

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUITST. CLAIR COUNTY, ILLINOIS

THE AMERICAN FEDERATION OF STATE, COUNTY AND
MUNICIPAL EMPLOYEES, AFL-CIO, COUNCIL 31, and
JEANETTE RETTLE, STACIE McKINNIE-WALLACE, ROSEMARY
ROBINSON, SHAWNE HAMMONDS, KAREN CARTHANS, ESTEPHEN
BESKOROVANY, and MIKE HAMIL, in their individual
capacities as

Plaintiffs

v.

STATE OF ILLINOIS and DANIEL W. HYNES, in his
official capacity as Comptroller for the State of
Illinois,

Defendants

TRIAL BY JURY DEMANDED

NO. _____

PLEASE SERVE DEFENDANTS AT:

See attached sheet

SUMMONS

To the defendant;

YOU ARE SUMMONED and required to file an answer in this case, or otherwise file your appearance,
in the office of the clerk of this court St. Clair County Bldg., 10 Public Square, Belleville,
Illinois 62220 (Insert name of building, room number, address, including city)

Illinois, within 30 days after service of this summons, not counting the day of service. IF YOU FAIL TO
DO SO, A JUDGMENT OR DECREE BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE
RELIEF ASKED IN THE COMPLAINT.

To the officer:

This summons must be returned by the officer or other persons to whom it was given for service, with indorsement
of service and fees, if any, immediately after service. If service cannot be made, this summons shall be returned so indorsed.
This summons may not be served later than 30 days after its date.

WITNESS, _____, 19__.

(Seal of court)

Clerk of court

Associate Circuit Clerk—Deputy

GILBERT FELDMAN, ESQ.
Name CORNFIELD AND FELDMAN
Attorney for Plaintiffs
Address 25 East Washington St., Suite 1400
City Chicago, IL 60602
Telephone (312) 236-7800

Date of service: _____, 19__.
(To be inserted by officer on copy left with defendant or other person)

SHERIFF'S FEES

Service and return \$ _____

Miles _____

Total \$ _____

Sheriff of _____ County

I certify that I served this summons on defendants as follows:

(a) – (Individual defendants—personal):

By leaving a copy and a copy of the complaint with each individual defendant personally, as follows:

Name of defendant

Date of service

_____	_____
_____	_____
_____	_____

(b) – (Individual defendants—abode):

By leaving a copy and a copy of the complaint at the usual place of abode of each individual defendant with a person of his family, of the age of 13 years or upwards, informing that person of the contents of the summons, and also by sending a copy of the summons and of the complaint in a sealed envelope with postage fully prepaid, addressed to each individual defendant at his usual place of abode, as follows:

Name of defendant

Person with whom left

Date of service

Date of mailing

_____	_____	_____	_____
_____	_____	_____	_____

(c) – (Corporation defendants):

By leaving a copy and a copy of the complaint with the registered agent, officer or agent of each defendant corporation, as follows:

Defendant corporation

Registered agent, officer or agent

Date of service

_____	_____	_____
_____	_____	_____

(d) – (Other service):

_____, Sheriff of _____ County

By _____, Deputy

PLEASE SERVE DEFENDANTS:

- (1) STATE OF ILLINOIS
c/o Attorney General of Illinois
100 West Randolph Street
12th Floor
Chicago, IL 60601
- (2) Daniel W. Hynes, Comptroller
100 West Randolph Street
Suite 15-500
Chicago, IL 60601

THE AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
AFL-CIO, COUNCIL 31, and JEANETTE RETTLE,
STACIE McKINNIE-WALLACE, ROSEMARY
ROBINSON, SHAWNE HAMMONDS, KAREN
CARTHANS, ESTEPHEN BESKOROVANY, and
MIKE HAMIL, in their individual capacities as

Case No.

Plaintiffs

TRIAL BY JURY DEMANDED

-vs-

STATE OF ILLINOIS and DANIEL W. HYNES, In
His Official Capacity As Comptroller for the State
of Illinois,

Defendants

NOW COME the above-captioned Plaintiffs, public employees of the State of Illinois, and the certified bargaining representative representing some of them by and through their undersigned counsel, and complain of the Defendants, State of Illinois and Daniel W. Hynes in his official capacity as Comptroller for the State of Illinois as follows:

1. Plaintiffs bring this action under the Fair Labor Standards Act, 29 U.S.C. § 201, et seq. (“FLSA”), for alleged wage and overtime violations, and Article I, Section 10, of the United States Constitution, U.S. Const., art. I, §10; of the Illinois Constitution, Ill. Const. 1970,;

and Section 8.b13 of the Illinois Personnel Code, 20 ILCS 415/8b.13, for impairment of contract violations, on behalf of similarly situated public employees of the State of Illinois who are and are not represented by Council 31 of The American Federation of State County, and Municipal Employees, AFL-CIO (“AFSCME” or “Council 31”).

2. This action arises out of the State of Illinois’ and its State Comptroller’s (“Defendants” or “Employer”) unlawful efforts to deprive State public employees represented and not represented by AFSCME the wages, overtime, or on-call compensation due for labor and services rendered pursuant to and in accordance with the terms and conditions of the Collective Bargaining Agreements (“CBAs”) and the employment agreements by and between the State of Illinois and AFSCME on behalf of same. The public employees in question include both those subject to the Governor and those employed by the public universities in the state. (“Plaintiff Employees” or “Plaintiffs”)

3. The wages and salaries of the employees of the State are funded primarily by the general revenues of the State of Illinois. The General Assembly and the Governor annually must agree to a budget which appropriates money for the payment of wages and salaries from these revenues. The fiscal year of the State typically runs from July 1 to June 30th.

4. The Governor and the General Assembly have not yet agreed to a budget for the current fiscal year.

5. The General Assembly and the Governor have not agreed on a new measure to fund the operation of State government.

6. Notwithstanding the lack of an appropriations measure for State government, the Plaintiff Employees represented and not represented by AFSCME have continued to work since July 1, 2009.

7. Defendant Hynes has stated publicly that in the absence of a court order or authorization from the heads of Executive agencies, he will not authorize the payment of wages and salaries for the work performed by State employees unless an appropriation measure is enacted. He has further stated that, commencing July 8, 2009, he will be unable to cut checks for payment of Plaintiff Employees on their regular pay date of July 15, 2009.

