



October 1, 2018

VIA E-MAIL

Mr. Michael Provines, Investigator
Illinois Labor Relations Board
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Re: AFSCME Counsel 31 v. Illinois Department of Central Management Services
Case No. S-CA-16-006: Compliance Report

Dear Compliance Officer Provines:

This Compliance Report (and attachments thereto) is submitted by the Respondent State of Illinois, Department of Central Management Services (the “State”) in response to your August 29, 2018 Compliance Order.

The Compliance Order recognizes that numerous legal issues remain, including the time for which step increases are owed and the impact of appropriations on the State’s practical and legal ability to pay those amounts. (Order at 4-5.) The Order directed Administrative Law Judge Anna Hamburg-Gal to conduct a hearing to address these issues in the first instance. (*Id.* at 13.) The Order further recognized “[t]he role of the compliance officer is simply to identify and quantify the State’s burden by determining the cost of returning affected employees to the status quo but for the State’s withholding of the Step Increases.” (*Id.* at 5.) For that purpose, the Order requested that the State identify specific information enumerated in sixteen different requests by October 1. (*Id.* at 9-12.)

Prior experience from 2012/2013 shows the complexity of these calculations and the dangerous pitfalls and errors that result from rushing them. After the 2008-2012 CBA with AFSCME expired, the State stopped paying step increases, but agreed to reinstate them as part of the contract settlement in 2013. The Quinn Administration directed the agencies to place employees on the appropriate step and to calculate back pay as quickly as possible. This resulted in a months-long herculean effort that, because of the rushed and largely manual process, still resulted in an overwhelming rate of error at a great cost to the State and some AFSCME employees. DHS payroll staff, for example, worked seven days a week for three full months to do the initial manual calculations. And Administrative and Regulatory Shared Services, serving eight agencies, worked exclusively on the effort seven days a week for 27 days to complete their manual calculations. After the agencies’ efforts, CMS took up the task of manually reviewing and rebuilding each employee’s personnel history to verify the agencies’ calculations and manually input over 36,000 transactions, with a team of approximately 15 staff—employees, contractors,

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and retirees—that worked on nothing else. They worked from August 2013 and finished in mid-April 2014. For most bargaining unit members, agencies and CMS were calculating a period of only nine months during which step progressions were halted in 2012/2013. Given the potentially longer time period in this case (and the fact that there has been no legal determination regarding that time period), the calculation and verification process is significantly more complex here.

Moreover, despite the efforts in 2012/2013, agencies spent years dealing with the fallout from the errors that resulted from the rushed process, including underpayments, overpayments and other errors. Some agencies have been forced to commence collections actions against their bargaining unit employees to obtain repayment of overpayments. AFSCME employees grieved the State's attempts to recoup miscalculated overpayments at least 100 times. In at least one instance, a bargaining unit member was incorrectly overpaid, and had sought financing for a house based on the higher pay. Once the mistake was corrected, she was unable to maintain the house payments and lost the home. In addition, some employees who were underpaid have sought reimbursement through the Back Wage Claim Fund. CMS took the extraordinary step of authorizing agencies to utilize Back Wage Claim payments directly rather than going through CMS due to the large number of errors expected. The fallout from the salary adjustment errors continued into calendar year 2018. Thus, the importance of getting this correct, the first time, cannot be overlooked.

To avoid the mistakes of the 2012/2013 step payments, CMS, DoIT and certain agency payroll teams developed an integrated electronic mechanism to more efficiently and effectively identify steps and recalculate most of the subsequent personnel actions that would be affected by a reinstated step. They began developing this program in May 2018, well before the Compliance Order. It has likely saved agencies substantial administrative time and effort, and significantly reduced the amount of human error expected. As discussed below, the State is providing answers for nine of the sixteen requests and has made meaningful progress on Items 3, 12 and 14. The remaining four requests, Items 4-7, must build off of the work that is in progress on Item 3. Although the State was not able to provide all of the information requested by October 1, it has made significant strides towards the outstanding items. The State anticipates that Item 12 will be completed before the end of October, Item 3 will be completed within eight weeks, and Items 4-7 will be completed within five months thereafter. The State will not be able to finalize an answer to Item 14 until the impasse dispute is resolved.

Below is a detailed explanation of the facts and data that the State is providing with this response, and the status of its progress on the remaining items.

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1. Provide a past action report that includes the following information:

- a. the number of AFSCME employees by agency that received step increases in FY 2013, FY 2014, and FY 2015;**

State's Response: The State has provided the requested information as Exhibit 1(a). As noted in Exhibit 1(a), GOMB is still waiting to receive data from a handful of agencies. The State will supplement Exhibit 1(a) when additional data is available.

