

FIRST CIRCUIT COURT  
STATE OF HAWAII  
FILED

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Attorneys for Plaintiff  
HAWAII GOVERNMENT EMPLOYEES  
ASSOCIATION, AFSCME LOCAL 152, AFL-CIO

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

HAWAII GOVERNMENT EMPLOYEES )  
ASSOCIATION, AFSCME LOCAL 152, )  
AFL-CIO, )

Plaintiff, )

vs. )

LINDA LINGLE, as Governor of the State )  
of Hawaii; and DOES 1-10, )

Defendants. )

CIVIL NO. 09-1-1375-06 S S M  
(Contract)

COMPLAINT; SUMMONS

**COMPLAINT**

Plaintiff HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME  
LOCAL 152, AFL-CIO ("HGEA") complains against Defendants above-named, alleging as  
follows:

1. HGEA is a labor union duly organized under the laws of the State of Hawaii

I do hereby certify that this is a full, true and  
correct copy of the original on file in this office.

  
Clerk, Circuit Court, First Circuit

and the exclusive collective bargaining representative for collective bargaining units 2, 3, 4, 9, and 13, which units included employees of the State of Hawaii.

2. Defendant LINDA LINGLE is resident of the State of Hawaii and is sued in her representative capacity as the Governor of the State of Hawaii ("Governor").

3. Defendants DOES 1 to 10 are persons, entities, labor organizations, or governmental bodies or agencies sued herein under fictitious names for the reason that their true names and identities, despite due diligence, are presently unknown to HGEA or its attorneys and may be in some manner liable or necessary parties herein.

4. On June 1, 2009, the Governor announced that state employees will be furloughed for 3 days/24 hours each month, from July 1, 2009 to June 30, 2011, thereby unilaterally reducing employees' hours and cutting employees' wages approximately 13.8%.

5. The Governor cannot unilaterally impose furloughs and circumvent the collective bargaining process. Furloughs reduce employee hours and wages and affect terms and conditions of employment and, therefore, are a mandatory subject of collective bargaining negotiation protected by Article XIII, Section 2 of the Hawaii State Constitution and as prescribed by HRS § 89-9(a). Any disputes over negotiable subjects, when properly presented, must be resolved in accordance with the impasse, mediation, and arbitration process prescribed by HRS § 89-11 and the Memorandum of Agreement, dated February 20, 2009, between HGEA and the Employer. The Governor does not have the implied right to unilaterally impose furloughs pursuant to HRS § 89-9(d).

6. Also, the collective bargaining agreements with HGEA do not allow furloughs and specifically provide that "[n]o changes in wages, hours or other conditions of work

contained herein may be made except by mutual consent.” The terms of the collective bargaining agreements remain in force and cannot be unilaterally changed after the agreements “expire” where, as here, the parties remain in negotiation on a successor agreement in accordance with the above Memorandum of Agreement process.

7. Alternatively, even if furloughs are not a mandatory subject of collective bargaining negotiation, and they are, the *procedures* for implementing furloughs are subject to negotiation under Article XIII, Section 2 of the Hawaii State Constitution and HRS Chapter 89 and are also, if properly presented, subject to the above-described arbitration process.

#### COUNT I

8. HGEA requests, and is entitled to receive, a declaratory judgment that the Governor cannot unilaterally impose the furloughs.

#### COUNT II

9. HGEA requests, and is entitled to receive in order to avoid irreparable harm, a preliminary and permanent injunction from this court enjoining the Governor from unilaterally imposing the furloughs.

#### COUNT III

10. Article XIII, Section 2 of the Hawaii State Constitution, in pertinent part, provides that:

[p]ersons in public employment shall have the right to organize for the purpose of collective bargaining as prescribed by law.

11. Chapter 89 of the Hawaii Revised Statutes sets forth the public policies underlying collective bargaining in the public sector.

12. Chapter 89, Section 2 defines "collective bargaining" as:

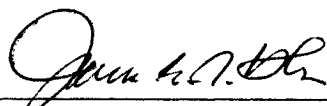
"Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive representative to meet at reasonable times to confer and negotiate in good faith, and to execute a written agreement with respect to wages, hours, amounts of contributions by the State and counties to the Hawaii public employees health fund, and other terms and conditions of employment, except that by any such obligation neither party shall be compelled to agree to a proposal, or be required to make a concession (Emphasis added). HRS §89-2.

13. The Governor's unilateral action is a violation of the Hawaii Constitution, Article XIII, Section 2.

WHEREFORE, HGEA prays as follows:

- A. That the Court issue a declaratory judgment that the Governor cannot unilaterally impose the furloughs.
- B. That the Court issue a preliminary and permanent injunction enjoining the Governor from unilaterally imposing the furloughs.
- C. That the Court award HGEA its attorney's fees and costs of suit.
- D. That the Court award such other and further relief as is just and equitable under the circumstances.

DATED: Honolulu, Hawaii, June 16, 2009.

  
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JAMES E.T. KOSHIBA  
NEAL K. AOKI  
CHARLES A. PRICE  
Attorneys for Plaintiff  
HAWAII GOVERNMENT EMPLOYEES  
ASSOCIATION, AFSCME LOCAL 152,  
AFL-CIO

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

|                                        |   |                 |
|----------------------------------------|---|-----------------|
| HAWAII GOVERNMENT EMPLOYEES            | ) | CIVIL NO. _____ |
| ASSOCIATION, AFSCME LOCAL 152,         | ) | (Contract)      |
| AFL-CIO,                               | ) |                 |
|                                        | ) | SUMMONS         |
| Plaintiff,                             | ) |                 |
|                                        | ) |                 |
| vs.                                    | ) |                 |
|                                        | ) |                 |
| LINDA LINGLE, as Governor of the State | ) |                 |
| of Hawaii; and DOES 1-10,              | ) |                 |
|                                        | ) |                 |
| Defendants.                            | ) |                 |
| _____                                  | ) |                 |

**SUMMONS**

STATE OF HAWAII

To the above-named Defendants:

YOU ARE HEREBY summoned and required to serve upon Plaintiff's counsel, Koshiba Agena & Kubota, 1003 Bishop Street, Suite 2600, Honolulu, Hawaii 96813, an answer to the Complaint which is attached. This action must be taken within twenty (20) days after service of this summons upon you, exclusive of the day of service.

If you fail to make an answer within the twenty-day time limit, judgment by default will be taken against you for the relief demanded in the Complaint.

This summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m., on premises not open to the general public, unless a judge of the above-entitled court permits, in writing on this summons, personal delivery during those hours.

A failure to obey this summons may result in an entry of default and default judgment against the disobeying person or party.

DATED: Honolulu, Hawaii, JUN 16 2009

H. CHING

CLERK OF THE COURT