8. As a result, as soon as July 15, 2009, the employees represented by AFSCME will not receive the contractually and statutorily mandated wages, overtime, or on-call compensation for the labor they have provided since July 1, 2009. This compensation is due pursuant to both State and Federal law and the terms of the collective bargaining agreements and employment contracts between the State and AFSCME and the unrepresented employees.

9. This lawsuit is brought on behalf of the employees represented by AFSCME Council 31 to require the payment of wages pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201, et seq. (“FLSA”), for alleged wage and overtime violations, and Article I, Section 10, of the United States Constitution, U.S. Const., art. I, § 10; art. I, § 16; and Section 8.b13 of the Illinois Personnel Code, 20 ILCS 415/8b.13, for impairment of contract violations. Plaintiffs also seek appropriate equitable relief.

II. JURISDICTION AND VENUE

10. This Court has original jurisdiction over this case pursuant to Article VI, Section 9, of the Illinois Constitution, Ill. Const. 1970, art. VI, § 9.

11. This Court also has statutory jurisdiction over this dispute pursuant to The Illinois State Lawsuit Immunity Act, § 5/1.5(b), which states that:

[a]n employee of the State who is aggrieved by any conduct or action or inaction of the State that would constitute a violation of the Fair Labor Standards Act of 1938, 29 U.S.C. 201 et seq., as amended, if committed by an employer covered by that Act may bring an action under the Fair Labor Standards Act of 1938 against the State in State circuit court or federal court.

12. This Court has original mandate jurisdiction over the impairment of contract claim pursuant to the Contract Clause in the Federal Constitutions which mandates that no State shall pass a law that impairs an existing contract, see U.S. Const., art. I, § 10; Ill. Const. 1970, art. I, § 16, and Section 8.b13 of the Illinois Personnel Code, 20 ILCS 415/8b.13, which provides for layoffs by reason of lack of funds or work.

13. Venue in this Judicial Circuit is proper. The CBAs and the employment contracts that are the subject of this Complaint are administered within the territorial boundaries of this Judicial Circuit in the State of Illinois; the impairment related to the CBA and employment contracts took place, at least in part, in this Judicial Circuit; Defendants maintain an office, transact business, effectuate wage distributions, or indirect operations within the territorial boundaries of this Judicial Circuit; and Plaintiff Employees are residents of and/or employed by and receive wage distributions from Defendants within the territorial boundaries of this Judicial Circuit in the State of Illinois.

III. PARTIES

14. Plaintiff, The American Federation of State, County and Municipal Employees, AFL-CIO, Council 31 (“AFSCME” or “Council 31”), is and was, at all times relevant to this

Complaint, the bargaining representative of some of the individual Plaintiffs. AFSCME is a labor organization which represents public employees employed by the State of Illinois with respect to the wages, hours, and term and conditions of employment. It represents 39,000 thousand employees who are under a collective bargaining agreement with the Illinois Department of Central Management Services, 5,000 thousand employees who are employed by the public universities of the State and additional employees who have designated it as their representative for the purposes of collective bargaining but which have not yet been covered by a collective bargaining agreement.

15. Defendant State of Illinois is a state corporation that, at all times relevant to this Complaint, employed, and currently employs the public employees represented and not represented by AFSCME.

16. Defendant State of Illinois maintains a registered agent for purposes of accepting service of process at 100 W. Randolph, Suite 15-500, Chicago, Illinois 60601.

17. Defendant Daniel Hynes (“State Comptroller” or “Hynes”) is and, at all times relevant to this Complaint, was Comptroller for the State of Illinois with his principal place of business in Springfield, Illinois and who, through his Local Government Division, works with more than 7,200 units of local governments throughout Illinois, including Jeanette Rettle, Stacie Mckinnie-Wallace, Rosemary Robinson, Shawne Hammonds, Karen Carthans, Estephen Beskorovany, and Mike Hamil located in St. Claire County.

18. Defendant Hynes acts and, at all times relevant, acted pursuant to authority granted by Article V, Section 17 of the Illinois State Constitution, Ill. Const. 1970, art. V, § 17, which charges those persons inaugurated into the position of State Comptroller with the duties of

maintaining the State's central fiscal accounts, ordering payments into the treasury, and issuing warrants against any funds held by the treasurer, the performance or non-performance of which occurs in Illinois and affects the personal, financial, and legal interests of Plaintiff Employees.

19. Defendant Hynes maintains a registered agent for purposes of accepting service of process at 100 W. Randolph, Suite 15-500, Chicago, Illinois 60601.

20. On behalf of Defendant State of Illinois, Hynes, through his officers, agents, or employees, is and was, at all times relevant, responsible for paying Plaintiff Employees in accordance with all applicable Federal laws, including but not limited to the statutes listed in Paragraph 1 of this complaint, see supra pp. 1-2, ¶ 1.

21. Whenever this Complaint refers to any of Defendant State of Illinois' or Defendant Hynes' acts, deeds, or transactions, it means that Defendants engaged in the act, deed, or transaction by or through its members, officers, directors, agents, employees, or other representatives while they actively were engaged in the management, direction, control, or transaction of its business or affairs.

22. All Defendants are collectively referred to herein as "Defendants" or "Employer."

23. The named Plaintiffs are hourly or salary employees of Defendants who have been denied wages, overtime, or on-call compensation due pursuant to Federal law and who stand to be irreparably harmed from the conduct engaged in by Defendants as alleged herein. Plaintiffs are individuals who have consented in writing to be made parties to this action. Executed written consents for all named Plaintiffs are attached hereto as Exhibits A-I and

included in the Appendix to the Complaint and are incorporated by reference herein as if fully copied and set forth at length.

24. The Plaintiffs and putative class members are employees of Defendants who will each spend uncompensated time working for Defendants because the State of Illinois Legislators have failed and refused to pass a State budget that adequately appropriates the monies needed for paying the wages, overtime, and on-call compensation of its employees before the expiration of the last fiscal year's budget. The Plaintiffs and putative class members are represented by Council 31 with respect to their wages, hours, and terms and conditions of employment.