- b. the total number of AFSCME employees by agency for FY 2013, FY 2014, and FY 2015;**

State's Response: The State has provided the requested information as Exhibit 1(b). Headcount numbers are reflected as of June 30 for each fiscal year. For FY13, FY14 and FY15, the State is providing contemporaneous GOMB reports that include AFSCME and non-AFSCME employees. As noted in Exhibit 1(b), GOMB is still waiting to receive data from a handful of agencies. The State will supplement Exhibit 1(b) when additional data is available.

- c. the total dollars paid to AFSCME represented employees for step increases by agency for FY 2013, FY 2014, and FY 2015;**

State's Response: The State has provided the requested information as Exhibit 1(c). Consistent with the requests in subpart d and e, the amounts reflected include only the increase in salary. They do not include any consequential impact beyond the salary (*e.g.*, no FICA, pension cost). As noted in Exhibit 1(c), GOMB is still waiting to receive data from a handful of agencies and other agencies provided estimates only. The State will supplement Exhibit 1(c) when additional data is available.

The Compliance Officer should be aware that when an employee's anniversary date is sometime within the fiscal year, the step increases paid in that fiscal year do not reflect the full twelve-month step increase award. For example, step increase payments for an employee with a July 1 anniversary date would include the full twelve months, while payments for an employee with an April 1 anniversary date would include only three months of the increase. In the following fiscal year, the twelve-month award is moved into the employee's base salary, and thus the remaining portion of the twelve-month award is not accounted for in the following fiscal year step increase figure either. This may impact the utility of the percentage requested in subpart (e).

- d. the base payroll cost for AFSCME represented employees by agency for FY 2013, FY 2014, and FY 2015;**

State's Response: The State has provided the requested information as Exhibit 1(d). As with subitem (c), the amounts reflected include only the increase in salary. They do not include any consequential impact beyond the salary (*e.g.*, no FICA, pension cost). As noted in Exhibit 1(d),

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GOMB is still waiting to receive data from a handful of agencies and other agencies provided estimates only. The State will supplement Exhibit 1(d) when additional data is available.

- e. the percentage of the cost of the step increases by agency for AFSCME represented employees as a percentage of AFSCME represented employees' base pay for FY 2013, FY 2014, and FY 2015; and**

State's Response: The State has provided the requested information as Exhibit 1(e). These calculations are based on the data produced for sub-items (c) and (d) above, and subject to the limitations reflected in those responses.

- f. the summary totals of paragraphs a through e for all agencies for FY 2013, FY 2014, and FY 2015.**

State's Response: The State has provided the requested information as Exhibit 1(f). These calculations are based on the data produced for sub-items (a) through (e) above, and subject to the limitations reflected in those responses.

- 2. Post the attached Board notice. The notice is to be posted as the Board ordered with the language as specified by the Board. Copies of this notice shall be reproduced by Respondent and posted in conspicuous places wherever public employees or member notices for bargaining unit employees are customarily posted; the notices are to be maintained for a period of 60 consecutive days. Some large facilities may require a greater number of postings. Respondent will take reasonable efforts to ensure that the notices are not altered, defaced, or covered by other material. At the end of the posting period, Respondent will provide an acknowledgement to Charging Party and the compliance officer that the copies were continuously and conspicuously posted. Charging Party will bring to the compliance officer's attention any problems associated with the proper posting of the notices at any time during the posting period, and the compliance officer will investigate and determine the appropriate action needed to address the complaint. Respondent shall also post the notice electronically on its internet site and keep it continuously posted for 60 days. At Respondent's discretion, in addition to posting notices at employees' worksites and Respondent's internet site, it may also elect to send notices to bargaining unit employees by email.**

State's Response: The notice has been posted as directed.

- 3. Place employees at the proper step for FY 2019 as if they received all step progressions for which they were eligible for since July 1, 2015, including, but not limited to, affected**

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employees who are current employees, those who are no longer employed, those who are deceased or retired, and those who have been promoted and/or transferred;

State's Response: Due to the State's efforts to develop an increasingly automated program that can more quickly and efficiently compile much of the underlying data—efforts which began months before the Compliance Order was issued—the State has made substantial progress on this request. However, additional work is still needed.

As early as May, CMS, with the support of DoIT and a number of agency payroll staff, began brainstorming and developing a comprehensive and integrated approach to address step progression calculations. This approach leverages the State's personnel data, which is now centralized at DoIT, to electronically identify where steps were missed, and to automatically recalculate most of the subsequent personnel actions that would be affected by a reinstated step. It has likely saved agencies months of initial ground work, and significantly reduced the amount of human error expected.

Of the approximately 24,000 potentially affected employees, CMS and DoIT believe they have successfully automated initial projections for all but approximately 2,000 employees' base pay adjustments accounting for step progressions for each of the three possible time periods for which step progressions could be owed. As discussed below, these numbers must still be verified by the agencies.

