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IN THE SUPERIOR COURT OF GUAM

GUAM FEDERATION OF TEACHERS,

Petitioner,

v.

REY M. VEGA, in his capacity as  
DIRECTOR OF THE GUAM  
BEHAVIORAL HEALTH AND WELLNESS  
CENTER; CHRISTINE BALETO, in her  
capacity as DIRECTOR OF THE  
DEPARTMENT OF ADMINISTRATION,

Respondents.

SPECIAL PROCEEDING NO. \_\_\_\_\_

SP 0153-16

**VERIFIED PETITION FOR WRIT OF  
MANDAMUS**

DEPARTMENT OF ADMINISTRATION

SEP 13 2016

*De* 12:10pm  
DIRECTOR'S OFFICE

Petitioner Guam Federation of Teachers petitions this Court for a writ of mandamus directed to Respondents, with an accompanying memorandum of points and authorities, and by this verified petition alleges.

1. This court has jurisdiction over this matter pursuant to 7 GCA §§ 31201 *et seq.*
2. Petitioner Guam Federation of Teachers, AFT Local 1581, ("GFT" or "Petitioner") is a union whose membership includes more than twenty employees of the Guam Behavioral Health and Wellness Center. (See Decl. Irish Olivares at ¶ 5, Ex. A.)

3. Respondent Rey M. Vega is the Director of Guam Behavioral Health and Wellness Center ("GBHWC"), an agency of the Government of Guam, and is named as a respondent in that capacity.

4. Respondent Christine Baleto is the Director of the Department of Administration, an agency of the Government of Guam, and is named as a respondent in that capacity.

5. From "February 2000 to February 2012," GBHWC had a "policy and practice of allowing hazardous pay," but "it was abruptly discontinued." (Decl. Counsel, Ex. A (Comm. Rpt. on Bill No. 7-33 (Mar. 17, 2015)) at 13; see also *id.*, Ex. E (GBWHC's former Policy & Proc. re Hazardous Duty & Environ. Pay) at 9-13.)

6. On January 5, 2015, Senator Dennis G. Rodriguez introduced Bill No. 7-33 (COR), "An Act to Add a New § 6225.1 to Article 2 of Chapter 6, Title 4, Guam Code Annotated, Relative to Providing for a Hazardous Pay Differential for Employees of the Guam Behavioral Health and Wellness Center in Unsafe or Dangerous Hazardous Duty Working Conditions." (See Decl. Counsel, Ex. A (Comm. Rpt. on Bill No. 7-33 (Mar. 17, 2015)) at 6.)

7. Respondent Vega testified in support of Bill No. 7-33 at the public hearing held on March 12, 2015. (See Decl. Counsel, Ex. A (Comm. Rpt. on Bill No. 7-33 at 6-12, 18-19.)

8. Respondent Vega had also testified in support of Bill No. 7-33's substantively identical predecessor, Bill No. 409-32, at a hearing held in November 2014. (See Decl. Counsel, Ex. A at 6; *id.* at Ex. D (Guam Legis. Bill No. 409-32).)

9. On March 20, 2015, the Guam Legislature passed Bill No. 7-33 (COR), “An Act to Add a New § 6225.1 to Article 2 of Chapter 6, Title 4, Guam Code Annotated, Relative to Providing for a Hazardous Pay Differential for Employees of the Guam Behavioral Health and Wellness Center in Unsafe or Dangerous Hazardous Duty Working Conditions.” (See Decl. Counsel, Ex. B (Guam Pub. L. No. 33-16) at 2.)

10. On April 2, 2015, the Governor of Guam signed Bill No. 7-33 (COR) into law as Public Law 33-16. (See Decl. Counsel Ex. B (Guam Pub. L. No. 33-16) at 1.)

11. Section 1 of Public Law 33-16 provides:

**Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds that the personnel of the Guam Behavioral Health and Wellness Center (GBHWC), as referenced in the Hazardous/Environmental Pay Policy and Procedures, are often placed in personal jeopardy when they are working in what are deemed unsafe or dangerous hazardous duty working conditions - being in close proximity with mentally ill or emotionally disturbed or psychotic substance use disorder patients who are unpredictable, combative or volatile.

*I Liheslaturan Guåhan* further finds that the GBHWC policy and practice of allowing hazardous pay was in effect from February 2000 to February 2012, at which time it was administratively discontinued. The twelve (12) year precedent of receiving this compensation for the hazardous work conditions speaks to the validity of their claims that the policy should be reinstated.

