

Summary of SC99179, *American Federation of State, County, and Municipal Employees, AFL-CIO, Council 61, et al. v. State of Missouri, et al.*

Appeal from the Cole County circuit court, Judge Jon E. Beetem

Argued and submitted May 24, 2022; opinion issued October 4, 2022

Attorneys: The state was represented by Maria A. Lanahan, D. John Sauer, and Jason K. Lewis, of the attorney general's office in St. Louis (573) 751-3321. The unions were represented by Loretta K. Haggard and Christopher N. Grant of Schucat, Cook & Werner in St. Louis. (314) 621-2626.

This summary is not part of the opinion of the Court. It is provided by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: The state appeals from a judgment finding that a senate bill did not mandate at-will employment for most state employees and that rules and regulations implementing the bill were an unauthorized expansion of the law. In a unanimous decision written by Judge W. Brent Powell, the Supreme Court of Missouri reverses the judgment and remands (sends back) the case. The senate bill mandates at-will employment for most state employees. That mandate does not violate the constitutional right to bargain collectively because it merely limits the terms and conditions of employment the state is authorized to bargain; nor does the mandate violate the contracts clause of the state constitution. Furthermore, the majority of rules and regulations implementing the bill are invalid expansions of the law because they prevent the state from bargaining over terms and conditions of employment that do not impact at-will employment status.

Facts: In 2018, the legislature passed senate bill no. 1007, which amended several statutes pertaining to state employees and the merit employment system. In particular, SB 1007 provided that, save for state employees in charitable or penal institutions and agencies, all state employees "shall be employed at-will." In response to SB 1007's enactment, the personnel advisory board ("PAB") amended its rules and regulations pertaining to suspension, dismissal, demotions, and grievance procedures. In particular, the amendments deleted language regarding the order of layoffs and recalls being based on seniority, provided that state employees do not have the right to notice or appeal from a suspension, demotion, or discharge, and prevented state agencies from establishing grievance procedures for suspensions, demotions, and discipline. Several unions sued the state alleging SB 1007 violated the right to collectively bargain under the Missouri Constitution and impaired state employees' contractual rights by interfering with collective bargaining agreements already in effect between the unions and the state. The unions also alleged the PAB's amendments to the rules and regulations went beyond what was permitted under the bill and, therefore, were either unauthorized or unconstitutional. The circuit court conducted a bench trial (before a judge rather than a jury) after which it issued a permanent injunction enjoining the state from altering existing collective bargaining agreements with the unions and ordering the state to bargain in good faith with the unions without constraint from SB 1007. The circuit court concluded SB 1007 was not unconstitutional because the at-will employment provision was not a mandate but, rather, a default rule subject to bargaining. The circuit court further found the PAB's amendments were unauthorized and invalid. The circuit

court alternatively held that, if SB 1007 mandates at-will employment, it violates the constitutional right to bargain collectively and the contracts clause under the state constitution. The state appeals.

REVERSED AND REMANDED.

Court en banc holds: (1) SB 1007 mandates most state employees be employed at-will. Except for limited exceptions, the bill provides “all employees of the state shall be employed at-will.” The word “shall” imposes a mandatory duty; therefore, SB 1007 mandates all state employees, absent statutory exception, be employed at-will.

(2) SB 1007 prohibits the state from bargaining with the unions over terms and conditions that impact or alter at-will status for non-merit, state employees. Because this Court must presume the legislature understands and knows the law, this Court finds the at-will employment relationship mandated by SB 1007 requires an indefinite term of employment and the ability to terminate employment without cause. SB 1007, therefore, restricts the state from bargaining over terms and conditions of employment that provide for a definite duration of employment or require cause for termination. But SB 1007 does not limit the state from bargaining over terms and conditions of employment that do not conflict with at-will employment. The state, therefore, is prohibited from bargaining over grievance procedures, for-cause requirements, and seniority protections only to the extent they would limit the right to terminate employment at any time without cause.

(3) SB 1007 does not infringe on the right to collective bargaining set out in article I, section 29 of the Missouri Constitution. The constitutional right to bargain collectively imposes a duty on employers to negotiate in good faith with the purpose to form an agreement. This Court’s interpretation of SB 1007 does not prevent the state from bargaining in good faith with unions representing at-will employees; rather, it merely limits the terms and conditions of employment over which the state is authorized to bargain. Although employment status is a significant component of employment, it is still only a term and condition of employment. SB 1007 still permits unions representing at-will employees to bargain with the state in good faith for various other employment terms and conditions that are consistent with at-will employment.

(4) SB 1007 does not violate the contracts clause set forth in article I, section 13 of the Missouri Constitution. To establish a violation of the contracts clause, the unions had to prove a contractual relationship, a change in law impairing that contractual relationship, and that the impairment is substantial. The unions’ collective bargaining agreements with the state include provisions stating the agreements cannot supersede law and setting out procedures for modifying agreements that are contrary to state or federal law. Because the unions contractually agreed that the agreements were subject to modification upon a change in law, SB 1007 does not substantially impair the parties’ contractual relationship.

(5) The PAB’s amendments to 1 CSR 20-3.070(1); 1 CSR 20-3.070(2), (4)-(5); and 1 CSR 20-4.020(1) are invalid because they exceed statutory authority to the extent they prevent the state from bargaining over terms and conditions of employment that would not impact at-will employment status. A rule or regulation must be within the authority of a statute and cannot

expand or modify a statute. Because a layoff is not a complete break in employment, seniority protections for layoffs do not infringe on the right to terminate employment at any time without cause. Similarly, demotions do not result in a complete break in employment with no expectation of recall but, instead, generally result in a change of work responsibilities, title, or compensation. Accordingly, seniority protections and demotions are not inconsistent with at-will employment. Additionally, grievance procedures do not necessarily limit the employer's right to terminate employment at any time and without cause; therefore, they are also not inconsistent with at-will employment.

(6) The PAB's amendments to 1 CSR 20-3.070(3)-(5) are valid. The amendments merely provide that at-will employees do not have the right to notice, opportunity to be heard, or appeal from a suspension, demotion, or discharge. This language does not preclude the state and unions from bargaining over these workplace protections but provides that these workplace protections are not guaranteed to at-will employees as they are to merit employees. The amendments to 1 CSR 20-3.070(3)-(5), therefore, are authorized because SB 1007 specifically removed non-merit state employees from the merit system's guaranteed protections, including grievance procedures.