Each agency has received three reports that reflect the automated results for each employee that worked in their agency since 2015. They have also received a list of the employees for whom automated results could not be produced. The three reports reflect different time periods when step increases may have been owed:

- Report 1: assumes step progressions are owed through January 8, 2016, which is the date that impasse occurred;
- Report 2: assumes step progressions are owed December 13, 2016, which is the date that the Board ruled on impasse;
- Report 3: assumes step progressions are owed through the time the report was produced, as if no impasse occurred at all.

The State believes its obligation to pay step progressions ends on January 8, 2016, the date impasse occurred. The Labor Act permits the State to implement its last, best, and final offer once impasse occurs, and that offer did not include steps. There does not appear to be any genuine dispute between the parties about this legal principle. The only dispute is when and whether impasse occurred. The Compliance Order recognizes the Board or court must determine this impasse issue, after the factual record is established in the administrative process. Thus, the State believes it is necessary to produce calculations for all three scenarios.

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Each report includes the following information:

- Employee's name;
- Employee's continuous service date;
- Position classification number for each position held;
- Employee's personnel transactions since July 1, 2015;
- The effective date of each of employee's personnel transactions, including the effective dates of previously unrecognized post-July 1, 2015 step adjustments;
- Employee's currently reported step (w/o any step adjustments since July 1, 2015);
- Employee's adjusted step level (based on the respective impasse date);
- Employee's currently reported base salary (w/o any step adjustments since July 1, 2015);
- Employee's base salary adjustments including steps (based on the respective impasse date).

Importantly, the data in these reports are not final and almost certainly contain errors. Agencies must still verify this initial data against their own payroll and personnel records, and manually check for certain issues that the electronic process could not account for. For example, CMS and DoIT were unable to successfully program the effect a voluntary reduction would have on each specific employee's subsequent step and salary. Moreover, agency MOUs or other agency-specific labor agreements/rules may also affect the automated results. In addition, the electronic process could not be used at all for approximately 2,000 of the approximately 24,000 affected employees. For these employees, agencies must recreate step placement and salary amounts from scratch. CMS has given each agency the list of employees for whom it must manually calculate.

Despite the imperfections and work that still remains, this is a substantial improvement from the largely manual process used to calculate step progressions in 2012/2013. The process in 2012/2013 was also complicated by tight timeframes, frozen pay scales at some agencies, the release of pay freezes during the relevant time period, and lack of coordination. The preliminary work completed by CMS and DoIT this time puts agencies in a much better place than they were when implementing step progression calculations in 2013.

The State estimates that all agencies will be able to verify the automated data and complete the 2,000 manual calculations within six to eight weeks.

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- 4. Provide a report detailing the number of AFSCME employees by agency, employees' names, and the amount of back pay owed by fiscal year for those employees that were to receive step increases, including an overall agencies' summary total for back pay by fiscal year, beginning July 1, 2015, through September 2018, and including the cost of the step increases by agency for AFSCME represented employees as a percentage of AFSCME represented employees' base pay;**

State's Response: The total number of AFSCME employees by agency for FY16, FY17 and FY18 are included in Exhibit 4(a). The remaining elements of this request require significant manual work, must build on the data finalized for Item (3), and will vary greatly depending on whether and when a final court order determines impasse occurred. As explained above, agencies are currently working to verify the automated data and to manually calculate the steps for the approximately 2,000 employees whose transactions could not be automatically generated, as requested in Item (3). Once that work is completed, agency staff will begin to calculate these back pay amounts, which must be done by the individual agencies on a pay period-by-pay period basis.

Numerous factors make back pay calculation onerous, including, but not limited to shift differential, temporary assignment, paid/unpaid leaves of absence, docked time, discipline, promotions, voluntary reductions, effect on part-time employees. Moreover, unless the impasse issue is decided in the meantime, to fairly comply with this Item, the State must perform each of these calculations three times.

Each of the potentially complicating factors requires numerous subprocesses to ensure accuracy. For example, employees whose salaries are increased due to a temporary assignment (TA) will need their backpay manually adjusted. Agencies will likely have to seek a report of all temporary assignment paid during relevant periods from the applicable payroll system (the State has seven separate payroll systems). Each agency would then pull a report from its own payroll database to cross-check and verify that the payroll system report accurately captures all relevant TA pay. The agency payroll staff would then use the verified base pay adjustment analysis, coupled with the TA pay reports to create a formula to recalculate the TA base pay, as well as any overtime payments while in TA status—for each individual employee impacted by TA.

To account for docked time, agencies will pull a report from the payroll system as well as a report from the timekeeping system to compare and verify what employees were docked and during what periods. From there, the agency would likely create formulas in Excel to identify the difference between the amount docked at the inappropriately lower salary.

