

"CHAPTER 381
LABOR DISPUTES; PUBLIC UTILITIES

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" **§381-1 Definitions.** Where used in this chapter unless the context clearly indicates otherwise:

"Director" means the director of labor and industrial relations.

"Dispute" and "labor dispute" mean any controversy concerning wages, hours, and other terms and conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange wages, hours, or other terms and conditions of employment.

"Employee" means any person, whether or not a member of a labor organization, in the employ of a public utility and whose duties pertain or relate to the public utility service in which the public utility is engaged.

"Labor organization" means any organization of employees which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning wages, hours, and other terms and conditions of employment.

"Lockout" means the refusal of a public utility to furnish work to employees as a result of a labor dispute.

"Public utility" has the meaning given that term in section 269-1, excluding, however, the State or any county or any commission or board of the State or of any county, and any person subject to the Federal Railway Labor Act, as amended from time to time.

"Representative" means any person or persons, labor organization, organization, or corporation designated either by a public utility or by employees to act for it or them.

"Strike" means the temporary stoppage of work, slowdown, or retarding of production or operations by the concerted action of two or more employees as a result of a labor dispute. [L 1949, c 146, pt of §1; RL 1955, §91-2; HRS §381-1]

Revision Note

Definitions rearranged pursuant to §23G-15.

Attorney General Opinions

This chapter is invalid. Att. Gen. Op. 67-7.

" **§381-2 Duty to avoid lockouts and strikes by collective bargaining.** In order to avoid any interruption of public utility service to users, consumers, or the public, any public utility and its employees and their respective representatives shall use the processes of conference and collective bargaining in the settlement of all disputes between the public utility and

the employees thereof, without resort to lockout or strike. [L 1949, c 146, pt of §1; RL 1955, §91-3; HRS §381-2]

" **§381-3 Notice of impasse required; effect of collective bargaining agreements.** When an impasse is reached in any dispute between a public utility employer and its employees, either party to the dispute claiming the existence of an impasse shall notify the director of labor and industrial relations in writing of the existence of the impasse. The notice shall contain a clear and concise statement of each issue on which an impasse has been reached, and a certificate as to the good faith of the notice and the statements contained therein, which certification shall be made by the representatives actively engaged in the conduct of negotiations for the party filing the notice. A copy of the notice shall be delivered to the other party to the dispute simultaneously with delivery of notice to the director.

This section shall not apply in any case where there exists a collective bargaining agreement between a public utility employer and its employees, except where:

- (1) A dispute arises under the agreement concerning the interpretation or application of the terms of the collective bargaining agreement, and the agreement contains no procedure for the settlement of the dispute; or
- (2) In accordance with the terms of the collective bargaining agreement, the parties undertake negotiations for a new agreement or an amendment of the existing agreement pursuant to specific designation in the agreement of a certain time or period for such negotiations, and no agreement has been reached at the expiration of the time or period, and the agreement does not prohibit strikes or lockouts following such negotiation and failure to arrive at agreement. [L 1949, c 146, pt of §1; RL 1955, §91-4; HRS §381-3]

" **§381-4 Appointment of emergency board.** Following receipt of a notice of impasse from either party as specified in section 381-3, the director of labor and industrial relations shall forthwith request each of the parties to designate in writing within five days a person to serve as a member of an emergency board. The designation shall be filed in writing with the director. The person designated by the public utility employer shall not be an officer or director of the company or other person normally acting in an official capacity with the utility, and the person named by the employees shall not be an employee

of the utility or a representative of its employees. The two persons so appointed shall within three days select an impartial person to serve with them on the emergency board. The third person so selected shall act as chairperson. If either the public utility employer or the employees fail to designate a member of the board, or if the two designated members fail to agree upon a third, the governor shall, within twelve days after the director has requested the parties to appoint members to the board, appoint such member or members.

Members of the board shall receive compensation at the rate of \$15 for each day actually spent by them in the work of the board, together with necessary travel and subsistence expense. Payment shall be made by the director out of funds made available to the department of labor and industrial relations, and upon request of the board the department shall furnish necessary stenographic services. [L 1949, c 146, pt of §1; RL 1955, §91-5; HRS §381-4; gen ch 1993]

" **§381-5 Hearings; report.** The emergency board shall notify the employer and the employees or their representatives of the time and place for commencement of hearings, which hearings shall commence within five days from the date the board has been constituted. The board shall ascertain the facts of the controversy and shall use its best efforts by mediation to bring the parties into agreement.