25. Assuming that Defendants were in compliance with State and Federal laws, prior to the State budget crisis, Plaintiff Employees were regularly compensated for their labor and services after the end of the respective weekly, bi-weekly, semi-monthly, or monthly pay period in which such wages were earned. Specifically, all wages earned by any employee during a semi-monthly or bi-weekly pay period were paid to such employee not later than 13 days after the end of the pay period in which such wages were earned. All wages earned by any employee during a weekly pay period were paid not later than 7 days after the end of the weekly pay period in which the wages were earned. Wages of executive, administrative, and professional employees, as defined in the Federal Fair Labor Standards Act of 1938, were paid on or before 21 calendar days after the period during which they are earned.

26. As of the date of filing this Complaint, Plaintiffs and all putative class members are present hourly or salary employees of Defendants who are represented and not represented by the Union and who will be deprived of wages, overtime, and/or on-call

compensation because Defendants will fail and will refuse to compensate them within the time frames delineated in Federal laws. Plaintiffs and the putative class members, in reality, will be pressured to spend certain hours performing work duties for the benefit of Defendants, namely showing up to work every day during their regularly scheduled hours of work and maintaining the essential and non-essential functions of the State for which Defendants did not and, in the foreseeable near future will not, compensate the named Plaintiffs and putative class members. Defendants' offer of anything but the wages that are due violates applicable wage and hour laws.

IV. CLASS ALLEGATIONS – FAIR LABOR STANDARDS ACT

27. Count I of this action is brought pursuant to the Fair Labor Standards Act, 29 U.S.C. § 216(b) as a collective opt-in representative action, for and on behalf of all named Plaintiffs and other employees of Defendants who will be damaged by Defendants' failure to appropriately compensate Plaintiffs in violation of 29 U.S.C. § 201, et seq. and § 251, et seq.

28. Additionally, Plaintiffs assert claims in Count II against Defendants under The Impairment Clause of the Federal Constitutions, U.S. Const., art. I, § 10; for the impairment of Parties' Collective Bargaining Agreement that will result from the pay delay Employer will cause for its employees to deal with its budgetary problems. Plaintiffs also assert claims in Count II against Defendants under Section 8.b13 of the Illinois Personnel Code, 20 ILCS 415/8b.13, for the impairment of employment contracts created by the Personnel Code.

V. CLASS ALLEGATIONS – IMPAIRMENT OF CONTRACT

29. Plaintiffs bring Count II as a class action pursuant to The Illinois Code of Civil Procedure, 735 ILCS 5/2-801 to 5/2-806, against Defendants and on behalf of a class

consisting of all present employees of Defendants injured or that will be injured by Defendants' failure to comply with Article I, Section 10 of the United States Constitution, U.S. Const., Art. I, §10; Article I and Section 8.b13 of the Illinois Personnel Code, 20 ILCS 415/8b.13.

Numerosity

30. The class is so numerous that joinder of all members is impracticable. On information and belief, thousands of present employees of Defendants will be deprived of wages because of Defendants' refusal to pay Plaintiffs the wages they have earned since June 1, 2009.

Commonality

31. This case involves common questions of law and fact, including, but not limited to:

a. Whether Defendants' failure and refusal to timely pay employees for their labor prevent employees from using their non-work time effectively for their own purposes;

b. Whether Defendants can fairly give employees the option to show up to work and 'voluntarily' continue maintaining the functions of the State through their labor on behalf of and for the benefit of Defendants without compensation for same thereby owed and due within statutorily and contractually mandated time periods, without violating applicable Federal and State laws and/or impairing the current CBA and employment contracts;

c. Whether Defendants have failed to pay Plaintiffs for time worked for the benefit of Defendants including through their meal and break periods to compensate for the anticipated imbalanced employee coverage because some employees either ‘choose’ to not labor for Defendants without timely compensation or simply could not afford the costs associated with living without wages including but not limited to the acts of getting to and from work, providing for and feeding their children and families, tending to medical emergencies and buying prescribed medications, etc.

32. Moreover, Plaintiffs Jeanette Rettle, Stacie Mckinnie-Wallace, Rosemary Robinson, Shawne Hammonds, Karen Carthans, Estephen Beskorovany, and M i k e H a m i l (“Class Representatives”) are members of the Class they seek to represent and their claims are in common with the claims of the class members.

33. The Representative Plaintiffs and the members of the Class each and all have tangible and legally protectable interests at stake in this action.

34. The claims of the named Class Representatives and the absent class members have a common origin and share a common basis. Their claims will originate from the same unlawful denial of wages, overtime, and/or on-call compensation by the Defendants, and the Defendants act in the same way toward the Plaintiffs and the members of the class. As such, the named Plaintiffs have been the victim of one or more of the unlawful pay practices as described herein.

35. The proposed Class Representatives state a claim for which relief can be granted that is common with the claims of absent class members. If brought and prosecuted individually, the claims of each class member would necessarily require proof of the same material and substantive facts, rely upon the same remedial theories, and seek the same relief.

36. The claims and remedial theories pursued by the named Class Representatives are sufficiently aligned with the interests of absent class members to ensure that the universal claims of the class will be prosecuted with diligence and care by the Plaintiffs as representatives of the class.

37. Plaintiffs' claims are in common with the claims of the members of the Class because Plaintiffs and all other class members will sustain injury and damages in the same way, as a result of Defendants' wrongful conduct complained of herein, and the claims of each Class member arise out of the same nucleus of operative facts and are based on the same legal theories.

Adequate Representation

38. The Class Representatives will adequately represent and protect the interests of class members. The Class Representatives will fairly and adequately protect the interest of the class and have no interests adverse to, or which directly and irrevocably conflict with, the interests of other members of the class.

39. The self-interests of the named Class Representatives are co-extensive with and not antagonistic to those of the absent class members. The proposed representatives will undertake to well and truly protect the interests of the absent class members.

40. The Class Representatives have engaged the services of counsel experienced in complex class litigation, whom will adequately prosecute this action, and will assert, protect and otherwise well represent the named Class Representatives and absent class members.

Appropriate Method

41. A Class Action is the appropriate method for the fair and efficient adjudication of this controversy. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class, which would establish incompatible standards of conduct for the Defendants, or which could, as a practical matter, be dispositive of the interests of non-parties. Such incompatible standards and inconsistent or varying adjudications, on what would necessarily be the same essential facts, proof, and legal theories, would also create inconsistent and incompatible rights within the Class, and/or substantially impair or impede the ability of Class members to protect their interests.