Leaves of absence and disciplinary suspensions are other complicating factors for backpay calculations. Payroll staff would likely compare personnel history information from the PEERS system and stop/start codes in the agency payroll database to determine whether there was a leave of absence or disciplinary measure affecting salary. The distinct differences between each

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disciplinary action or leaves of absence means that these calculations would likely be manually calculated.

Part-time bargaining unit employees pose another likely scenario requiring manual calculations. Agencies will have to calculate the percentage of time worked per pay period to identify the accurate differences between the base salary paid and the salary due after implementing the required steps.

Some agencies/payroll systems have been working to partially automate the backpay calculations building off the data described above, but even with automation, the numerous and nuanced complicating factors make arriving at an accurate calculation of backpay a massive undertaking.

Once backpay is calculated for each employee, agencies will divide the backpay amounts by fiscal year and also calculate a cumulative amount for each of the three potential time periods.

Depending on the size of the agency, these calculations will likely take anywhere from 2-6 months after the completion of Item (3). DHS, for example, processes the payrolls for DHS, DOC, DJJ, DCFS, DNR and DVA (approximately 27,000 AFSCME employees in total) and will need at least five months after Item (3) is complete to perform these calculations properly.

5. Provide a report that identifies those employees that should have received a step increase who worked overtime beginning July 1, 2015, through September 2018, and calculate the difference in the overtime paid at the rate each employee should have received if step increases had occurred, by agency, by pay period worked and fiscal year;

State's Response: As with Item (4), this report requires significant manual work, must build on the data finalized for Item (3), and will vary greatly depending on whether and when a final court order determines when or if impasse occurred. Once agencies complete the work required for Item (3), they can begin factoring overtime into back pay calculations by agency. Again, these calculations must be done by the agency on a pay period-by-pay period basis and require manual work.

Like back pay generally, calculating adjustments to overtime payments is a multi-step process. After verifying the accuracy of the step placement, agencies will likely need to request reports from their IT staff that maintain the applicable timekeeping system for all overtime worked during the relevant time periods. These reports provide data on a day-by-day basis, as overtime worked is coded specifically based on things like weekends worked, holidays, and other factors that affect the overtime rate. Agencies would then compare the daily timekeeping data with their payroll database data, which reflects overtime per pay period and the rates paid. After verification of accuracy, the agency would likely create a formula to recalculate overtime based on the base salary changes (verified data referred to in response to Item (3)). The agency would then divide the

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adjusted overtime into amounts by fiscal year and also calculate a cumulative amount for each of the three potential time periods.

As with Item (4), the State expects it will each agency anywhere from one to five months to complete these overtime calculations after Item (3) is verified. Again, DoIT and agency payroll will seek to develop additional electronic programming to address some of these issues and expedite the process. The State will update the compliance officer as this work progresses.

6. Provide a report that totals the back pay that affected employees should have received together with the corrected overtime back pay by employee, by agency for each fiscal year, beginning July 1, 2015;

State's Response: This request seeks a calculation based exclusively on the data produced for Items (4) and (5) above. For the reasons discussed in response to Items (4) and (5), the State will produce these calculations as soon as practical.

7. Calculate interest owed on back pay at 7% per annum by fiscal year beginning July 1, 2015 (see Appendix A);

State's Response: This request seeks an interest calculation based exclusively on the amounts determined in Item (6) above, which is in turn based on Items (4) and (5). For the reasons discussed in response to Items (4) and (5), the State will produce these calculations as soon as practical.

The State has some questions and concerns about the interest calculation methodology presented in Appendix A, and it looks forward to discussing those more with the Compliance Officer and AFSCME before these calculations are completed. For example, interest must be calculated on pay period by-pay period basis.

8. By agency, provide the agencies' budget requests for personal services appropriations for FY 2019;

State's Response: The State has provided the requested information as Exhibit 8(a), based on extracts from the State's FY19 Budget Book. In addition to the original amounts requested by agencies, Exhibit 8(a) also identifies the amount of appropriations for personal services ultimately passed by the General Assembly. For some agencies, like the Department of Human Services, which employs the second largest number of AFSCME employees, the General Assembly appropriated even less than the agency budgeted (its budget already excluded step progressions). Exhibit 8(b) is a copy of GOMB's FY19 budget instructions, in which agencies were explicitly instructed to exclude step increases from their FY19 budget requests for the reasons discussed in response to Item (9) below. Exhibit 8(c) is Guidance to Payroll Officers from the Director of CMS, explaining the State's policy to cease all step increase payments going forward.

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9. By agency, identify whether sufficient funds existed in personal services appropriations to pay for step progressions in each agency's budget requests for FY 2015; FY 2016, FY 2017, FY 2018 and FY 2019 and, if not, explain why sufficient requests were not made;

State's Response: In FY15, step progressions were accounted for in the development of each agency's budget, but the actual FY15 Budget Bill enacted by the General Assembly was \$1.4B short because a temporary tax increase expired in January 2015. At that time, the 2012-15 CBA was still effective. The current administration worked with the General Assembly to enact spending reductions and reallocate resources in other funds in order to close the \$1.4B gap. This enabled the State to pay step increases through the expiration of the CBA.

