Chicago pension cuts struck down by court

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On Friday, July 24 Cook County Circuit Court Judge Rita M. Novak struck down a state law that cut pensions for Chicago municipal workers and laborers. In her ruling, which was widely expected, Novak cited the May 8 Illinois Supreme Court decision that declared the 2013 law cutting pensions for state employees to be unconstitutional, calling it a "crystal-clear direction."

The Supreme Court's decision upheld the principle clearly stated in the Illinois Constitution, that pension benefits "shall not be diminished or impaired." Rejecting the state's argument that the state's "police powers" allowed it to cut pensions in order fund necessary government services, the court found that economic fluctuations were anticipated at the time the constitutional provision was added, and that "the law was clear that the promised benefits would therefore have to be paid and that the responsibility for providing the state's share of the necessary funding fell squarely on the legislature's shoulders."

Nevertheless, even after this decision, the city pressed on with its own defense of the state's move to cut city pensions. Chicago corporation counsel Stephen Patton argued that the law amounted to a "massive net benefit" because it would have placed direct responsibility for guaranteeing pension benefits onto the city itself, rather than on the pension fund—a nominally separate entity—and would have ramped up funding. Chicago Mayor Rahm Emanuel, as well as other city spokespersons, claimed the state's actions were intended to "preserve and protect the pensions."

Emanuel, President Barack Obama's former chief of staff and a long-time Democratic operative, has peddled this concept, that cuts are necessary in order to "save" the pensions, since the beginning of his tenure as mayor. As he put it, "We have to do the tough things, the necessary things so people can know that they're going to have a retirement, which they didn't know before." In other words, there was an implicit claim that without the city taking charge of cutting benefits, the pension systems would become insolvent and the city would be under no obligation to do anything about it.

Novak's ruling rejected this logic, saying that it "does not survive scrutiny." Her ruling stated: "Pension benefits cannot be netted against funding schemes, regardless of any salutary outcomes they may have. To do so would render the rights guaranteed by the pension protection clause illusory."

The law would have essentially nullified the pension protection clause because any "guarantee" of funding in the pension cutting law could be changed at the whim of a later session of the state legislature. Such a move could leave workers with diminished pensions and insolvent pension funds, a clear violation of the constitution under any plausible interpretation.

In fact, according to Novak, the idea that the pension systems could become insolvent and workers could lose their pensions constitutes a fundamental distortion of the meaning of the pension clause.

"Contrary to the city's argument, it is not the Pension Code that creates the contractual relationship. Rather, if the state or municipal employer creates a pension system, the contractual relationship that is mandated derives from the Constitution and so does the 'enforceable obligation' to pay the benefits."

Judge Novak also rejected the argument that the Chicago pension cuts were fundamentally different than the state-level pension cuts on the grounds that Emanuel had "negotiated" the cuts with 28 of the 31 unions representing municipal workers and laborers. She wrote that "The contention that labor unions, undisputedly acting outside the sphere of collective bargaining, may bind all members of the funds ignores the individual constitutional rights" of the affected workers.

She wrote, “There is no evidence that, in reaching an agreement with the city, the union officials followed union rules and bylaws in such a way as to bind their members as true agents. Nor is there evidence that the membership voted on the agreement.” Novak continued, saying “Additionally, there is no showing that the unions could have acted as agents of retired members while at the same time acting as representatives of active employees.”

In other words, the trade unions flagrantly violated the democratic rights of the working class by colluding with the Democratic Party to impose sweeping, unconstitutional cuts to worker pensions.

While making no reference to this damning indictment, the unions cynically hailed the judge’s ruling as proof that workers can rely on the courts to defend their pensions. Roberta Lynch, executive director of the American Federation of State, County and Municipal Employees (AFSCME) said “All city residents can be reassured that the Constitution—our state’s highest law—means what it says and will be respected, while city employees and retirees can be assured that their modest retirement income is protected.”

While both the state and municipal pension cuts have now been thrown out, there is no guarantee that the Illinois Supreme Court will continue to issue decisions favorable to workers. Nor is a change to the state constitution ruled out, which might remove the pension protection clause entirely. One thing is absolutely certain, the state can rely on the trade unions to collaborate in any future effort to slash retiree benefits.

Contrary to AFSCME spokesman Anders Lindall’s call for Chicago “not to waste further time and taxpayer dollars on an appeal,” the city promised to appeal Novak’s decision. Corporation Counsel Patton said, “While we are disappointed by the trial court’s ruling, we have always recognized that this matter will ultimately be resolved by the Illinois Supreme Court.” He continued to hold that the law “saves these funds from insolvency and ensures that pensions that have been promised will be paid.”

The law had been expected to save the city approximately $10 billion in pension funding, primarily through the elimination of the three percent compounded annual increase and its replacement by a non-compounding annual increase of three percent or half the level of inflation, whichever was lower. Even then, no increases would have been made in 2017, 2019, and 2025. According to estimates, the average worker would have lost around 20 percent of the value of their pensions under the new formula.

Besides the change to the annual increase, the law would have also raised the retirement age, with workers under 45 forced to wait an extra five years to retire with full benefits, while those over 45 would have had to wait somewhat less. Mandatory employee contributions to the pension funds would have risen 29 percent, from 8.5 percent of wages to 11 percent. This increased contribution has been collected from workers since January 1.

The credit ratings agencies Moody’s and S&P both weighed in on the ruling, essentially saying that they expected this ruling following the Supreme Court decision in May and had already reduced Chicago’s credit rating accordingly. However, they promised to further reduce Chicago’s rating—already at junk status—if no headway was made on pension cuts.

Due to the refusal of all levels of government in Illinois to adequately contribute to the pension funds, it is expected that they will eventually pay out more in benefits than they are receiving in contributions. The Chicago municipal workers fund is expected to run out in 2026 without further increases in contributions, while the laborers fund is expected to become insolvent in 2029. While the total “unfunded liability” of both funds is around $7.85 billion, the combined net worth of just three of Illinois’ 18 billionaires—Ken Griffin, Sam Zell, and J.B. Pritzker—is more than $14 billion.