

SETTLEMENT AGREEMENT
Temporary Hazard Pay—COVID-19 Pandemic
Bargaining Units 02, 03, 04, 13, 14, and 15

THIS SETTLEMENT AGREEMENT is made by and between the COUNTY OF KAUAI ("Employer" and "COK"), and the HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, LOCAL 152, AFSCME, AFLCIO ("HGEA" and "Union"), on behalf of COK employees organized into Bargaining Units 02, 03, 04, 13, 14, and 15 ("Affected Employees"). "Affected Employees" means COK employees that were employed by the COK on and/or between March 4, 2020, and March 25, 2022, or any portion thereof, and organized into BUs 02, 03, 04, 13, 14, and 15.

WHEREAS, the Employer recognizes the HGEA as the exclusive bargaining representative of all employees organized into BUs 02, 03, 04, 13, 14, and 15, and employed by the Employer pursuant to Article 1 of the BUs 02, 03, 04, 13, 14, and 15 CBAs, Agreement, and Chapter 89, Hawaii Revised Statutes ("HRS"); and,

WHEREAS, on or about April 3, 2020, the HGEA Kauai Island Division Chief Kaulana Finn sent letters to each of the Employer's Department Heads wherein she requested Temporary Hazard Pay ("THP") retroactive to March 4, 2020 for all affected employees organized into BUs 02, 03, 04, 13, 14, and 15 due to the Coronavirus Disease 2019 ("COVID-19") pandemic; and,

WHEREAS, on or about August 11, 2021, HGEA filed a Class Grievance at Step 2 of the Grievance Procedure alleging violations of Articles 2, 3, 4, 5, of the BUs 02, 03, 04, 13, 14, and 15 Collective Bargaining Agreements ("CBAs"), 20 of the BUs 3, 4, and 13 CBAs, 22 of the BU 2 CBA, and 30 of the BU 14 CBA; and,

WHEREAS, on December 27, 2021, the Employer denied the above Class Grievance at Step 2; and,

WHEREAS, on or about January 4, 2022, HGEA filed a Notice of Intent to Proceed to Arbitration regarding the above grievance, and,

WHEREAS, the Parties mutually agreed to bifurcate the Hearing on the Merits of this Class Grievance into a Phase I and Phase II; and

WHEREAS, Phase I was held on February 6 – 17 and July 10-28, 2023 as scheduled; and,

WHEREAS, in the Arbitrator's ARBITRATION DECISION AND AWARD in regard to issues in controversy at Phase I, the Arbitrator issued a decision and award that required the Parties to Proceed to Phase II to resolve the issues remaining in controversy at Phase II; and,

WHEREAS, Phase II is scheduled to proceed on October 10, 15-6, 22, 29, 31, and November 6, 2024; and,

WHEREAS, notwithstanding their respective positions, the Employer and the HGEA ("Parties") hereto desire to affect a full and final compromise and settlement of any and all matters, claims, and causes of action arising out of, or related to, the subject Class Grievance wherein HGEA represents the Affected Employees organized into BUs 02, 03, 04, 13, 14, and 15. A mutually acceptable agreement to resolve this grievance on behalf of Affected Employees, without incurring further costs and expenses, has been fashioned.

NOW THEREFORE, the Employer and the HGEA, on behalf of all Affected Employees, hereto mutually agree to the following terms, conditions and mutual obligations:

1. The Employer shall amend its denial and rejection of the above referenced Step 2 Class Grievance and agree to award THP wage differentials in the degree of *Severe* (15%) to all eligible COK employees organized into Bargaining Units ("BUs") 02, 03, 04, 13, 14, and/or 15 who were employed by the COK at any time on and/or between March 4, 2020 and March 25, 2022, regardless of whether the eligible employees are currently employed by the COK, contingent on approval by the County Council as follows:
 - a. The calculation of the total monetary value of THP wage differential shall be based on total number of hours worked on and/or between March 4, 2020 through March 25,

2022. In accordance with the Temporary Hazard Pay article of each respective applicable Collective Bargaining Agreement, the wage differential shall be based on the minimum step(s) of the eligible employee's salary range(s) for the aforementioned period of exposure.