In FY16, agencies presented a maintenance level budget, which would have included step increases and would have led to a \$6.1 billion deficit. Agencies then presented a series of programmatic and operational reductions to bring the budget back in balance. Budget negotiations broke down, and the State issued guidance to all agencies to stop paying step increases effective July 1, 2015. (*See Ex. 13.*)

In FY17 through FY19, agencies' appropriation requests for personal services did not include additional funds intended to pay for step progressions. The 2012-15 CBA had expired, and the State believed in good faith that it did not have any legal obligation to continue paying step progressions – a belief confirmed by the Labor Board's step increase ruling. Indeed, on February 3, 2016, the Administrative Law Judge issued a Recommended Decision and Order finding that the State did not owe step progressions, which the Labor Board adopted at its meeting on May 10, 2016. Although the Appellate Court reversed the Labor Board's decision on November 6, 2017, the State immediately appealed to the Supreme Court. The Supreme Court did not rule upon the State's Petition for Leave to Appeal until March 21, 2018, which was more than a month after the State's FY19 Budget Book had already been made public and presented to the General Assembly.

Respectfully, the State believes it would have been fiscally irresponsible for it to request that the General Assembly appropriate hundreds of millions of dollars in taxpayer funding for step progressions that the Labor Board determined the State did not owe, and which the Court system did not finally reverse until March 21, 2018. The law does not require the State to seek appropriations for all hypothetical future legal liabilities, and it would be unreasonable to expect any government body to do so, especially since the State proposed eliminating step increases for the entire term of the contract. For that reason, in FY17, FY18 and FY19, GOMB instructed agencies to exclude step progressions from their budget proposals and did not seek step increase appropriations when it submitted the State's budget proposals to the General Assembly. (*See Exhibit 8(b), GOMB Budget Instructions.*) For FY19, the Budget Book was submitted in February 2018, over a month before the Supreme Court's March 21, 2018 ruling.

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The General Assembly was well informed of the step progression litigation from FY16 through FY19. If it had deemed it appropriate, the General Assembly could have passed greater appropriations to cover step progressions. If anything, however, the personal services amounts appropriated by the General Assembly were lower than the agencies requested, not higher. And in FY16 and FY17, the General Assembly did not pass a complete, balanced budget leaving many agencies without enacted appropriations that would have been available to pay personal services.

10. By agency, provide the number of employees who retired from or otherwise left the agency during FY 2015, FY 2016, FY 2107, and FY 2018;

State's Response: The State has provided the requested information as Exhibit 10(a). Exhibit 10(a) includes retirement numbers provided by SERS, and additional separation numbers provided by the agencies. As noted in the Exhibit, some agencies included only the AFSCME employees who separated rather than all state employees. The State will supplement Exhibit 10(a) when additional data is available.

11. By agency, provide the number of employees estimated to retire from or otherwise leave each agency during FY 2019 and the amount of time estimated to fill any open positions;

State's Response: The State has provided its current best estimate of the requested information as Exhibit 11(a). These numbers are mere estimates of the number of employees that may retire or otherwise separate from the agency in FY19 and the amount of time that may be needed to fill open positions. They are based on prior year trends and other factors such as the number of employees eligible for retirement. As noted in Exhibit 11(a), GOMB is still waiting to receive data from a handful of agencies and other agencies provided only a subset of the data request, for example only applicable AFSCME employees or separations but not retirees. The State will supplement Exhibit 11(a) when additional data is available.

12. By agency, provide the projected estimates of the amount of FY 2018 appropriations that will lapse;

State's Response: Exhibit 12(a) identifies the appropriation line items from which appropriations for personal services are potentially available. The State will be able to determine the amount of cash actually available in those line items to pay step increases within three weeks. Agencies are still completing their spending for FY18 and have until October 31, 2018 to file vouchers with the Office of the Comptroller for FY18 expenditures. Then, the Comptroller has until December 31, 2018, to pay such vouchers out of expiring FY18 appropriations. The State recommends that the parties should immediately explore options to escrow the lapsing cash available by October 31, 2018. Escrows have been used for similar purposes in the past, including the 2012/2013 wage increase dispute.

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The amount of lapsing appropriations that are available to pay step increases is dependent on a number of legal and practical considerations. First, as explained more below, non-personal services appropriations cannot generally be used to pay wages. Second, a lapsing personal service “appropriation” is not the same as cash available to pay wages. Third, FY18 appropriations can only be used to pay costs in that fiscal year. 30 ILCS 105/25; *see* SAMS Manual, Procedure 11.10.20. Fourth, these appropriations lapse on October 31, 2018, after which the State will no longer have authority to spend them.