The board shall hold such meetings as it deems necessary or proper for a period not longer than twenty days from the date the hearings commenced; provided that the twenty-day period may be extended from time to time by the board with the written consent of the parties, a copy of which consent shall be filed with the director of labor and industrial relations.

Within three days from the date of termination of the hearings, the board shall submit to the governor a written report setting forth findings of fact and stating the position of each of the parties as to each issue on which agreement has been reached and as to each issue still in dispute at the time of termination of the hearings. Within five days from the receipt of the findings of the board and if no agreement is reached during this period, the governor shall make the findings of the board public. [L 1949, c 146, pt of §1; RL 1955, §91-6; HRS §381-5]

" **§381-6 Powers of board; evidence, witnesses; process by mail, etc.** The emergency board may hold hearings at any place within the State, subpoena witnesses and compel their attendance, compel the production of books and papers, administer oaths, take testimony, and receive evidence.

In case of contumacy or refusal to obey a subpoena issued to any person, the circuit court of any judicial circuit within the jurisdiction of which the inquiry is carried on, upon application by the board, shall have jurisdiction to issue an order requiring such person to appear before the board, to compel the production of papers, to produce evidence, or to give testimony touching the matter in question. Failure to obey any such order may be punished by the court as a contempt thereof.

Process and papers of the board may be served either personally or by registered mail or by radiogram or by leaving a copy thereof at the principal office or place of business of the person to be served. Return by the individual serving the same setting forth the manner of the service, return post office receipt or radiogram receipt shall be proof of service of the same. [L 1949, c 146, pt of §1; RL 1955, §91-7; HRS §381-6]

Cross References

Mailing of process, see §1-28.

Oaths, subpoenas, see §§1-21, 92-16, 603-21.9, 621-1, and 621-12.

Rules of Court

Oaths, subpoenas, see HRCP rules 43(d), 45.

" **§381-7 Status quo maintained.** After the notice required by section 381-3 is filed with the director of labor and industrial relations and until ten days after the report of the emergency board has been filed with the governor, no change in wages, hours, or other terms and conditions of employment prevailing before the actual or proposed change out of which the dispute arose shall be made by the public utility employer named in the notice, except by agreement of the parties.

The employer involved in the dispute shall be free to make such changes in operations of personnel as are consistent with the operation of its business provided that if written objection to any such change is filed by the employees with the director, the change shall require the approval of the director. [L 1949, c 146, pt of §1; RL 1955, §91-8; HRS §381-7]

" **§381-8 Procedure where dispute not resolved.** For the ten-day period after the report of the emergency board has been filed with the governor, there shall be no strike or lockout. If no agreement is reached within the ten-day period, then at any time within a further period of twenty days, the representative of the employees may call the employees out on

strike, or if the employees are unrepresented, the employees may proceed to go out on strike, and the public utility shall be free to lock out.

If during this period of twenty days a strike is not called or the employees fail to go on strike or the public utility does not engage in a lockout, there shall be no strike or lockout for a further period of thirty days.

If the parties fail to reach agreement within the thirty-day period, the employees shall thereafter be free to strike and the public utility to lock out, but not until notice of intent is first filed with the director of labor and industrial relations and ten days elapse from the date the notice is filed. The notice of intent may not be filed until the expiration of the thirty-day period. [L 1949, c 146, pt of §1; RL 1955, §91-9; HRS §381-8]

" **§381-9 Strikes and lockouts prohibited, when.** (a) It shall be unlawful for any employees of a public utility to call a strike or go out on strike causing or threatening to cause an interruption of public utility service, or for any public utility to lock out its employees when the action would cause or threaten to cause an interruption of public utility service, except as the action may be taken in compliance with this chapter.

(b) It shall be unlawful for any person or persons to instigate, induce, or encourage any other person or persons to engage in any strike or lockout that would cause an interruption of public utility service in violation of this chapter.