COUNT I – FAIR LABOR STANDARDS ACT **(against all Defendants)**

42. Plaintiffs incorporate paragraphs 1 through 41.

43. Defendants are each engaged in the mandated business of government, generating, distributing, transacting, and/or mailing wages via electronic commerce transactions or U.S. Postal Service to Plaintiff Employees doing business on behalf of Employer in the several states, and are, therefore, engaged in commerce within the meaning of 29 U.S.C. § 203(b).

44. Pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201, et seq. and the Portal-to-Portal Act, 29 U.S.C. § 251, et seq., Plaintiffs are entitled to compensation for all hours actually worked, including time spent engaged to wait on call, time spent traveling in response to a request while on-call, and time spent monitoring and safeguarding Defendants' equipment during meal periods, and are entitled to wages at a rate not less than one and one-half times their regular rate of pay for all hours worked in excess of forty hours in any workweek.

45. Pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201, et seq., and the Portal-to-Portal Act, 29 U.S.C. § 251, et seq., Plaintiffs are entitled to wages at a rate not less than one and one-half times their regular rate of pay for all time worked in excess of forty hours in any workweek in which inclusion of the call-back allowance would result in overtime compensation.

46. Pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201, et seq., and the Portal-to-Portal Act, 29 U.S.C. § 251, et seq., Plaintiffs are entitled to wages at a rate not less than one and one-half times their regular rate of pay for all time worked in excess of forty hours in any workweek in which calculation of shift and pay differentials would result in overtime compensation.

47. Defendants have indicated that Plaintiffs will not be paid the compensation they have earned after July 15, 2009 until the General Assembly and the Governor agree to an appropriations bill for State operations. The failure to pay Plaintiffs promptly for their work violates Section 206(b) of the FLSA. This illegal conduct will continue therefore unless halted by a Court Order.

48. The conduct of Defendants in this case is willful and intentional, in that Defendants knew or should have known that their pay practices violate the FLSA. Therefore Plaintiffs are entitled to liquidated damages and prejudgment interest if they are not paid on time.

WHEREFORE Plaintiffs respectfully request this Court award the following relief:

- a. a declaration that the provisions of the Fair Labor Standard Act require Defendants to promptly pay Plaintiffs for the work that they have performed;
- b. an injunction requiring Defendants to promptly pay Plaintiffs who are scheduled to be paid on July 15, 2009;
- c. an award of back pay to any Plaintiffs who are not paid for the services they have performed;
- d. liquidated damages;
- e. prejudgment interest;
- f. the costs and attorneys fees for thing this cause of action; and
- g. any other relief this Court deems just and appropriate,

**COUNT II – IMPAIRMENT OF CONTRACT
(against all Defendants)**

49. Plaintiffs incorporate paragraphs 1 through 48.

50. Article I, Section 10, of the United States Constitution, U.S. Const., art. I, § 10, declares “[n]o state shall ... pass any ... law impairing the obligation of contracts”

51. Article I, Section 16, of the Illinois Constitution, Ill. Const. 1970, art. I, § 16, also provides the State shall not pass any “law impairing the obligation of contracts.”

52. This Contract Clause is implicated when an existing contract is substantially impaired.

53. Plaintiff Employees have entered into a Collective Bargaining Agreement with the State of Illinois Department of Central Management Services that sets forth the terms and conditions of Plaintiffs’ employment. This contract is currently in effect.

54. This contract requires that Plaintiffs be compensated on a periodic basis for the work that they perform on behalf of the State.

55. The Department of Central Management Services is under the authority of Governor Patrick Quinn.

56. Defendant State Comptroller Hynes is responsible for authorizing the warrants that are required for triggering the disbursement of the compensation due to the employees covered by the contract and earned in the course of their duties.

57. Defendant State Comptroller Hynes refuses to authorize these warrants without an Order from the Court.

58. This refusal has substantially impaired the authority and ability of Governor Quinn to comply with the terms and conditions of this Collective Bargaining Agreement by and between Plaintiff Employees and the State of Illinois Department of Central Management Services.

59. There is no important public purpose to justify the impairment.

60. State Comptroller Hynes continues to refuse to issue the warrants that are required for triggering the disbursement of the compensation due to the employees covered by the contract and earned in the course of their duties.

61. The Illinois Personnel Code, 20 ILCS 415/8b.13, permits layoffs of state employees for lack of funds or work, but it requires that agencies give consideration to each employee's employment records and seniority and any impact on achieving equal employment opportunity goals. 20 ILCS 415/8b.13.

62. This statutory responsibility constitutes an employment contract with respect to both the represented and unrepresented AFSCME State employees.

63. State Comptroller Hynes' refusal to issue the warrants that are required for triggering the disbursement of the compensation due to the employees covered by this contract impairs this contract and is not justified by any important public purpose.

WHEREFORE, Plaintiffs respectfully request this Court enter judgment in favor of themselves and the putative class members and against Defendants State of Illinois and State Comptroller Hynes for the following:

a. declaration that the Defendants have impaired Governor Quinn's ability to comply with the terms and conditions of this contract;

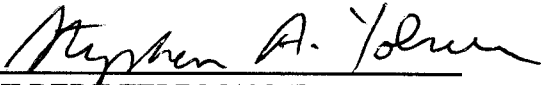
b. an injunction requiring State Comptroller Hynes to issue the warrants that are required for triggering the disbursement of the compensation

due to the employees covered by the contract and earned in the course of their duties;

c. such other relief as this Court deems just and appropriate.

Respectfully Submitted,

CORNFIELD AND FELDMAN

BY 
GILBERT FELDMAN, Esq..
STEPHEN A. YOKICH, Esq.

