up any projected shortfall in funds in these agencies:

(a) the State has hundreds of millions of dollars in unexpended appropriations for the 2011 fiscal year;

(b) the State could slow its procedures for filling positions that become vacant during the 2012 fiscal year or impose a freeze on filling positions as they become vacant in the departments subject to the pay freeze;

(c) the State could transfer funds from other appropriations lines into the appropriation line for personal services;

(d) the Governor could seek legislative authority to devote a portion of the savings from the line item vetoes of June 30, 2011, to personal services expenditures; and

(e) the Governor could seek supplemental appropriations to fill any shortfall.

21. None of the alternatives set forth in the preceding paragraph has been tried by Defendants Quinn or Weems.

22. Several of the alternatives set forth in Paragraph 20 have been utilized in previous years to ensure that the State complied with its collective bargaining agreements.

COUNT I
Impairment of Contract (United States Constitution)

Count I is brought against Defendants Quinn and Weems.

23. Article I, Section 10, of the United States Constitution states, in relevant part that “No State shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts”

24. The 30,000 employees subject to the pay freeze have a contractual right to receive the 2% general wage increase scheduled for July 1, 2011, pursuant to the 2008 - 2012 collective bargaining agreements and the cost-savings agreements negotiated in the Fall of 2010.

25. The 30,000 employees subject to the pay freeze have a contractual right to receive step and longevity increases pursuant to the 2008 - 2012 collective bargaining agreements.

26. The pay freeze imposed by Defendants Quinn and Weems has substantially impaired these contractual rights in violation of Article 1, Section 10, of the United States Constitution.

27. The impairments of contract set forth above are not reasonable and necessary to achieve an important public purpose.

28. Defendants Quinn and Weems were acting under color of state law to violate the rights of the Plaintiff guaranteed under the United States Constitution, and the Court may grant relief against those actions pursuant to 42 U.S.C. Section 1983.

WHEREFORE, Plaintiff prays that this Court grant the following relief:

(a) render a declaratory judgment that the pay freeze imposed by Defendants Quinn and Weems violates Section 10 of Article I of the United States Constitution;

(b) issue an order requiring Defendants Quinn and Weems to rescind the pay freeze;

(c) enter an injunction prohibiting Defendants Quinn and Weems from further action which impairs the contracts between Plaintiff and the State of Illinois;

(d) enter a judgment for requiring Defendants Quinn and Weems to pay backpay to the employees who have lost wages due to their unconstitutional acts;

(e) order Defendants Quinn and Weems to pay Plaintiff the costs and reasonable attorney fees of bringing this cause of action; and

(f) order any further relief the Court deems just and proper.

COUNT II
Denial of Equal Protection (United States Constitution)

Count II is brought against Defendants Quinn and Weems.

29. Defendant Quinn's and Defendant Weems's pay-freeze order freezes the pay of all AFSCME-represented employees in 14 State departments, authorities, boards and commissions.

30. The employees in many other State departments, authorities, boards and commissions will receive their contractually required wage increases and the appropriate step and longevity increases as well.

31. Many of the employees in the 14 departments subject to the pay freeze are in the same classifications as those in departments that are not subject to the pay freeze.

32. Many of the employees in the 14 departments subject to the pay freeze perform substantially similar duties as those in the departments that are not subject to the pay freeze.

33. Paying employees different wages when they have the same classification and/or duties is unreasonable and arbitrary, and it lacks a rational basis. It therefore violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

34. Defendants Quinn and Weems were acting under color of state law to violate the rights of the Plaintiff guaranteed under the United States Constitution, and the Court may grant relief against those actions pursuant to 42 U.S.C. Section 1983.

WHEREFORE, Plaintiff prays that this Court grant the following relief:

(a) render a declaratory judgment that the pay freeze imposed by Defendants Quinn and Weems violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution;

(b) issue an order requiring Defendants Quinn and Weems to rescind the pay freeze;

(c) enter an injunction prohibiting Defendants Quinn and Weems from further action which violates the Equal Protection Clause;

(d) enter a judgment for requiring Defendants Quinn and Weems to pay backpay to the employees who have lost wages due to their unconstitutional acts;

(e) order Defendants Quinn and Weems to pay Plaintiff the costs and reasonable attorney fees of bringing this cause of action; and

(f) order any further relief the Court deems just and proper.

COUNT III
Impairment of Contract (Illinois State Constitution)

Count III is brought against Defendants Quinn and Weems.

