

NOTICE

Decision filed 12/16/16. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2016 IL App (5th) 160510-U

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

NO. 5-16-0510

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

AMERICAN FEDERATION OF STATE,	)	Appeal from the
COUNTY AND MUNICIPAL EMPLOYEES,	)	Circuit Court of
COUNCIL 31,	)	St. Clair County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 16-CH-302
	)	
ILLINOIS DEPARTMENT OF CENTRAL	)	
MANAGEMENT SERVICES,	)	Honorable
	)	Robert P. LeChien,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.  
 Justices Goldenhersh and Chapman concurred in the judgment.

**ORDER**

¶ 1 *Held:* This cause is remanded to the circuit court to make a determination as to whether to dissolve the temporary restraining order (TRO) entered to block final contract terms imposed by the State following an impasse in negotiations for a collective bargaining agreement as circumstances have changed since the issuance of the TRO.

¶ 2 This appeal pertains to the imposition of final contract terms by the defendant, Illinois Department of Central Management Services (the State), on the American Federation of State, County, and Municipal Employees, Council 31 (AFSCME). The circuit court of St. Clair County granted AFSCME a temporary restraining order (TRO)

to block the contract terms that were imposed by the State. The State brings this interlocutory appeal as of right pursuant to Illinois Supreme Court Rule 307(d) (eff. Feb. 26, 2010), requesting that the TRO be reversed or the cause be remanded to the circuit court with directions to vacate. As the circumstances have changed since the issuance of the TRO, we remand this matter to the circuit court for a determination on the TRO under the facts as they exist at this time.

¶ 3 In early 2015, the State and AFSCME began negotiating for a successor collective bargaining agreement. Thereafter, the parties negotiated a series of Tolling Agreements whereby they agreed to continue meeting and negotiating in good faith for a successor bargaining agreement and to not to engage in strikes, work stoppages, work slowdowns, or lockouts unless they mutually agreed that an impasse had been reached in the collective bargaining or until the Illinois Labor Relations Board (ILRB) resolved the issue concerning the existence of an impasse.

¶ 4 On January 8, 2016, the State determined that an impasse existed and presented AFSCME with a Last, Best, and Final Offer. AFSCME disagreed. Pursuant to the Tolling Agreement, the State submitted the issue to the ILRB as an unfair labor practice charge. The State asserted that AFSCME had acted in bad faith by denying the existence of an impasse in negotiations. AFSCME thereafter filed its own charge, which alleged that the State had not bargained in good faith. The ILRB consolidated the charges and held 25 days of hearings.

¶ 5 Before the ILRB had reached a decision, on April 26, 2016, AFSCME filed the instant case in the St. Clair County Circuit Court (case No. 16-CH-302), asserting

numerous violations of the Tolling Agreement against the State. The complaint was brought pursuant to section 16 of the Illinois Public Labor Relations Act (5 ILCS 315/16 (West 2014)), which provides that circuit courts have jurisdiction over actions for the violation of collective bargaining agreements.

¶ 6 On November 15, 2016, the ILRB met to decide whether an impasse existed between the parties. After the meeting, the ILRB voted to rule that a good faith impasse existed on the critical issue of subcontracting and that the impasse led to an overall breakdown in negotiations. No written decision was issued. That same day, the State filed a petition for administrative review from certain portions of the November 15 ruling with the Fourth District Appellate Court (Appeal No. 4-16-0827).

¶ 7 Thereafter, the State began implementing the terms of its Last, Best, and Final Offer, which included the following contract terms: \$1,000 merit pay for employees who missed less than 5% of assigned work days during the fiscal year; overtime after 40 hours; bereavement leave; the use of volunteers; the beginning of a merit raise system; drug testing of employees suspected of working impaired; and the formation of a task force to look into workplace safety.

¶ 8 On December 1, 2016, AFSCME filed a motion for a TRO that is at issue in this appeal, which sought an order that despite the ILRB's November 15 ruling, the Tolling Agreement remained in effect, and it prohibited the State from implementing the terms of its Last, Best, and Final Offer from the negotiations. AFSCME asserted that the State entered into a binding legal agreement whereby no changes could be implemented on the contract unless the ILRB found the parties were at an impasse. AFSCME argued that

under state law, there was no such finding of an impasse until the ILRB issued a written decision at an open public meeting. There had been no written decision entered at this point in the proceedings. Thus, AFSCME sought a TRO to "protect against the unilateral imposition of the 'Last, Best and Final Offer' while the parties are still subject to the provisions of the Tolling Agreement."