- b. No THP wage differential will be awarded to employees during periods of telework from home that occurred on and/or between March 4, 2020 through March 25, 2022.
 - c. No THP wage differential will be awarded to employees for periods of vacation or sick leave, nor any other approved or unapproved leave of absence that occurred on and/or between March 4, 2020 through March 25, 2022.
 - d. THP shall be paid for the time period March 4, 2020 through March 25, 2022. The THP shall be paid as a lump sum to each Affected Employee, processed as a separate payment from the employee's regular bi-monthly paycheck.
 - e. The THP for former employees shall be paid via check and mailed to the last address on record. As these payments to former employees will not be processed through the payroll system, these former employees are responsible for any personal liabilities, including tax liabilities, incurred as a result of this settlement.
 - f. Employer shall present a bill for an ordinance adjusting the Fiscal Year 2025 operating budget to the County Council as soon as practicable.
2. Employer shall withhold all taxes and retirement contributions required by law. Affected Employees are responsible for all tax liabilities incurred as a result of this Settlement Agreement.
3. HGEA agrees that the Employer has no control over the Employee Retirement System ("ERS") calculations and will not hold Employer responsible for any actions taken by the ERS regarding Affected Employees' ERS retirement benefits.
4. The Parties must exercise their own due diligence regarding the legal effect of this Settlement Agreement and may not seek recovery from Employer for the actions of any outside agency.
5. Affected Employees shall have thirty (30) days from the date the Employer transmits the calculated total monetary value and number of hours worked on and/or between March 4, 2020 through March 25, 2022 to identify and produce evidence of errors in the calculated hours. For Affected Employees who do not identify and

produce evidence of errors within this thirty (30) day period, the Parties agree the calculations and subsequent payment made in compliance with this Settlement Agreement shall be deemed satisfied.

6. This Settlement Agreement shall be restricted in scope and application to the parameters of these grievances and shall not be construed or in any manner or form used as precedent in any other case or situation.
7. Nothing contained in this Settlement Agreement shall be construed as an admission of liability or wrongdoing by any of the Parties.
8. Neither Party shall be considered the drafter of this Settlement Agreement.
9. Neither HGEA nor the Affected Employees shall institute any grievances or action at law or in equity against Employer, its officers, employees, or agents concerning the actions taken by Employer as it relates to THP pay pursuant to the BUs 02, 03, 04, 13, 14, and/or 15 Collective Bargaining Agreements due to the COVID-19 pandemic as it pertains to the period at issue, specifically March 4, 2020 to March 25, 2022. This paragraph shall not preclude HGEA or an Affected Employee from disputing the THP lump sum payment amount referenced in 1.d through the grievance process outlined in the applicable Collective Bargaining Agreement.
10. This Settlement Agreement may only be accepted as a whole and shall apply to all employees in the affected BUs (02, 03, 04, 13, 14, and 15). Following full execution of the terms of this Settlement Agreement, the Union's Class Grievance filed on behalf of Affected Employees shall be considered fully resolved.
11. Should the Employer not be able to obtain funding for THP, the Union may resume pursuit of the Class Grievance referenced herein at Phase II of the bifurcated arbitration Hearing on the Merits.

IN WITNESS THEREOF, the parties hereto, by their authorized representatives have executed this Settlement Agreement on _____.

EMPLOYER:
County of Kaua'i

UNION:
HGEA Local 152, AFSCME, AFL-CIO

Derek S. K. Kawakami
Mayor, County of Kauaʻi

Randy Perreira
Executive Director

Annette L. Anderson
Director of Human Resources

Chelsie Sakai
Director of Finance

APPROVED as to FORM AND LEGALITY:

Kimberly A. Torigoe
Deputy County Attorney