

## COA Opinion: Law requiring three percent employee compensation contribution to finance public employee retirement held unconstitutional

29. August 2011 By Michael Azzi

In *AFSCME Council 25 v. State Employees Retirement System*, Nos. 302959, 302960, 302961, 302962, the Court of Appeals held that MCL 38.35, which requires a three percent employee compensation contribution to finance the public employee retirement health care funding act, is unconstitutional.

During collective bargaining agreement (“CBA”) negotiations, plaintiffs addressed wage provisions for the 2008-2011 fiscal years. The bargained-for CBA called for a three percent increase in civil service employee salaries for fiscal year 2010-2011. The CBA was approved by the Civil Service Commission (“CSC”) and transmitted to the governor for incorporation into the state budget as required by law. Under Article 11, Section 5 of the Michigan Constitution, the only way the Legislature can reject an approved CSC wage increase is by a 2/3 majority of the members in the house and senate. The Legislature failed to garner the necessary votes. Therefore, the Legislature instead passed MCL 38.35, which effectively required civil service employees to pay their entire compensation increase into the State Employment Retirement System through 2013, with the funds being used to pay the retirement costs of current retirees.

Plaintiffs filed suit in the Court of Claims challenging the constitutionality of MCL 38.35. The Court of Claims held that MCL 38.35 violated Article 11, Section 5 of the Michigan Constitution, rejected defendants’ jurisdictional challenge, and did not address the remaining claims. Defendants appealed as of right.

The Court of Appeals affirmed. As a preliminary matter, the Court held that the Court of Claims had jurisdiction over the dispute, given that MCL 38.35 resulted in a present reduction in worker compensation. Addressing the constitutionality of MCL 38.35, the Court noted that the Michigan Constitution vests the CSC with plenary power over the compensation of civil service employees. By enacting MCL 38.35, the Court determined that the Legislature was acting to reduce the compensation of civil service employees without consent of the employees’ unions or by the 2/3 majority vote of the house and senate as required by the Constitution. The Court held that the Legislature did not have the authority to act to eliminate the three percent wage rate increase through enactment of MCL 38.35, and therefore, MCL 38.35 was unconstitutional.