



## PENNSYLVANIA STATE CORRECTIONS OFFICERS ASSOCIATION

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*Patrolling the Toughest Blocks in the State*

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May 29, 2009

Bryan Oles  
Office of Administration  
Bureau of Labor Relations  
404 Finance Building  
Harrisburg, PA 17120

### **RE: Potential Budget Impasse**

Dear Mr. Oles,

I am writing to seek clarification of Governor Rendell's letter of May 13, 2009 (and the Commonwealth's position) regarding the impact of a potential budget impasse. I further request confirmation that there will be no interruption of those disability benefits (paid pursuant to the Heart and Lung Act, Act 632, and Act 534) currently being received by our members who have been injured in the performance of duties.

Governor Rendell makes a number of pertinent observations in his letter:

- "... all employees would continue **working** as scheduled . . ."
- "However, the **commonwealth would not be able to pay most employees for work performed** in the new fiscal year until a budget is enacted."
- ". . . Commonwealth Court ruled that during a budget impasse, the **Pennsylvania Constitution prohibits the payment of wages** to any employee whose funding is subject to the enactment of a signed budget . . ."

Further, the "2009 Potential Budget Impasse Employee FAQ" makes similar points:

- "... because the **commonwealth lacks authority to pay for time worked** after the current budget expires . . . there may be **delays in pay earned** from that point until a new budget is enacted."

- ". . . the **Commonwealth Court held that there is no authority to pay any employee** without an authorized budget. The court also reasoned that the federal law which requires **timely payment of wages** does not pre-empt the Pennsylvania constitution."

The Commonwealth Court decision in *Council 13 v. Commonwealth of Pennsylvania*, 954 A.2d 706 (Pa.Cmwlth.2008), dealt with the applicability of the Fair Labor Standards Act (FLSA), and **wages paid to employees**, during a budget impasse. Of course, disability benefits paid pursuant to the Heart and Lung Act, Act 632 and Act 534 do not constitute "wages" or "pay for work performed," and, therefore, should be unaffected by any of the considerations outlined above.

The purpose of the [Heart and Lung] Act is to provide important public safety personnel with *full* compensation while disabled from an injury which occurs in the performance of duty.

*Feineigle v. Pennsylvania State Police*, 680 A.2d 1220, 1222 (Pa.Cmwlth1996)(quoting *Colyer v. Pennsylvania State Police*, 644 A.2d 230, 233 (1994)). Full compensation for disability is distinguished from payment of wages. Beyond that, for example,

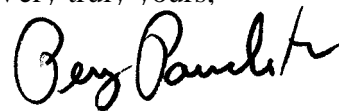
It is clear that Heart and Lung Act benefits can be terminated in one of two ways: (1) when the claimant is able to return to work because his disability ceases or (2) when the claimant's disability is determined to be permanent as opposed to temporary.

*Williams v. Department of Corrections*, 642 A.2d 608, 610 (Pa.Cmwlth.1994).

Accordingly, it seems clear that the special disability benefits enumerated should not be affected by any prohibition against payment of wages during a budget impasse. To the contrary, what is expressly prohibited is the termination of such benefits without just cause and without a due process hearing. For these reasons, we respectfully request your confirmation that payment of special disability benefits will continue during any potential budge impasse.

Thank you for your consideration. If you require anything further, please so advise.

Very truly yours,



PERCY POINDEXTER  
PSCOA Vice President

cc: Donald G. McNany, President - PSCOA

June 8, 2009

Percy Poindexter, Vice President  
PSCOA  
2421 North Front Street  
Harrisburg, PA 17110-1110

Re: Potential Budget Impasse

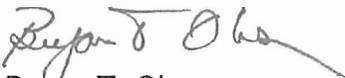
Dear Mr. Poindexter;

This is in response to your letter of May 29, 2009 inquiring as to the impact of a budget impasse on disability benefits paid pursuant to the Heart and Lung Act and Act 632 and Act 534 currently being received by your members. The Commonwealth will not be terminating these types of disability benefits as a result of a budget impasse. However, since these benefits are paid through the Executive Budget Process, funds must be appropriated by the General Assembly. Therefore, if a budget is not enacted there is no legal authority to release funds to make these payments.

The earliest possible pay date to be affected by an impasse would be July 17, 2009. Employees whose normal pay falls on July 17th would be compensated for seven days pay in fiscal year 08-09. The three days in fiscal year 09-10 will be paid when a budget is enacted. Similarly, employees paid on July 24, 2009 would receive payment for the two days in fiscal year 08-09 and the other eight days in fiscal year 09-10 would be paid when a budget is enacted. The July 31, 2009 pay and each following pay would be held in their entirety until a budget is enacted.

Should you have any additional questions, please do not hesitate to contact me at 717-787-5514.

Sincerely,



Bryan T. Oles  
Bureau of Labor Relations

Cc. Jay Gasdaska