¶ 9 On December 5, 2016, the ILRB issued a written order, memorializing its November 15 ruling that the parties had reached an impasse and that the impasse was sufficient to allow the State to implement the terms of its Last, Best, and Final Offer. The written order was not issued at a public meeting. On the same day, the State amended its pending petition for administrative review with the Fourth District while AFSCME filed a petition for review in the First District (Appeal No. 1-16-3136).

¶ 10 The State presented the ILRB's written order to the St. Clair County circuit court as well as a memorandum in opposition to the TRO. In the memorandum, the State argued, in pertinent parts, that the circuit court lacked jurisdiction over AFSCME's claim that the State breached the Tolling Agreement where the ILRB has entered a ruling on whether the impasse issue had been "resolved."

¶ 11 On December 6, 2016, AFSCME filed a response to the State's memorandum in opposition to the TRO, arguing, in pertinent parts, that the ILRB written decision is not final because it was issued in violation of section 2(e) of the Open Meetings Act (5 ILCS 120/2(e) (West 2014)) where the ILRB failed to take a vote to approve the written decision at an open public meeting. AFSCME asserted that the Tolling Agreement remained in effect until the issue is resolved by the ILRB.

¶ 12 Also, on December 6, St. Clair County Judge LeChien notified the parties via email that he had entered the TRO the previous day. The court found that AFSCME had demonstrated a protectable legal interest in the rights protected by the Tolling Agreement and had made a *prima facie* case that the State's conduct in implementing new terms and conditions of employment without notice to and the agreement of AFSCME has violated that agreement. The court found that AFSCME and its members are suffering and will continue to suffer irreparable injury because the State is changing the wages, hours, and other terms and conditions of employment without notice to and the agreement of AFSCME, which is contrary to the rights protected by the Tolling Agreement. The court concluded that AFSCME has shown that it has no adequate remedy at law for its injury and that the balance of equities weighs in favor of granting the TRO to prevent further violations of the rights protected by the Tolling Agreement.

¶ 13 The circuit court ordered the State to refrain from implementing its Last, Best, and Final Offer and "to rescind any changes they have implemented" without AFSCME's agreement concerning wages, hours, and terms and conditions of employment. The court ordered the State to restore the status quo as it existed on November 15 and to honor the Tolling Agreement by maintaining the wages, hours, and other terms and conditions of employment as they existed on that day pending a determination on the merits of AFSCME's verified amended complaint. The matter was set for a case management conference regarding a petition for permanent injunction and declaratory relief.

¶ 14 The State filed a petition for interlocutory appeal and review of the TRO pursuant to Illinois Supreme Court Rule 307(d) (eff. Feb. 26, 2010). Thereafter, AFSCME filed

its response. On December 15, 2016, the State filed a motion for leave to file *instanter* a reply brief and additional supporting record to bring to this court's attention the December 13, 2016, ruling of the ILRB. Illinois Supreme Court Rule 307(d)(3) (eff. Feb. 26, 2010) allows a party to file a reply upon order of court. We grant the State's motion for leave to file its reply brief and additional supporting record.

¶ 15 In the reply memorandum, the State noted that on December 13, the ILRB adopted its previous December 5 written decision in full at a regularly-scheduled public meeting. The December 13 order reiterated the ILRB's previous conclusion that the parties had reached a good faith impasse on the issue of subcontracting. Thus, the State argues that because the December 13 order resolves the issue of whether the parties are at an impasse, the Tolling Agreement, by its express terms, has terminated and there is no longer a legal basis for the issuance of a TRO. Because the circumstances as they existed at the time that the circuit court issued its TRO have changed, we remand this matter to the trial court to make a determination as to whether to dissolve its TRO.

¶ 16 For the reasons stated, we remand this matter to the circuit court of St. Clair county to make a determination on the TRO under the facts as they currently exist.

¶ 17 Remanded.