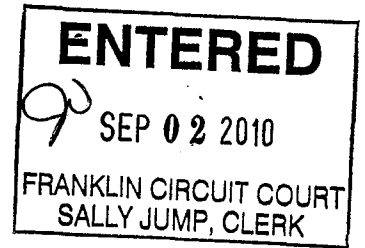


COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION 1
No. 10-CI-1259



CASEY CHADWELL, ET. AL.

PLAINTIFFS

v.

ORDER DENYING TEMPORARY INJUNCTION
AND GRANTING MOTION TO AMEND

STEVEN L. BESHEAR, GOVERNOR,
COMMONWEALTH OF KENTUCKY, ET. AL.

DEFENDANTS

This action is before the Court on the Plaintiffs' motions for a temporary injunction and for leave to file a second amended Complaint, and the Defendants' motion to dismiss for failure to state a claim upon which relief can be granted. For the reasons stated below, the motion for a temporary injunction is DENIED; the motion to amend is GRANTED; and the motion to dismiss is DENIED.

I. Temporary Injunction is DENIED.

The Plaintiffs have the burden to demonstrate their entitlement to injunctive relief under the familiar test of Maupin v. Stansbury, 575 S.W.2d 695 (Ky. App. 1978). The Plaintiffs must demonstrate "abrogation of a concrete personal right", in addition to showing that they will suffer immediate and irreparable injury. If the Plaintiffs can demonstrate the violation of a legal right, and irreparable injury, the Court is further required to weigh the equities, including

“possible detriment to the public interest, harm to the defendant, and whether the injunction will merely preserve the status quo.” *Id.* at 699.

Here, the Plaintiffs have failed to show the violation of a concrete personal right that would warrant the extraordinary remedy of injunctive relief prior to a decision on the merits. All parties recognize that the legislature granted the Governor extremely broad powers to implement furloughs of state employees because of the anticipated severe revenue shortfalls during this budget period. The relevant section of the state budget bill enacted by the legislature is attached to the Defendants’ motion to dismiss as Exhibit 1.

That legislation provides that the “Secretary [of the Personnel Cabinet], with the approval of the Governor may develop...and implement a furlough plan for all state Executive Branch employees based on a lack of funds as certified by the State Budget Director.” The legislation further provides that this authority may be invoked only “to prevent a permanent layoff of state employees in areas of critical services to the citizens of the Commonwealth.”

It is uncontested that the State Budget Director has made the required certification as to the shortfall of funds. (*See Copy of Certification of Fiscal Necessity*, attached to the Defendants’ Response to the Motion to File Amended Complaint as Exhibit 8). The State Budget Director has also provided an affidavit explaining why the revenue projections for the current fiscal year require immediate action to reduce the state payroll, and why large scale layoffs of state employees will be required if the furlough plan is not implemented. *Id.* Exhibit 9.

The Plaintiffs have not pointed to any statute or regulation that has been violated in the promulgation of the layoff plan, which has been duly adopted as an administrative regulation. *See* 101 KAR 5:015E (copy attached to Defendants’ Motion to Dismiss as Exhibit 2). Nor have the Plaintiffs demonstrated that the furlough plan violates any constitutional rights, although

there are significant disputed material facts as to whether the furlough plan is arbitrary, or whether it, as implemented, would violate of equal protection, under Sections 2 and 3 of the Kentucky Constitution.

In light of these factors, the Court holds that the Plaintiffs have failed to make the threshold showing of a present or imminent violation of their legal rights. The Court notes that the Plaintiffs have also asserted that the increase in stress and adverse working conditions for state employees, many of whom are already laboring under difficult and stressful work loads, as the primary basis for their claim of irreparable injury. The Plaintiffs have cited no case to support their theory that increased stress in the workplace constitutes irreparable injury for purposes of injunctive relief. The Court believes that the Plaintiffs have a colorable claim of irreparable injury by virtue of the fact that they will indisputably suffer financial injury from the furloughs, and it appears that they have no adequate remedy at law to redress that injury if they prevail on the merits. The state has certainly not waived sovereign immunity with regard to these claims. The budget bill specifically provides that the furlough of state employees cannot be considered a "penalization" under KRS Chapter 18A that can be appealed to the Personnel Board. Accordingly, it appears that no financial remedy is available if the Plaintiffs would prevail on the merits.

