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Senate of Pennsylvania

June 26, 2009

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Dear State Employee:

I share your concerns with the budget process and Governor Ed Rendell's decision to unnecessarily withhold pay from approximately 70,000 state workers if a budget is not enacted into law by July 1, 2009.

Since taking office in 2003, Governor Rendell has ignored the constitutionally required deadline for signing a budget into law every year except for his first budget in 2003. Starting in 2007, he issued his first of three differing legal opinions relating to the operation of government during a budget impasse. As you are aware, in 2007 Governor Rendell unnecessarily furloughed approximately 25,000 state employees for one day relying on his interpretation of the requirements of the federal Fair Labor Standards Act (FLSA) and the Pennsylvania Constitution. As Chair of the Senate Labor and Industry Committee, I challenged Governor Rendell's position by relying on *Council 13, AFSCME v. Casey*, a 1993 Commonwealth Court decision. In *Casey*, the Court interpreted the FLSA to allow for the continued employment of state employees with pay in the absence of an appropriations act despite the requirements of the Pennsylvania Constitution. Then in 2008, Governor Rendell again threatened the use of a furlough, but withdrew that threat when a budget was agreed to in early July.

In May 2009 Governor Rendell communicated with state employees that he had abandoned his furlough plan that he espoused in 2007 and 2008 and has instead interpreted a July 2008 single-judge Commonwealth Court decision to allow for the return of "payless paydays" last seen in 1991. This one-judge opinion overturned the Court's decision in *Casey* to prohibit the expenditure of funds in the event of a budget impasse which extends beyond the expiration of the fiscal year. The labor unions representing state employees, including AFSCME and SEIU, have appealed the July 2008 decision to the Pennsylvania Supreme Court arguing that the FLSA permits continued employment of state employees with pay. I submitted a "friend of the court" brief in favor of the unions' position and eagerly await a favorable decision by the Court. If the Court does not overturn that decision, it is possible that the Commonwealth may be subject to a federal legal action commenced by the U.S. Secretary of Labor that would require the payment of double damages for unpaid wages.

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On May 6, 2009 the Senate passed a responsible, balanced, no tax increase budget and sent it to the House of Representatives. Since then, the House Appropriations Committee chaired by Representative Dwight Evans (D – Philadelphia) has not advanced a balanced budget proposal for full consideration by the House.

Since it appears that a budget proposal will not be voted on by the House of Representatives prior to the June 30 deadline and that Governor Rendell will continue with his most recent legal interpretation, I would urge you to contact your financial institution if you are in need of assistance during an impasse. If you are affiliated with PSECU and participate in the payroll direct deposit program, you are eligible for a \$1,000 line of credit for each regular pay period affected by the impasse. These lines of credit are extended with 0% interest if repaid within 60 days of Governor Rendell signing a budget into law.

I strongly believe that all Commonwealth employees should receive timely payment for their services. I also find it extremely reckless and irresponsible that Governor Rendell would once again use state employees as pawns during the budget process.

Very truly yours,

A handwritten signature in black ink, appearing to read "John R. Gordner". The signature is fluid and cursive, with a large loop at the beginning and a long horizontal stroke at the end.

JOHN R. GORDNER

JRG/jdf