Attorneys for Plaintiffs

July 13, 2009

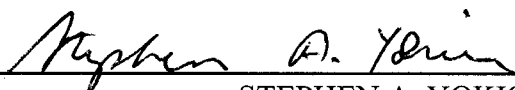
GILBERT FELDMAN, Esq.
STEPHEN A. YOKICH, Esq.
CORNFIELD AND FELDMAN
25 East Washington Street
Suite 1400
Chicago, Illinois 60602-1803
(312) 236-7800
(312) 236-6686 Facsimile

STATE OF ILLINOIS)
)
COUNTY OF C O O K)

AFFIDAVIT OF STEPHEN A. YOKICH

Affiant, STEPHEN A. YOKICH, being first duly sworn, deposes and states as follows:

1. I make the following statements based upon my own personal knowledge, and, if called upon to do so, I could and would competently testify thereto under oath.
2. I am an attorney representing Plaintiffs American Federation of State, County and Municipal Employees, Council 31 and Jeanette Rettle, Stacie Mckinnie-Wallace, Rosemary Robinson, Shawne Hammonds, Karen Carthans, Estephen Beskorovany, and Mike Hamil in a lawsuit against Defendants State of Illinois and Daniel Hynes.
3. The total of money damages sought exceeds \$50,000.
4. This affidavit is made pursuant to S.Ct. Rule 222(b).

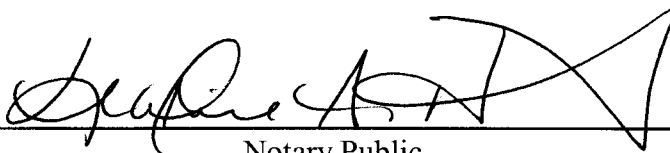


STEPHEN A. YOKICH

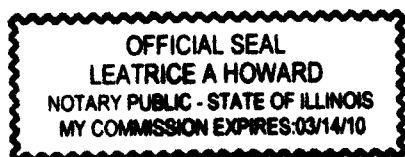
SUBSCRIBED and SWORN

to before me this 13th day of

July, 2009.



Notary Public



**IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS**

**THE AMERICAN FEDERATION OF STATE,
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-VS-

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Defendants

Case No.

TRIAL BY JURY DEMANDED

By my signature below, I hereby authorize the filing and prosecution of claims in my name and on my behalf, in this or any other action, to contest the Defendants' failure to pay me wages as required under state and federal law.

Henri Cartier

Signature

Date

7/13/2009

KAREN L. CARTHANS

Print Name

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IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
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Signature

Date

Print Name

07/13/2002 13:05 FAX

002/002

IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
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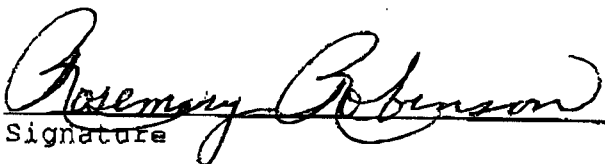
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Signature

7-13-2009
Date

ROSEMARY ROBINSON
Print Name

**THE AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
AFL-CIO, COUNCIL 31, and JEANETTE RETTLE,
STACIE McKINNIE-WALLACE, ROSEMARY
ROBINSON, SHAWNE HAMMONDS, KAREN
CARTHANS, ESTEPHEN BESKOROVANY, and
MIKE HAMIL, in their individual capacities as**

-VS-

Defendants

TRIAL BY JURY DEMANDED

Now come the Plaintiffs, by their attorneys, and move the Court for the entry of a Temporary Restraining Order, or in the alternative, a Preliminary Injunction against the Defendants enjoining and restraining Defendants as follows:

2. Requiring Defendants to authorize and issue paychecks on each regular payday and for each regular payday on which paychecks were not previously issued to the individual Plaintiffs.

In support of said Motion, Plaintiffs state as follows:

1. Plaintiffs have filed a Verified Complaint for Injunctive Relief alleging federal claims subject to the Supremacy Clause of the U. S. Constitution for harm caused Plaintiffs by the Defendants which have refused and continue to refuse to timely pay the individual Plaintiffs their compensation for work performed. Plaintiffs incorporate the allegations of the Verified Complaint into this Motion.

The State has the money required to compensate the State employees. However, compensation is not being paid the individual Plaintiffs because of the failure of the Defendant State to adopt a budget and to appropriate funding for such compensation and the refusal by the Defendant Comptroller to issue paychecks in the absence of an appropriation. Hence, the State employees continue to work without pay and without any legal guarantee that they will ever receive compensation for this unpaid work. 1/

2. The individual Plaintiffs or many of them will suffer irreparable harm unless they receive temporary injunctive relief. Because they are working for the State they are deprived of the opportunity to earn income based on employment elsewhere. They have mortgages and other commitments to pay. Their health insurance premiums must be paid. Many live from hand to mouth. And they have no legal guarantee that the budget when eventually adopted will cover their compensation retroactively. On the other hand, no harm will result to the Defendants by the issuance of an injunction. Under such circumstances, temporary injunctive relief is appropriate. See *AFSCME*

1/ The State is committing an unconstitutional taking of property by accepting the services of the employees pursuant to contract for timely compensation while the employees' actual receipt of compensation is entirely contingent upon the future benevolence of the State. See *Chicago, Milwaukee and St. Paul R.R. Co. v. State of Wisconsin*, 238 U.S. 491 500 (1915); *Joslin Mfg. Co. V. Providence*, 262 U.S. 668 (1923).

v. *Schwartz*, 343 Ill.App.3d 553, 561 (5th Dist. 2003). 2/

3. The Plaintiffs are likely to prevail on the merits. This is a virtual certainty with respect to the federal claims based on the Fair Labor Standards Act and the Federal Impairment of Contract clause. The State has waived any Eleventh Amendment defense to a claim under the federal Fair Labor Standards Act. (See 745 ILCS 5/1.5(b). These claims override any contrary state law under the Supremacy Clause.

4. The federal courts have repeatedly and consistently held that it is a violation of the Fair Labor Standards Act not to pay employees their minimum wage on the employees' regular pay day. *Rogers v. City of Troy, New York*, 148 F.3d 52 (2d Cir. 1998); *Biggs v. Wilson*, 1 F.3d 1537 (9th Cir. 1993) (applied in absence of a state budget); *Calderon v. Witvoet*, 999 F.2d 1101, 1107 (7th Cir. 1993); *Brooklyn Saving Bank v. O'Neil*. 324 U.S. 697, 707 (1945). 3/

5. The contract impairment clause in Article I, Section 10 of the U.S. Constitution bars a State from impairing its own contracts. *Fletcher v. Peck*, 10 U.S. (6 Cranch. 87 (1810); *Trustees of Dartmouth College v. Woodward*, 17 U.S. (4 Wheat) 518 (1819). States are bound by their debt contracts because they are purely financial and do not arise to a reserved power of the state. *United States Trust Co. v. New Jersey*, 431 U.S. 1, 23-24 (1977). Hence, the State has no reserved power not to honor the compensation owed its employees. Nor is there any public purpose that

2/ The public interest will not be served by a late payment of compensation because of the claims for liquidated damages and prejudgment interest under the FLSA which, in the absence of injunctive relief, will cost the State a fortune given the number of claims involved.

