

IN THE SUPREME COURT OF FLORIDA

RICK SCOTT, PAM BONDI, and
JEFF ATWATER, as the FLORIDA
STATE BOARD OF ADMINISTRATION,
et al.,

Appellants,

CASE NO.: SC12-520
L.T. CASE NOS.: 2011 CA 1584
1D12-1269

vs.

GEORGE WILLIAMS, et al.,

Appellees.

ON APPEAL FROM THE CIRCUIT COURT FOR THE
SECOND JUDICIAL CIRCUIT, CERTIFIED BY THE
FIRST DISTRICT COURT OF APPEAL AS
A MATTER OF GREAT PUBLIC IMPORTANCE

ANSWER BRIEF OF INTERVENOR/APPELLEE, RODNEY DURBIN

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STATEMENT OF THE CASE AND FACTS

1. The Intervenor/Appellee, Rodney Durbin, accepts the statement of the case and facts submitted by the Appellants with the exceptions by the Appellees, George Williams, et al., as though contained here in full.

2. Rodney Durbin is an employee of the State of Florida. (Intervenor Rodney Durbin's Verified Response to Defendant's First Set of Interrogatories; ROA pp. 539 - 545; pp. 894 - 990).

3. The State of Florida and the Florida State Fire Service Association ("FSFSA") are parties to a contract governing Durbin's employment, to which Durbin is a beneficiary. (Plaintiff Rodney Durbin's Answers To Defendant's Second Request For Admissions (ROA pp. 931-934); and Intervening Plaintiff Durbin's Supplement to Plaintiffs' Motion for Summary Judgment at p. 2 note 2 and Exhibit A thereto (ROA pp. 2218 - 2254)); (hereinafter the "Contract"). The terms and conditions of the Contract remain in effect.

4. The State of Florida and the FSFSA acknowledge that the Contract is a collective bargaining agreement negotiated pursuant to "Part II, Chapter 447, Florida Statutes, which provide[s] statutory implementation of Section 6, Article I of the Constitution of the State of Florida". (The Contract at p. 4 ("Preamble")) (underscoring supplied).

5. Durbin is an “employee” within the meaning of Article 1 of the Contract¹. (Defendants’ Response to Durbin’s First Request for Admissions). The Contract governed Durbin’s employment with the State of Florida. (Intervenor Rodney Durbin’s Verified Response to Defendants’ First Set of Interrogatories (ROA: pp. 539 - 545; 994 - 990)).

6. Article 16 of the Contract provides that “[a]ll bargaining unit members shall continue to participate in the Florida Retirement System (FRS) at no cost to the employee.” (Contract Article 16 at p. 23) (underscoring supplied).

7. Notwithstanding the explicit terms of the Contract, and with the adoption of Chapter 2011-68, Durbin was no longer permitted to participate in FRS at no cost, and Durbin’s compensation was in turn reduced by 3% to permit his continued participation in FRS. (Intervenor Rodney Durbin’s Verified Response to Defendants’ First Set of Interrogatories (ROA: pp. 539 - 545; 994 - 990)).

SUMMARY OF THE ARGUMENT

Rodney Durbin is an employee of the State of Florida, as well as an “employee” in the bargaining unit covered by the collective bargaining agreement (the “Contract”) between the State of Florida and the Florida State Fire Service

¹ Article 1 is the Contract’s “Recognition” clause, which provides that the State “recognizes FSFSA as the exclusive representative for the purposes of collective bargaining with respect to wages, hours and terms and conditions of employment for all employees [including Durbin] included in the Florida State Fire Service Association Bargaining Unit.” (Contract at p. 4).

Association (“FSFSA”). This Contract with the State of Florida plainly states that “[a]ll bargaining unit members [which would include Durbin] shall continue to participate in the Florida Retirement System (FRS) at no cost to the employee.” (The Contract, Article 16 at p. 23) (underscoring supplied). However, solely by virtue of the adoption of Chapter 2011-68: (1) Article 16 of the contract was rendered a nullity *and* (2), without any collective bargaining, Durbin and all other FSFSA bargaining unit members automatically lost approximately 3% of their income to continue participation in the Florida Retirement System. Hence, Chapter 2011-68 unconstitutionally abridges the right of employees to effectively negotiate retirement issues.

ARGUMENT

Retirement issues are mandatory subjects of bargaining, and a state statute removing such subjects from the realm of collective bargaining violates article 1, section 6 of the Florida Constitution. *City of Tallahassee v. Public Employees Relations Commission*, 410 So.2d 487 (Fla. 1981). Indeed,

[t]he Florida Constitution guarantees public employees the right of effective collective bargaining. Collective bargaining is embedded in our state constitution’s Declaration of Rights, and is deemed by our Supreme Court to be a fundamental right. *Chiles v. State Employees Attorneys Guild*, 734 So. 2d 1030 (Fla. 1999); *Hillsborough County Aviation Auth.*, 522 So. 2d at 362; see also, *State Employees Attorneys Guild v. State*, 653 So. 2d 487, 488 (Fla. 1st DCA 1995); *City of Miami v. F.O.P., Miami Lodge 20*, 571 So. 2d 1309, 1316 (Fla. 3d DCA 1991).

City of Miami Beach v. Board of Trustees etc., No. 3D11-2974 at pp. 5-6 (Fla. 3d DCA, June 27, 2012) (quoting *International Brotherhood of Teamsters, Local 385 v. City of Daytona Beach*, 162 LRRM (BNA) 2428 (Fla. 7th Jud. Cir. Ct. Aug. 10, 1999) (underscoring supplied)².

In collective bargaining, some public employees and public employers decline to specifically address the terms of employee retirement in their agreements; others specifically address the scope and cost of pension benefits in their collective bargaining agreements. In either event, the terms of retirement – whether the retirement *benefit* received or *cost to employee*, if any, of participating in the retirement program – remain a mandatory subject of bargaining.

Here, Durbin through his labor organization (the FSFSA) bargained over the cost of participating in FRS. Durbin and his fellow employees, in the give and take of the bargaining process, successfully negotiated the following explicit contract language:

Article 16
RETIREMENT

All bargaining unit members shall continue to participate in the Florida Retirement System (FRS) at no cost to the employee.

² Intervenor/Appellee, Durbin joins the argument of Plaintiff/Appellee and Intervenor/Appellee Brett Sandlin, in support of affirmance of the decision of the Trial Court, but writes separately to emphasize the significance of Appellant's interference with the fundamental right to bargain collectively where, the adoption of Chapter 2011-68 contravenes specific contract language.

(Contract at p. 23) (underscoring supplied). This short passage is without exception or limitation. The State of Florida's complete abrogation of this language via adoption of Chapter 2011-68 unconstitutionally abridges the right of employees to effectively negotiate retirement issues.

CONCLUSION

For the foregoing reasons, it is requested that the decision of the court below be affirmed in its entirety.

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I certify that this brief is submitted in Times New Roman 14-point font, which complies with the font requirement. *See* Fla. R. App. P. 9.210(a)(2).

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