A. *Not all appropriations can be used for personal services.*

Exhibit 12(a) includes only appropriation line items that may contain cash available to be spent on wages. The Illinois Constitution states: “The General Assembly by law shall make appropriations for **all** expenditures of public funds by the State.” (Ill. Const. Art. VIII, Section 2(b) (emphasis supplied)). The Supreme Court has held this means that **only** the General Assembly may make such appropriations: “the public policy of this state under which the power to appropriate for the expenditure of public funds is unique to the General Assembly.” *State of Illinois v. AFSCME*, 2016 IL 118422, para. 45. Thus, in the absence of an appropriation or other spending authority from the General Assembly, a bill cannot be paid. The Comptroller Act requires the State Comptroller to refuse to draw a warrant [to pay a bill] if he or she determines no appropriation or expenditure authority is available. 15 ILCS 405/9(b); *see Netsch*, 216 Ill. App. 3d at 567. Further, a State Board cannot require the State to spend money in excess of that which has been appropriated by the General Assembly. Section 30 of the State Finance Act, which is entitled “Indebtedness exceeding appropriation prohibited,” provides that no . . . board, . . . shall . . . assume to bind the State in an amount in excess of the money appropriated.” 30 ILCS 105/30.

Section 13 of the State Finance Act sets forth 18 objects and purposes for which appropriations may potentially be made: (1) **Personal services**; (2) State contribution for employee group insurance; (3) Contractual services; (4) Travel; (5) Commodities; (6) Equipment; (7) Permanent improvements; (8) Land; (9) Electronic Data Processing; (10) Operation of automotive equipment; (11) Telecommunications services; (12) Contingencies; (13) Reserve; (14) Interest; (15) Awards and Grants; (16) Debt Retirement; (17) Non-Cost Charges; (18) Purchase Contract for Real Estate. 30 ILCS 105/13. An appropriation made for one of these objects “shall be construed in accordance with the definitions and limitations specified in this Act, unless the appropriation act otherwise provides.” 30 ILCS 105/13.

For example, an appropriation authorizing payment of one of the above objects does not authorize an agency to pay for any of the other objects. Importantly here, appropriations for personal services and in part electronic data processing authorize payment of wages, but appropriations for any of the other 16 objects do not. In some cases the General Assembly may issue a “lump sum” appropriation, which includes more than one specific object.

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In Exhibit 12(a), the State identified all appropriation line items that may be available for personal services. As discussed more below, however, not all of the lapsing lump sum appropriations may be used for wages, and the State is still determining what cash is actually available from the lapsing appropriations that could be used for personal services.

There is one limited exception to the general rule that appropriations may only be used for the purpose they are issued. Section 13.2 of the State Finance Act authorizes agencies to make limited transfers among certain operational line item appropriations when the balance in one line-item is insufficient to cover its intended costs. But significant restrictions apply. First, for FY18 and FY19, agencies may transfer only up to 4% of the aggregate amount appropriated to the agency from the treasury fund for the fiscal year. 30 ILCS 105/13(c-4). Second, the appropriations must be from the same treasury fund (*e.g.*, General Funds). 30 ILCS 105/13.2(a). Third, transfers may not be made between agencies. 30 ILCS 105/13.2(a-1). Fourth, transfers may not be made from certain line item appropriations, including but not limited to, personal services, State contributions to the State Employees' Retirement System, employer contributions to employee retirement funds, State contribution for employee group insurance, and Awards and Grants. 30 ILCS 105/13.2(a-2). Fifth, only the unexpended portion of an appropriation may be available for transfer. Sixth, a transfer may not be made unless it is necessary to carry out the programs and purposes for which the appropriations were made by the General Assembly. 30 ILCS 105/13.2(d). Given the vast limitations and great complexity in making transfer from other funds, the State did not include appropriation line items that are not intended for personal services in Exhibit 12(a), but agencies will consider their transfer authority in determining cash available to potentially escrow.

B. Not all lapsing personal services appropriations equal available cash for wages.

Lapsing “appropriations” is not the same as available cash. Appropriations are just authorizations to spend. They do not constitute actual cash. Thus, where an appropriation is made from a fund other than the General Revenue Fund, a determination must be made whether there is sufficient cash in the fund to use the appropriation authority. If there is not sufficient cash or, alternatively, the use of the appropriation authority would exhaust cash needed for other critical aspects of the program, the appropriation may not be used to pay the step increases.

In addition, appropriations of federal funds may be subject to spending caps. For example, federal appropriations may typically limit the amount of the appropriation that can be spent on overhead or administrative costs, which would include personal services. If the payment of the step increases from such appropriations would exceed the spending cap, the appropriation could not be used to pay the step increase. Violating the cap could require the repayment of those funds in excess of the cap, potentially reduce future years awards, or possibly prevent the State from receiving those funds in the future.