3/ The federal courts have also held that a collective bargaining process could not deprive employees of their statutory FLSA claim. *Albertson's Inc. v. United Food Workers*, 157 F.3d 758 (9th Cir. 1998); *Barrrentine v. Arkansas-Best Freight System, Inc.*, 450 U.S.728 (1981)

would justify the State not honoring its promise to promptly pay its employees. Id. at 431 U.S. 26.

4/ Another heavily weighted factor in finding an impairment of its contract by a state is the severity of the impairment and the reliance on the contract terms by the complaining party. *Allied Structural Steel Co. v. Spannaus*, 434 U.S. 234, 244 (1978). As we show elsewhere, *supra*, timely pay for their services is vital to the Plaintiff employees in this case. Since it has the money available, the State has no reasonable purpose in support of its substantial impairment of the employees' contracts. The impairment clause has been applied to compel enforcement of state contracts even in the situation of a financial crisis. See *University of Hawaii Professional Assembly v. Cayetano*, 183 F.3d 1096 (1999) ("Cayetano") and cases cited therein.

WHEREFORE, Plaintiffs pray that the Court enter a Temporary Restraining Order, or in the alternative , a Preliminary Injunction enjoining Defendants as first above stated. 5/

Respectfully submitted,

CORNFIELD AND FELDMAN

BY


GILBERT FELDMAN
STEPHEN A. YOKICH

ATTORNEYS FOR THE PLAINTIFFS

July 13, 2009

4/ No public purpose is served when, as in the case sub judice, the State holds its employees hostage in the internal political negotiations for a new budget. There is no fiscal emergency or other severe crisis that could be argued as a reasonable basis for an impairment. See *United States Trust Co.*, *supra*, at 431 U.S. 22, n. 19. A self-created situation, as in the case sub judice, does not justify an impairment of the obligation to pay the State employees. See cases cited in *United States Trust Co.*, *supra*, at 431 U.S. 24, n. 22.

5/ A similar lawsuit was filed in connection with the Illinois budgetary impasse in 2007. An Agreed Order was entered on August 10, 2007 (copy attached). The suit was then voluntarily dismissed on August 30, 2007 when the impasse ended (copy attached).

GILBERT FELDMAN, Esq.
STEPHEN A. YOKICH, Esq.
CORNFELD AND FELDMAN
25 East Washington Street
Suite 1400
Chicago, Illinois 60602-1803
312-236-7800
312-236-6686 Facsimile

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
CHRISTIAN COUNTY, ILLINOIS

THE AMERICAN FEDERATION OF STATE,
COUNTY and MUNICIPAL EMPLOYEES,
AFL-CIO, COUNCIL 31,

and

MARCIA HEITZ, DONALD WAREHAM,
RONALD ENGLAND, MELODIE SYKES,
SUSAN L. SMITH, MARNITA M. HARRIS,
BRUCE CURTAIN, SUSAN C. MASTEN,
and GARY BECKMAN, in their individual
capacities as

Plaintiffs,

vs.

STATE OF ILLINOIS and DANIEL W. HYNES,
in his official capacity as Comptroller for the
State of Illinois,

Defendants.

No. 07 MR 52

FILED

AUG 10 2007

Donna M. Costello
Circuit Clerk
Christian County

AGREED ORDER

THIS MATTER, coming on for hearing on the Motion for Temporary Restraining
Order or, in the alternative, Preliminary Injunction;

THE PARTIES, the American Federation of State, County, and Municipal
Employees, AFL-CIO, Council 31; Marcia Heitz; Donald Wareham; Ronald England;
Melodie Sykes; Susan L. Smith; Marnita M. Harris; Bruce Curtain; Susan C. Masten; and
Gary Beckman, plaintiffs, having appeared by and through their counsel, Cornfield and
Feldman; and the defendants, State of Illinois and Daniel W. Hynes, Comptroller of the
State of Illinois, having appeared by and through their counsel, Lisa Madigan, Attorney
General of the State of Illinois; and

THE PARTIES having agreed, solely for purposes of this Agreed Order, as follows:

- a. The Comptroller of the State of Illinois has no authority to issue warrants or otherwise pay employees of the State of Illinois without an appropriation (*AFSCME v. Netsch*, 216 Ill. App. 3d 566, 567 (1991)) or a court order (*Jorgensen v. Blagojevich*, 211 Ill.2d 286, 315 (2004));
- b. Pursuant to §2(a) of the State Officers and Employees Money Disposition Act, "[n]o money belonging to or left for the use of the State shall be expended or applied except in consequence of an appropriation made by law and upon the warrant of the State Comptroller" (30 ILCS 230/2(a));
- c. Pursuant to §9(c) of the State Comptroller Act, the Comptroller shall refuse to draw a warrant, "[i]f he determines that unencumbered appropriations or other obligational or expenditure authority are not available from which to incur the obligation or make the expenditure" (15 ILCS 405/9(c));
- d. The 95th General Assembly has not passed a budget for the 2008 fiscal year;
- e. The Governor of the State of Illinois has not signed the 2008 fiscal year budget into law;
- f. The State of Illinois is an "employer" as defined by the Fair Labor Standards Act (FLSA) (29 U.S.C. §201 *et seq.*);
- g. The FLSA requires that the State of Illinois comply with the minimum wage and overtime obligations contained in that Act;
- h. Without a court order authorizing payment, the State of Illinois may be subject to liquidated damages and interest for a violation of the FLSA;
- i. It is in the best interest of the parties and the People of the State of Illinois to avoid the need to pay liquidated damages and interest due to a violation of the FLSA;
- j. All parties shall bear their own attorney's fees, costs, and expenses. This Agreed Order or the provisions contained herein shall not be used as a basis for a petition or other claim for attorneys' fees; and
- k. Plaintiffs agree that they will not pursue a claim for liquidated damages and/or for interest under the FLSA for the time period encompassed by this Agreed Order.

