



**ILLINOIS SUPREME COURT RULES STAFFING AGENCY COLLUSION
MAY VIOLATE ILLINOIS ANTITRUST ACT**

In a decision issued January 19, 2024, the Illinois Supreme Court addressed a critical legal question involving the application of the Illinois Antitrust Act to staffing agencies. The case, *The State of Illinois v. Elite Staffing, Inc., et al.*, revolves around allegations of anticompetitive conduct by staffing agencies, leading to an examination of the statutory framework and legal exemptions. The Court ultimately ruled that wage-fixing and anti-poaching agreements between staffing agencies may violate the Illinois Antitrust Act, “unless the agreement arises as part of the bargaining process and the affected employees, through their collective bargaining representatives, have sought to bargain with the multiemployer unit.”

The State of Illinois filed a complaint against Elite Staffing, Inc., Metro Staff, Inc., and Midway Staffing, Inc., three competing staffing agencies. The complaint alleged violations of the Illinois Antitrust Act, asserting that the agencies entered into an agreement with a client to fix temporary workers' wages at below-market rates and to refrain from hiring each other's employees.

After denying a motion to dismiss filed by the staffing agencies, the circuit court certified several questions for interlocutory review by the appellate court. The appellate court failed to address one of these questions, namely, whether the definition of “Service” under Section 4 of the Illinois Antitrust Act, which excludes labor performed by natural persons as employees of others, applies to the Act as a whole. The staffing agencies then appealed to the Illinois Supreme Court regarding this unanswered question.

The Supreme Court highlighted the complaint's allegation that the staffing agencies, competitors in the market, agreed to fix wages for their employees sent to work for one particular client. The staffing agencies also

agreed to refrain from hiring each other’s employees. This conduct, seen as clearly anticompetitive, violated antitrust laws without further examination under the rule of reason.

The court also addressed the ambiguity present in Section 4 of the Illinois Antitrust Act, which excludes labor performed by natural persons as employees of others from the definition of “service.” While seemingly exempting labor agreements from antitrust scrutiny, the court pointed out that this conclusion would clearly conflict with the Act’s stated purpose of promoting unhampered growth of commerce and industry. To resolve this ambiguity, the court considered legislative intent, ultimately concluding that exemptions were intended for legitimate labor union activities and agreements reached during collective negotiations between employers and unions. Joint agreements outside collective bargaining were subject to antitrust scrutiny unless there was an existing or prospective joint collective bargaining agreement with a union. The case was then remanded for further litigation in line with the Court’s decision.

The Illinois Supreme Court’s decision emphasizes the need to scrutinize agreements between competitors that may stifle competition. This case marks a significant step in maintaining the integrity of antitrust laws and safeguarding fair competition in the employment sector.

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