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It is also important to keep in mind that, just as appropriations designated for one agency may not be used for other agencies, certain appropriations available for personal services are also limited by specific purpose of the appropriation. For example, FY19 personal services appropriations for the Department of Corrections are made by division or facility. A lapsing appropriation for personal services at one correctional facility could not be used to pay step increases owed to employees at another facility.

GOMB is working with agency finance departments to determine how much cash is available in the lapsing appropriations and expects to identify those figures within three weeks.

C. FY18 Appropriations can be used only for FY18 costs.

Section 25 of the State Finance Act states that appropriations shall be available for expenditure in the fiscal year for which they are enacted. 30 ILCS 105/25(a). To use an appropriation for prior year spending, the appropriation must be issued as a special type of appropriation defined in the SAMS Manual as a “prior year appropriation”—one made specifically to provide for prior year spending from a current appropriation. SAMS Manual, Procedure 11.10.20. Such an appropriation must clearly state that its purpose is to pay for prior year costs. Without express prior year cost language, an appropriation cannot be used to pay costs or debts from prior years.

None of the personal services appropriations expected to lapse in FY18, contain such prior year cost language. Therefore, they could be used only to pay FY18 step progressions, and they could not be used for FY16 or FY17 back pay.

D. Lapsing FY18 Appropriations cannot be spent after October 31, 2018.

At the end of each fiscal year, Section 25 of the State Finance Act also authorizes “lapse-period spending,” during which agencies can pay for outstanding expenses incurred during that fiscal year. For example, during the lapse-period, agencies can pay outstanding invoices or wage amounts incurred in FY18, but not billed or processed until after the fiscal year expired. Typically, the lapse period lasts two months, although in FY18 it is extended until October 31, 2018, and in FY19 it will extend until August 31, 2019. After the last day of the lapse period, any remaining appropriation funds immediately expire, and the agency no longer has authority to spend those funds. Lapsing appropriations for FY18 will expire on October 31, 2018. 30 ILCS 105/25(b-2.6b). Likewise, the State has no authority to spend appropriations that may have lapsed in FY16 or FY17.

E. The State could attempt to escrow lapsing cash available for personal services.

Escrow accounts have been used in the past, including during the 2012/2013 wage increase stoppage, to escrow otherwise lapsing appropriations while the correct back pay amounts were determined. The parties should immediately explore this option for the cash available from the

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FY18 lapsing appropriations that could be used for personal services. This would require cooperation from the Comptroller and/or the Attorney General, and it may require a court order. In addition, agencies will need to determine the cash available and amounts appropriate from each appropriation, consider its transfer authority and issue vouchers.

13. Identify any other funds in FY 2019 appropriations that are available to pay step increases;

State's Response: The State has provided the requested information as Exhibit 8(a). Exhibit 8(a) includes appropriations intended, at least in part, for personal services in FY19. These funds, however, must be used to pay all state employees base salaries and other wages accounted for in the FY19 budget requests. As the State is only three months into the fiscal year, it is too early to know how much surplus may be available in any of these appropriations to pay step progression amounts. As discussed in Item (14), however, the State expects that most if not all agencies will not have sufficient appropriations to pay step increases.

14. Indicate whether each agency's current appropriation is sufficient to pay employees at the correct step and to pay back pay;

State's Response: The State anticipates that the small amounts of personal services appropriations that may remain available at the end of FY19 for step progressions and back pay will be insufficient funds to pay current and prior step progression wages for most if not all agencies. As discussed in response to Item (9), the State and General Assembly reasonably did not include step progressions and back wages in the FY19 appropriations requests or final budget bill. For some agencies, such as DHS, the General Assembly appropriated even less personal services funds than the Agency requested for its planned budget.

However, to reach a definite conclusion in response to this request, other items must first be determined. Whether the State owes step progressions through January 8, 2016, December 13, 2016 or the present will have a significant impact on the total amount that is due. In addition, the State is still in the process of calculating back pay amounts and current step progression levels in response to Items (3), (4), and (5), for all three time periods. Once these issues are resolved, the State will be in a better position to determine just how deficient the FY19 appropriations are to cover those final amounts.

15. Indicate the impact on other agency operations if agency funds are diverted from other purposes to pay employees at the correct step and/or to pay back pay; and

State's Response: As discussed above, the State cannot legally divert funds intended for other purposes to pay for personal services costs, except to the extent permitted by the 4% transfer rule. As a practical matter, doing so would cause untold disruption to state services, including health

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and human services, the safety and security of residents across the state. If agencies were forced to use current appropriation authority to pay employees at the correct step, agencies may have to consider the following actions to maximize appropriations available for personal services:

- Implement layoffs to reduce salary burden to affordable levels, leaving critical positions unfilled;
- Refrain from filling current vacancies, again potentially leaving agency mission critical positions unfilled and likely causing overtime for remaining employees;
- Refrain from backfilling any positions that become vacant during the fiscal year, again potentially leaving critical positions unfilled and likely causing overtime for remaining employees.
- Reduce spending in program areas to preserve appropriations available for personal services. Agencies may be forced to choose between making payroll and paying for other operational expenses like utilities, telephone bills and leases. An extreme example – DOC, DHS or DVA could be forced to choose between paying for food, medical care and utilities at their various facilities, and paying salary increases.