(c) During the term of any collective bargaining agreement, there shall be no lockout by the public utility and there shall be no strike on the part of any employees covered by the agreement, except where:

- (1) A dispute arises under the agreement concerning the interpretation or application of the terms of the collective bargaining agreement, and the agreement contains no procedure for the settlement of the dispute; or
- (2) In accordance with the terms of the collective bargaining agreement, the parties undertake negotiations for a new agreement or an amendment of the existing agreement pursuant to specific designation in the agreement of a certain time or period for the negotiations, no agreement has been reached at the expiration of the time or period, and the agreement does not prohibit strikes or lockouts following the negotiation and failure to arrive at agreement;

provided that the provisions of this chapter for settlement of disputes have first been complied with. [L 1949, c 146, pt of §1; RL 1955, §91-10; HRS §381-9; am L 2016, c 55, §8]

" **§381-10 Injunction.** In the event any public utility employer or any employees of a public utility are found to be violating or failing to comply with the requirements of this chapter or there is reasonable cause to believe that the employer or employees are violating or failing to comply with such requirements, the attorney general, at the attorney general's own instance or at the request of the director of labor and industrial relations, shall institute appropriate proceedings in the circuit in which the violation occurs to enjoin the performance of any acts or practices forbidden by this chapter, or to require the employer or employees to comply with the requirements of this chapter. Jurisdiction to hear and dispose of all actions under this section is hereby conferred upon each circuit judge, and each such judge may issue such orders and decrees, by way of injunction, mandatory injunction or otherwise, as may be appropriate to enforce this chapter. All such suits shall be brought in the name of the State by the attorney general. The county attorney of each county shall, at the request of the attorney general, conduct such proceedings in behalf of the State. [L 1949, c 146, pt of §1; RL 1955, §91-11; HRS §381-10; gen ch 1985]

Cross References

Injunctions, see §603-23.

Rules of Court

Injunctions, see HRCPC rule 65.

Attorney General Opinions

The public utilities commission may not order the Honolulu Rapid Transit Co. to resume service while the company's drivers are on strike and while the collective bargaining negotiations are in process. Att. Gen. Op. 67-7.

" **§381-11 Penalties.** Any public utility calling or causing a lockout in violation of section 381-9, or otherwise contrary to this chapter, or without giving the notice required by sections 381-3 and 381-8, shall be fined not more than \$5,000 or, in the case of an individual, fined not more than \$5,000 or imprisoned not more than six months.

Any employee calling a strike or going out on strike in violation of section 381-9, or otherwise contrary to this chapter, or without giving the notice required by sections 381-3 and 381-8, shall be fined not more than \$100 or imprisoned not more than six months.

Any person instigating, inducing, or encouraging any strike or lockout in violation of section 381-9, or otherwise contrary to this chapter, shall be fined not more than \$100 or imprisoned not more than six months.

The penalties provided by this section shall apply to any individual, person, corporation, or association, whether acting as principal, agent, officer, director, for oneself, or itself, or for another person. [L 1949, c 146, pt of §1; RL 1955, §91-12; HRS §381-11; gen ch 1985]

Cross References

Classification of offense and authorized punishment, see §§701-107, 706-640, and 706-663.

" **§381-12 Employee need not work involuntarily.** Nothing in this chapter shall be construed to require an individual employee to render labor or service without the individual employee's consent, nor shall anything in this chapter be construed to make the quitting of the individual employee's labor or service by an individual employee an illegal act. [L 1949, c 146, pt of §1; RL 1955, §91-13; HRS §381-12; gen ch 1985]

" **§381-13 Labor organizations, collective bargaining.** Nothing in this chapter shall be construed to impair, curtail, or destroy the rights of employees and their representatives to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection; provided that in so doing this chapter, when applicable, shall be followed and complied with. [L 1949, c 146, pt of §1; RL 1955, §91-14; HRS §381-13]

" **§381-14 Law as exercise of police power.** This chapter shall be deemed an exercise of the police power of the State for the protection of the public welfare, safety, prosperity, health, and peace of the people; and all of the provisions of the chapter shall be liberally construed for the accomplishment of such purposes. [L 1949, c 146, pt of §1; RL 1955, §91-15; HRS §381-14]