

IN THE CIRCUIT COURT OF THE 20TH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

American Federation of State, County)
and Municipal Employees, Council 31;)
Illinois Troopers Lodge No. 41, Fraternal)
Order of Police; Illinois Nurses Association;)
Illinois Federation of Public Employees,)
Local 4408 IFT-AFT; Illinois Federation of)
Teachers, Local 919; International)
Brotherhood of Electrical Workers; Illinois)
Fraternal Order of Police Labor Council;)
Laborers International Union of North)
America - ISEA Local 2002; Service)
Employees International Union, Local 73;)
SEIU Health Care Illinois & Indiana;)
SEIU Local 1; Teamsters Local Union)
No. 705, Affiliated with the International)
Brotherhood of Teamsters; Conservation)
Police Lodge of the Police Benevolent)
and Protective Association,)

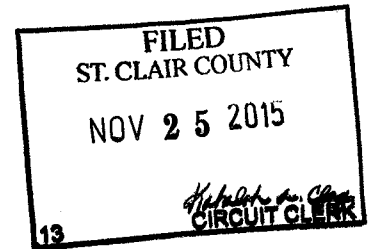
Plaintiffs,)

v.)

State of Illinois and Leslie Geissler Munger)
in Her Official Capacity as Comptroller for)
the State of Illinois,)

Defendants.)

Case No. 15 CH 475



TEMPORARY RESTRAINING ORDER WITH NOTICE

This cause comes before the court on Motion for Temporary Restraining Order filed by Plaintiff SEIU Healthcare Illinois and Indiana (SEIU HCH). The Attorney General for the State of Illinois and Special Attorney General have filed arguments in opposition. The court has reviewed the pleadings and heard the argument of counsel and finds as follows:

Defendants appear pursuant to notice.

The Petitioner has established that the affected employees will suffer irreparable harm and that it has been shown that the balance of equities clearly favors the employees. The executive and legislative branches of state government have failed to reach an agreement on the budget and appropriations are frozen beginning July 1, 2015. This lack of ability of the Governor and the General Assembly to perform duties makes essential services and assistance headed for a chaotic bust. Payment out of pocket for medical services and medication dooms the financial survival of the employees and their families. While the employees have complied with the CBA in all respects, the fiddle while burning posture of the other branches of State government provokes the judicial branch to act to preserve the status quo because it is necessary for the State to secure the financial stability of the SEIU Health Fund for 2015 and 2016

As echoed in *Yellow Cab Co. v. City of Chicago*, 3 F. Supp. 2d 919, 922 (N.D. Ill. 1998), the U.S. Supreme Court has distinguished between an “unconstitutional impairment of a contract obligation and a breach of contract for purposes of claims brought under the Contract Clause of the U.S. Constitution. See *Hays v. Port of Seattle*, 251 U.S. 233, 237, 40 S.Ct. 125, 126, 64 L.Ed. 243 (1920). The distinguishing characteristic between a constitutional impairment and a contractual breach is whether the non-breaching party has an available remedy. *Id.*; *Horwitz-Matthews*, 78 F.3d at 1250-51. *Yellow Cab* 3 F. Subb. At 922. The Petitioner has demonstrated that there is a clearly ascertainable right in need of protection and that there is a likelihood of success on the merits of their claim for impairment of contract. In Illinois, Article I, Section 16 of the Constitution states, in relevant part, that “No ex post facto law, or law impairing the obligation of contracts . . . shall be passed.” The State

argues that the petition for TRO plaintiff "at most states a claim only for breach of contract." The court disagrees.

Petitioner has demonstrated that there is no available and adequate remedy at law and only injunctive relief will suffice. In this case there is no available remedy for breach of contract. The employees cannot be expected to bring multiple lawsuits to attempt to protect their rights. In addition, there are consequences that flow from out of pocket payment of medical and pharmaceutical costs. It is clearly foreseeable that many employees will not be able to pay and they will forego medical treatment and prescribed medicines. Also, there are results of a nonmonetary in nature because some employees will suffer worsened health or be overwhelmed with medical expense and be left with practical bankruptcy.

The failure to supplement the SEIU Health Fund violates the prohibition of impairment of contracts as guaranteed by Article I, Section 16 of the Illinois Constitution. The Illinois Supreme Court has stated the role of the judiciary may be to step in and order payment required by a CBA when the State cannot get a budget. *AFSCME v. Netsch*, 216 Ill. App.3d 566, 575 N.E.2d 945, 947 (1991). ["While we now hold that the issue of general breakdown of government is not before us, we are not saying that the courts are barred from intervening in the event that the legislative or executive branches fail to perform their constitutional functions."] The Supreme Court has also held that a court order based upon the State Constitution may provide for the "expenditure authority other than appropriation." *Jorgensen v. Blagojevich*, 211 Ill. Ed 286, 315 (2004).] The court has the authority to act. The TRO is in order.

Finally, for the reasons stated above and more, the record demonstrates that the


equities favor the Petitioner.

Based upon the foregoing, it is hereby ordered that:

- 1) The Defendants shall take all necessary steps to effect within 10 days to see that the SEIU Health Fund is made whole for all contributions owed, specifically including the payment for fiscal year 2015 underage and payment of all amounts owed for the months of July, August, September, October 2015.
- 2) Further, the Defendants shall take all necessary steps to effect the continuing monthly payments to the SEIU Health Fund on an ongoing basis. Such payments to be made to the SEIU Health Fund within 30 days of the end of the applicable month.

November 25, 2015

e.c. & c.c. All attorneys



Robert P. LeChien, Circuit Judge