IT IS HEREBY ORDERED that Comptroller, Daniel W. Hynes, to the extent feasible,

shall issue warrants or electronic payments sufficient to comply with the FLSA (29 U.S.C. §201 et seq.) to State employees. To the extent it is not feasible to limit the issuance of warrants or electronic payments only to those State employees and in such amounts necessary to comply with the FLSA, the Comptroller shall issue such other additional payroll warrants or electronic payments to ensure that the requirements of the FLSA have been satisfied, including payroll warrants or electronic payments to State employees that may not be covered by the FLSA. This Agreed Order will expire at 11:59 p.m. on August 31, 2007.

This order shall not prejudice any other claim or defense in this matter. This Order also shall not be a precedent for any other lawsuit, issue, or claim.

SO ORDERED.

8/10/07
Date

Ru B. [Signature]
Judge

22013

IN THE CIRCUIT COURT FOR THE FOURTH JUDICIAL CIRCUIT
CHRISTIAN COUNTY, ILLINOIS

THE AMERICAN FEDERATION OF
STATE, COUNTY AND MUNICIPAL
EMPLOYEES, AFL-CIO, COUNCIL 31,

AND

MARCIA HEITZ, DONALD WAREHAM,
RONALD ENGLAND, MELODIE SYKES,
SUSAN L. SMITH, MARNITA M. HARRIS,
BRUCE CURTAIN, SUSAN C. MASTEN,
and GARY BECKMAN, in their
individual capacities as

Plaintiffs

-vs-

STATE OF ILLINOIS and DANIEL W.
HYNES, in his official capacity
as Comptroller for the State of
Illinois,

Defendants

CASE NO. 07 MR 52

FILED

SEP 04 2007

Donna M. Castelli
Circuit Clerk
Christian County

VOLUNTARY DISMISSAL

The parties are in agreement that the Governor
has signed the Amendatory Veto, thereby rendering the
issues in this action moot. Therefore, Plaintiffs, by
their attorneys, CORNFIELD AND FELDMAN, pursuant to

Section 5/2-1009 of the Illinois Code of Civil Procedure,
hereby withdraw their pending Motion for Temporary
Injunctive Relief and dismiss this lawsuit in its
entirety.

Respectfully submitted,

CORNFIELD AND FELDMAN

BY 

GILBERT FELDMAN, one of the
attorneys for Plaintiffs

August 30, 2007

GILBERT FELDMAN, Esq.
STEPHEN A. YOKICH, Esq.
JENNIFER CLAIRE WEISS, Esq.
CORNFIELD AND FELDMAN
25 East Washington Street
Suite 1400
Chicago, Illinois 60602-1803
312-236-7800
312-236-6686 Facsimile

-2-

STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)

AFFIDAVIT OF SERVICE

IRMA PICKENS, being first duly sworn on oath,
deposes and states that she served the foregoing
Voluntary Dismissal by mailing a true and correct copy
thereof to the following named party of record on the
30th day of August, 2007, postage prepaid:

ROGER P. FLAHAVEN, Assistant Attorney General
STATE OF ILLINOIS
Office of Attorney General
100 West Randolph Street - 12th Floor
Chicago, Illinois 60601

Irma Pickens

IRMA PICKENS

SUBSCRIBED and SWORN

to before me this 30th

day of August, 2007.

Gilbert Feldman

Notary Public



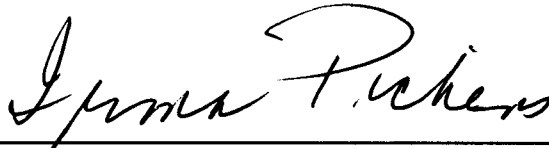
STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)

AFFIDAVIT OF SERVICE

IRMA PICKENS, being first duly sworn on oath, deposes and states that she served the foregoing Motion for Temporary Restraining Order or, in the Alternative, Preliminary Injunction by personal delivery to the following named parties of record on the 13th day of July, 2009:

Attorney General
State of Illinois
Office of Attorney General
100 West Randolph Street - 12th Floor
Chicago, Illinois 60601

Daniel W. Hynes, Comptroller
Office of the Illinois State Comptroller
100 West Randolph Street
Suite 15-500
Chicago, Illinois 60601

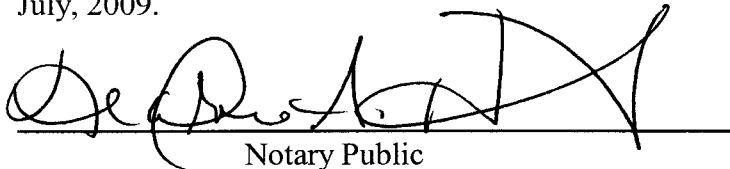
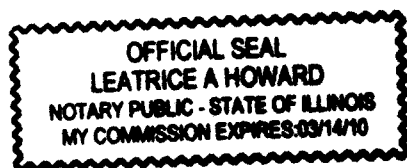


IRMA PICKENS

SUBSCRIBED and SWORN

to before me this 13th day of

July, 2009.


Notary Public

**THE AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
AFL-CIO, COUNCIL 31, and JEANETTE RETTLE,
STACIE McKINNIE-WALLACE, ROSEMARY
ROBINSON, SHAWNE HAMMONDS, KAREN
CARTHANS, ESTEPHEN BESKOROVANY, and
MIKE HAMIL, in their individual capacities as**

[illegible]

Plaintiffs

TRIAL BY JURY DEMANDED

-VS-

STATE OF ILLINOIS and DANIEL W. HYNES, in)
his official capacity as Comptroller for the State of)
Illinois,)

Defendants

Cayetano involved a “pay lag” law adopted by the State of Hawaii which would create financial savings for the State by rolling over and delaying salaries and reducing inadvertent overpayments. The plaintiff union complained that the law impaired its collective bargaining contract. The District Court issued a preliminary injunction mandating the timely payment of compensation. The 9th Circuit affirmed on a number of grounds including a finding that the State had impaired its contract with the union.

