



**FILED**  
ALAMEDA COUNTY

MAR 23 2010

CLERK OF THE SUPERIOR COURT

By Vicki Daybell VP

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA

SERVICE EMPLOYEES  
INTERNATIONAL UNION LOCAL  
1000, and YVONNE WALKER,

Petitioners/Plaintiffs,

vs.

ARNOLD SCHWARZENEGGER, et  
al.,

Respondents/Defendants.

RG09456750

ORDER GRANTING IN PART  
MOTION FOR RELIEF FROM  
AUTOMATIC STAY

The hearing on the motion of Petitioners Service Employees International Union, Local 1000 and Yvonne Walker ("SEIU") for Relief from Automatic Stay Pursuant to Cal. Code of Civil Procedure section 1110b came on regularly on March 24, 2010, in Department 31 of this Court, Judge Frank Roesch presiding. SEIU appeared by Felix J. De La Torre, Esq.

UAPD appeared by Adam Zapala, Esq., of Davis, Cowell & Bowe, LLP.

CASE appeared by Patrick Whalen, Esq. of The Law Office of Brooks Ellison.

Respondent Agencies to the coordinated Petitions appeared as follows:

Respondent Arnold Schwarzenegger, David Gilb, and Kris Perry appeared by David W. Tyra, Esq., of Kronick, Moskovitz, Tiedemann & Gerard.

Respondents Alan Kerzin, Bonnie Garcia, Bridgett Luther, Caleb Cheung, David Maxwell-Jolly, Carrie Lopez, Dale Bonner, Destie Overpeck, Dorothy Rice, Douglas Bosco, Fred Armendariz, George Valverde, J.A. Farrow, Jon Duncan, John P. Donnelly, Julie Nauman, Karen Humphrey, Ken Lewis, Kirk Breed, L. Steven Spears, Lester Snow, Lloyd Throne, Lynn Daucher, Lynn Jacobs, Mark Horton, Mark Leary, Mary D. Nichols, Mary-Ann Warderman, Maziar Movassaghi, Mike Chrisman, Patrick Henning, Patrick Wright, Raynor T. Tsuneyoshi, Ron Diedrich, Ronald P. Schafer, Ruth Coleman, Steve Hardy, Steve Poizner, Terri Ciau, Tony Sauer, John A. Wagner, Kimberly Belshe, Will Kempton, and William Haraf appeared by Will M. Yamada, Esq., Labor Relations Counsel for the Department of Personnel Administration.

Respondents Anne Stausboll, Jack Ehnes, and John A. Wagner appeared by Jeffrey Ryan Rieger, Esq., of Reed Smith.

Respondents Edmund G. Brown Jr., Debra Bowen, and John Chiang appeared by Ross C. Moody, Esq., California Department of Justice.

Respondent Glenn Pomeroy appeared by Fredric D. Woocher, Esq. of Strumwasser & Woocher LLP.

Respondent Joan Borucki represented by Ronald B. Turovsky, Esq. of Manatt, Phelps, & Phillips, LLP.

The Court having considered the pleadings, evidence, and arguments submitted in support of and in opposition to the motion, and good cause appearing, it is hereby ORDERED that the motion is GRANTED IN PART. Petitioners are granted relief from the automatic stay with respect to the prospective remedy requiring that Respondents cease and desist from further implementation of furloughs under the Governor's Executive Orders.

Section 1110b of the Code of Civil Procedure provides that the Court may direct that the appeal not operate as a stay of execution if there is a showing of irreparable harm by the Petitioner. Section 1110b requires evaluation of irreparable harm to the petitioner/plaintiff; there is no authority to require a balancing of harms.

It is clear to the Court that irreparable harm will occur to the members of Petitioner's organization. Indeed, the irreparable harm to members of Petitioner's organization is significantly greater than the harm to the employees represented by the plaintiff in *Social Services Union v. County of San Diego* (1984) 158 Cal.App.3d 1126, wherein an order granting relief under Section 1110b was affirmed. The Court takes judicial notice, on its own motion, that a 15% loss of pay establishes irreparable harm to the employees represented by Petitioner SEIU. The declarations submitted in support of the motion clearly demonstrate this point.

It is likewise clear to the Court that irreparable harm will occur to California's taxpayers, including Petitioner Yvonne Walker. California taxpayers will suffer irreparable harm if the appeal operates as a stay because the taxpayers

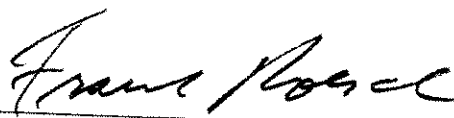
will continue to lose the benefit of these employees' work for the Respondent Agencies while still being required by this Court's judgment to pay wages for those days that the employees are improperly furloughed. Worse, if Respondents' representations are correct, the taxpayers may be required to use General Fund monies to pay the money owed to employees who were improperly furloughed even though their salaries would ordinarily be paid with federal or Special Fund monies. (See, e.g. Declaration of Robert Garcia, filed March 12, 2010, at ¶7, pg. 4.)

As to relief from the automatic stay of enforcement on the retrospective, backpay portion of this Court's order, the irreparable harm has already occurred. While there is no doubt that there is continuing harm as a consequence of lost pay for prior furlough days, the Court declines to exercise its discretion to remove the effect of the automatic stay of enforcement as to back pay relief.

This order does not apply to any Respondent not affected by the automatic stay provisions of Code of Civil Procedure section 916.

IT IS SO ORDERED.

DATED: 3/24/10



Frank Roesch  
Judge of the Superior Court