35. Article I, Section 16, of the Illinois Constitution states, in relevant part, that “No ex post facto law, or law impairing the obligation of contracts . . . shall be passed.”

36. The 30,000 employees subject to the pay freeze have a contractual right to receive the 2% general wage increase scheduled for July 1, 2011, pursuant to the 2008 - 2012 collective bargaining agreements and the cost-savings agreements negotiated in the Fall of 2010.

37. The 30,000 employees subject to the pay freeze have a contractual right to receive step and longevity increases pursuant to the 2008 - 2012 collective bargaining agreements.

38. The pay freeze imposed by Defendants Quinn and Weems has substantially impaired the contractual rights set forth above in violation of Article 1, Section 16 of the Illinois Constitution.

39. The impairments of contract set forth above are not reasonable and necessary to achieve an important public purpose.

40. Defendants Quinn and Weems were acting under color of state law to violate the rights of the Plaintiff guaranteed under the Illinois Constitution, and the Court may grant relief against those actions.

WHEREFORE, Plaintiff prays that this Court grant the following relief:

(a) render a declaratory judgment that the pay freeze imposed by Defendants Quinn and Weems violates Section 16 of Article I of the Illinois Constitution;

(b) issue an order requiring Defendants Quinn and Weems to rescind the pay freeze;

(c) enter an injunction prohibiting Defendants Quinn and Weems from further action which impairs the contracts between Plaintiff and the State of Illinois;

(d) enter a judgment requiring Defendants Quinn and Weems to pay backpay to the employees who have lost wages due to their unconstitutional acts;

(e) order Defendants Quinn and Weems to pay Plaintiff the costs and reasonable attorney fees of bringing this cause of action; and

(f) order any further relief the Court deems just and proper.

COUNT IV
Denial of Equal Protection (Illinois Constitution)

Count IV is brought against Defendants Quinn and Weems.

41. Defendant Quinn's and Defendant Weems's pay-freeze order freezes the pay of all AFSCME-represented employees in 14 State departments, authorities, boards and commissions.

42. The employees in the other State departments, authorities, boards and commissions will receive their contractually required wage increases and the appropriate step and longevity increases as well.

43. Many of the employees in the 14 departments subject to the pay freeze are in the same classifications as those in departments that are not subject to the pay freeze.

44. Many of the employees in the 14 departments subject to the pay freeze perform substantially similar duties as those in the departments that are not subject to the pay freeze.

45. Paying employees different wages when they have the same classification and/or duties is unreasonable and arbitrary, and it lacks a rational basis. It therefore violates the Equal Protection Clause of the contained in Article 1, Section 2, of the Illinois Constitution.

46. Defendants Quinn and Weems were acting under color of state law to violate the rights of the Plaintiff guaranteed under the Illinois Constitution, and the Court may grant relief against those actions.

WHEREFORE, Plaintiff prays that this Court grant the following relief:

(a) render a declaratory judgment that the pay freeze imposed by Defendants Quinn and Weems violates Equal Protection Clause of the Article 1, Section 2, of the Illinois Constitution;

(b) issue an order requiring Defendants Quinn and Weems to rescind the pay freeze;

(c) enter an injunction prohibiting Defendants Quinn and Weems from further action which violates the Equal Protection Clause of the Illinois Constitution;

(d) enter a judgment requiring Defendants Quinn and Weems to pay backpay to the employees who have lost wages due to their unconstitutional acts;

(e) order Defendants Quinn and Weems to pay Plaintiff the costs and reasonable attorney fees of bringing this cause of action; and

(f) order any further relief the Court deems just and proper.

COUNT V
Breach of Contract (Illinois Public Labor Relations Act)

Count V is brought against Defendant State of Illinois.

47. The 2008 - 2012 collective bargaining agreements and cost-savings agreements are valid and binding collective bargaining agreements between the State and AFSCME.

48. The State of Illinois breached those agreements when it implemented the pay freeze on July 1, 2011.

49. The State's violation of these collective bargaining agreements has injured AFSCME Council 31 and the State employees that Council 31 represents.

WHEREFORE, Plaintiff prays for the following relief:

(a) that the court render a declaratory judgment that Defendant State of Illinois has violated the 2008 - 2012 collective bargaining agreements and the cost-savings agreements;

(b) that the court enjoin further breaches of these contracts;

(c) that the court order damages be paid to the employees harmed by the breach of contract; and

(d) that the court order any further relief it deems equitable and just.

Respectfully submitted,

CORNFIELD AND FELDMAN

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