Actions such as those listed above could impact the following agencies:

- The Department of Corrections will not be able to hire new training classes for correctional officers. They may be forced to keep current vacancies open and not backfill for employees that leave, which will result in additional overtime for remaining officers ***and would leave some correctional facilities without sufficient staff to safely operate the facility***. Diverted funds could also limit DOC's ability to provide basic services to inmates such as food, clothing, educational and substance abuse programming, repair & maintenance, bulk fuel purchases, etc.
- The Department of Human Services would not be able to maintain adequate staffing at their Mental Health and Development Disabilities Centers which could ***jeopardize Medicaid funding that currently pays for critical mental health and disability care to Illinois residents***. DHS might also be unable to comply with consent decrees related to its Temporary Assistance for Needy Families program, which ***could cause vendors to shut off basic necessities, such as utilities and food, at DHS support facilities***.
- The Department of Children and Family Services may not be able to maintain staffing ratios required by consent decrees and the agency may not have sufficient staff to timely respond to alleged cases of abuse and neglect, ***putting the health and safety of children in Illinois at risk***.
- The Guardianship and Advocacy Commission would be prevented from fulfilling statutory mandates, ***which impact the safety and health of 5,000+ wards of the state***.

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- The Department of Public Health may not have sufficient staffing to meet its mandate with required nursing home inspections, *putting Illinois' elderly populations at risk*. Also, DPH may not have sufficient staffing to operate its laboratories, *putting the health of Illinois residents at risk in the event of outbreaks of food borne or other contagious illnesses*.
- The Department of Revenue may not have sufficient staff to process income tax returns, monitor the other revenue sources due to the state, or handle timely distributions of those revenues to other statutorily required entities. This could result in the *loss of critical state funding to the State and delay or inaccurate tax reimbursement to Illinois residents*.

Additional detailed impacts on specific agencies are attached as Exhibit 15(a), as reported by the agencies.

In addition, untenable operational and legal consequences would also result if agencies were ordered to start paying current step progression amounts from appropriations available for personal services where the agency's existing FY19 personal services appropriations could not fully absorb those amounts. Before the end of the year, the personal services appropriations would be exhausted and the agency would not be able to pay employees, including non-AFSCME employees, even their base salaries. Moreover, if the State were ordered to pay step progressions through the present before a final legal decision is entered regarding the time period owed, it would be practically impossible for the State to recover the over-payments.

16. Describe any agency plans or efforts to secure a supplemental appropriation or other legislative authorization to transfer funds internally to pay employees at the correct step.

State's Response: The State agrees that, at the appropriate time, a special supplemental appropriation is the correct approach to resolve the appropriations issue. As discussed more in Item (9), however, it would not be prudent to request or issue a supplemental appropriation until the level of step progressions and back pay amounts are determined. This requires resolution of the outstanding legal issues regarding impasse and the time period for which step increases are owed, and the mathematical calculations being conducted by the agencies currently. Seeking an appropriation for a greater amount than is legally owed is not necessitated by any law and would be fiscally irresponsible, and seeking a lesser amount than is owed would be inefficient.

Once these issues are resolved, the State will work with the General Assembly and its members to determine the appropriate time to convene and consider a supplemental appropriation.

* * *

In sum, the State fully recognizes the importance of resolving these issues. Finality is important to both the State and AFSME employees. Given the scale and complexity of the work

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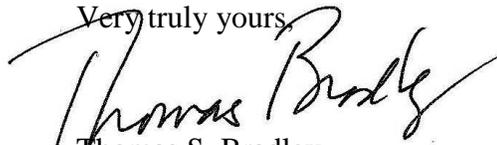
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required and the outstanding legal issues, however, appropriate care and consideration must be taken. The State has worked diligently and in good faith to substantially comply with the 16 requests in the Compliance Order. The State is continuing to work on the remaining items with all due haste, and is investigating more efficient methods for addressing the litany of back pay and overtime issues that currently must be addressed manually.

The State intends to keep the Compliance Officer and AFSCME apprised of its continued progress, and looks forward to hearing from the Compliance Officer regarding the timing for the next status update and/or scheduling the administrative hearing.

Very truly yours,



Thomas S. Bradley

TSB:dam

cc: Stephen Yokich
Mark W. Bennett
Jeffrey S. Fowler
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