Nevertheless, the Plaintiffs are still required to make a threshold showing of a violation of a "concrete personal right" before the Court can grant injunctive relief. No such showing has been made here. The Court further finds, in balancing the equities, that it is more equitable to spread the financial burden of a reduction in the state payroll among all (or almost all) employees, than to have the burden fall catastrophically on 400 employees who otherwise would be terminated from employment if the furlough plan is not implemented.

Notwithstanding the Court's finding that the equities do not favor injunctive relief prior to a decision on the merits, the Court notes the disputed factual and legal issues with regard to whether the furlough plan, as adopted, is "necessary to prevent a permanent layoff of state employees in areas of critical services to the citizens of the Commonwealth" as provided in the authorizing legislation. The plaintiffs have asserted that funds designated for future capital projects could be transferred to avoid layoffs. The defendants have disputed this, and argued that such funds are legally obligated and not subject to transfer. Likewise there may be other areas of achieving economies that would enable the furlough plan to be modified or reduced. The Court is mindful that the financial impact of the furloughs falls heavily on state employees at the lower end of the salary schedules, many of whom support families with income approaching poverty levels.

The impact of furloughs on highly paid state employees (including those who are responsible for drafting and implementing the plan) is significant, but not as difficult to bear as the impact on many rank-and-file employees who struggle with basic necessities. The Court is also mindful that the burden of the furlough plan is relatively light for those many full time state employees who are also drawing full pensions from state government. To the extent that the Court is required to balance the equities in deciding the issue of injunctive relief, these are all important factors, which require a more fully developed factual and legal record before the Court can make a final decision. The Court will allow the parties to present relevant evidence on these issues.

II. The Motion to Amend is GRANTED.

The Plaintiffs have filed a motion to file a second amended complaint, to reflect the naming of additional parties, and to further reflect that the Governor and Personnel Secretary have granted certain exemptions from furloughs for correctional officers and juvenile detention workers staffing facilities which require 24 hour coverage for security purposes. Under CR 15, leave to amend is to be freely granted, and the Plaintiffs are entitled to amend their complaint. Hoke v. Cullinan, 914 S.W.2d 335 (Ky. 1995).

III. The motion to dismiss is DENIED.

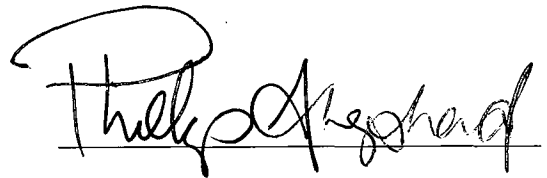
Summary judgment is appropriate where the Court concludes that there is no genuine issue of material fact for which the law provides relief. CR 56.03. Only when it appears from the facts that the nonmoving party cannot produce evidence at trial in favor of a judgment on his behalf should summary judgment be granted. Steelvest, Inc. v. Scansteel Service Center, Inc., 807 S.W.2d 476, 480 (Ky. 1991). The Defendants' motion to dismiss must be denied at this stage because there are contested issues of material fact in dispute.

Because of the importance of the issues presented, and the urgency of deciding the merits of this case before the furlough has been completely implemented, the Court directs the parties to complete discovery, and file dispositive motions, on the following expedited schedule:

1. All discovery shall be completed by October 15, 2010. The plaintiffs are directed to notify the defendants of any proposed depositions by September 10, 2010;
2. Motions for summary judgment shall be filed by November 1, 2010;
3. Responses to summary judgment motions shall be filed by November 10, 2010;
4. Replies in support of summary judgment motions shall be filed by November 15, 2010;

5. Thereafter, the case shall stand submitted for decision, and the parties are direct to file an AOC Form 280, notice of submission for decision, with the filing of the reply briefs;
6. If the Court requires oral argument, the case will be set for further hearing by separate order.

SO ORDERED this the 2nd day of September, 2010.

A handwritten signature in black ink, reading "Phillip J. Shepherd". The signature is written in a cursive style with a large, looping initial "P".

PHILLIP J. SHEPHERD, JUDGE
Franklin Circuit Court, Division I

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