The *Cayetano* Court first found that a contractual relationship existed and that the existing pay dates under the union practice were material elements of the contract. Citing and relying upon 7th, 8th and 2d Circuit Court decisions, the 9th Circuit next found that, because “the State has used its law-making powers not merely to breach its contract obligations but, to create a defense to the breach that prevents the recovery of damages”, there was a contract impairment. Id. at 1102-1104, 1106. 1/

The *Cayetano* Court then proceeded to apply the governing equity factors established in the earlier federal court case law, which are discussed in our pending motion. The Court found that the impairment was substantial and that the lag in pay checks would create a significant financial hardship for the employees. The Court further found that the impairment was neither reasonable nor necessary to achieve an important public purpose in view of the panoply of alternatives open to the State for revenue raising or revenue saving. Id at 1106-1107. The Court then found the irreparable harm and balancing of hardships issues in the plaintiff’s favor.

There is no meaningful distinction between *Cayetano* and the cases cited therein on the one hand and the case sub judice. The conduct by the Defendant State in not passing a budget nor adopting appropriations for employee compensation constitutes use of its “law making power” (even without a claim of reasonable financial justification as was present in all of the cited cases) to prevent plaintiffs from recovering damages and impairs their employment contracts.

The only case in disagreement with this abundant authority is a state court opinion

1/ Also cited were decisions of the Supreme Court of New Hampshire and the Massachusetts Supreme Judicial Court which, on the ground of judicial impairment, invalidated furlough days imposed on State employees for the purpose of resolving state financial crises. Id at 1106.

in *White v. Davis*, 30 Cal.4th 528, 68 P.3d 74, 133 Cal. Repr.2d 648 (2003) (“*White*”). *White* refused to apply not only the contract indemnity clause but also the FLSA. The only reason given by the *White* court for its failure to follow the impairment cases (which it characterizes as “the numerous out-of-state cases that have considered the validity of a variety of ‘pay lag’ and mandatory furlough measures”) is its cryptic statement in footnote 16 that those cases are not on point because they do not involve the absence of an available appropriation. But the “*White*” Court fails to offer any meaningful distinction when applying the impairment clause between the use by a state of its law-making powers to create a defense to the impairment by (1) failing to create an appropriation, and (2) adopting a law barring recovery on the contract. And the *White* Court simply ignores the equitable factors applied in all of the other cases as discussed above in determining whether there is an impairment. The *White* Court simply creates out of thin air an implied condition in employment contracts with the state that they become void in the absence of a budget and appropriation. Respectfully, a legal rationale for *White* does not exist. 2/

2/ *White v. Davis* was later relied upon in a decision by a California Superior Court Judge in *Gilb v. Chiang*, (Case No. 34-2008-80000026, Feb. 27, 2009) Although the issue had been mooted when the budgetary impasse was resolved, the Court issued a declaratory opinion dealing with the State’s obligation to pay salary to State employees during an impasse over the 2008-2009 budget. The decision resolved a dispute between the State Governor and Controller. The Governor (through the “DPA”, an administrative agency) instructed the Controller to only pay minimum salary required by the FLSA; however, the Controller declared his intention to provide full pay to all state employees regardless of whether there was an appropriation. The Court held that under California law, the Governor was authorized to make the initial decision and the Controller’s authority was largely ministerial and he was required to defer to the Governor’s legal decisions subject to court review.

Applying this decision to the current budgetary impasse in Illinois, (1) absent a showing of legislative delegation of substantive authority to the Comptroller, his authority in regard to the budgetary dispute is ministerial, and (2) unlike in the California situation, no State official empowered to administer and enforce the state laws involving personnel and employee compensation has directed the Comptroller on how to apply the federal FLSA and

Article VIII, Section 2 of the Illinois Constitution provides that the Governor “*shall* prepare and submit to the General Assembly, at a time prescribed by law, a State budget for the ensuing fiscal year” and that the “General Assembly by law *shall* make appropriations for all expenditures of public funds by the State.” To accept the argument of the *White* Court would be to sanction the right of the Defendant State to hire employees under contract, to work them and accept their services, and to impair their contracts by the act of failing to comply with Article VIII, Section 2, by the expedient of not adopting a timely budget. We respectfully submit that this argument, if made by the State, would be ludicrous. The State is not obligated to hire or retain hired employees. There are contractual due process procedures which govern the situation should the State decide to shut down state government. But the State must fish or cut bait; it cannot have it both ways and impair its employment contracts with its employees.

Respectfully submitted,

CORNFIELD AND FELDMAN

BY


GILBERT FELDMAN
STEPHEN A. YOKICH

ATTORNEYS FOR THE PLAINTIFFS

July 13, 2009
GILBERT FELDMAN, Esq.
STEPHEN A. YOKICH, Esq.
CORNFIELD AND FELDMAN
25 East Washington Street
Suite 1400
Chicago, Illinois 60602-1803
312-236-7800
312-236-6686 Facsimile

Contract Impairment laws. Accordingly, as in 2007, the assistance of the court is required to deal with the current emergency.

STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)

AFFIDAVIT OF SERVICE

IRMA PICKENS, being first duly sworn on oath, deposes and states that she served the foregoing Plaintiffs' Supplemental Memorandum in Support of Motion for Temporary Injunctive relief by personal delivery thereof to the following named parties of record on the 13th day of July, 2009:

Attorney General
State of Illinois
Office of Attorney General
100 West Randolph Street - 12th Floor
Chicago, Illinois 60601

Daniel W. Hynes, Comptroller
Office of the Illinois State Comptroller
100 West Randolph Street
Suite 15-500
Chicago, Illinois 60601

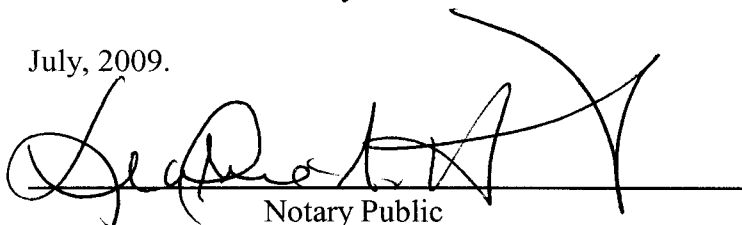


IRMA PICKENS

SUBSCRIBED and SWORN

to before me this 13th day of

July, 2009.



Notary Public