It is, therefore, the intent of *I Liheslaturan Guåhan* to reinstate the policy and practice of providing a hazardous pay differential for Guam Behavioral Health and Wellness Center personnel who are in unsafe, dangerous, or hazardous duty working conditions.

(See Decl. Counsel, Ex. B (Guam Pub. L. No. 33-16) at 2-3 (emphasis in original).)

12. Section 2 of Public Law 33-16 provides:

**§ 6225.1. Hazardous Pay Differential for Employees of Guam Behavioral Health and Wellness Center.** Notwithstanding § 6304 of Article 3, Chapter 6, Title 4, Guam Code Annotated, the Civil Service Hazardous/Environmental Pay Policy and Procedures, or any other provision of law, rule, regulation and Executive Order, the personnel of the



Guam Behavioral Health and Wellness Center working in what are deemed unsafe or dangerous hazardous duty working conditions in close proximity with mentally ill or emotionally disturbed or psychotic substance use disorder patients who are unpredictable, combative or volatile *shall* be entitled to a ten percent (10%) hazardous pay differential.

The Director of the Guam Behavioral Health and Wellness Center and the Director of the Department of Administration *shall* identify the direct-exposure personnel and ensure that all affected personnel receive the hazardous pay differential. The two Directors *shall* additionally develop a protocol for personnel not normally in direct-exposure situations for those times when they are in unusual and dangerous direct contact situations, at which time they *shall* then be entitled to a hazardous pay differential for that specific incident in which they were exposed.

(See Decl. Counsel, Ex. B (Guam Pub. L. No. 33-16) at 2-3 (emphasis in original).)

13. Section 3 of Public Law 33-16 provides: “**Effective Date.** This Act *shall* take effect on October 1, 2015.” (See Decl. Counsel, Ex. B (Guam Pub. L. No. 33-16) at 3 (emphasis in original).)

14. Public Law 33-16 (“Hazard Pay Law”) is codified at 4 GCA § 6225.1.

15. More than twenty members of Petitioner GFT are entitled to receive the hazardous pay differential mandated by the Hazard Pay Law because these GFT Members are “personnel of the Guam Behavioral Health and Wellness Center working in what are deemed unsafe or dangerous hazardous duty working conditions in close proximity with mentally ill or emotionally disturbed or psychotic substance use disorder patients who are unpredictable, combative or volatile.” 4 GCA § 6225.1. (See Decl. I. Olivares at ¶ 5, Ex. A.)

16. From October 1, 2015 to present, GFT’s Members, and likely other GBHWC employees, have been “working in what are deemed unsafe or dangerous hazardous duty working conditions in close proximity with mentally ill or emotionally disturbed or psychotic substance use disorder patients who are unpredictable, combative or volatile,” 4 GCA

§ 6225.1, without receiving their mandated hazardous pay differential (*see generally* Decl. Jan A. Mabini; Decl. Manuel C. Puno; Decl. Dalisay M. Sucgang).

17. Although the Hazard Pay Law was enacted in April 2015 and effective on October 1, 2015 and GBHWC has a former policy for hazard pay, to date, Respondents have not “identif[ied] the direct-exposure personnel and ensure[d] that all affected personnel receive the hazardous pay differential.” 4 GCA § 6225.1. Nor have Respondents “develop[ed] a protocol for personnel not normally in direct-exposure situations for those times when they are in unusual and dangerous direct contact situations, [and ensured that] at which time they *shall* then be entitled to a hazardous pay differential for that specific incident in which they were exposed.” *Id.*

18. Upon information and belief, Respondents have not taken any substantial steps to “identify the direct-exposure personnel and ensure that all affected personnel receive the hazardous pay differential” as mandated by the Hazard Pay Law. (See Decl. I. Olivares at ¶¶ 6-8.)

19. Upon information and belief, Respondents have not taken any substantial steps to “develop a protocol for personnel not normally in direct-exposure situations for those times when they are in unusual and dangerous direct contact situations, [and ensure that] at which time they *shall* then be entitled to a hazardous pay differential for that specific incident in which they were exposed” as mandated by the Hazard Pay Law. (See Decl. I. Olivares at ¶¶ 6-8.)

20. Indeed, GBHWC’s budget request for Fiscal Year 2017 does not even contain any allocation of hazard pay for any of its employees. (See Decl. of Counsel, Ex.

C (GBWHC's FY2017 Budget Request) at 31, 54, 57, 74, 76, 82, 96, 98, 109, 117, 119, 175, 177.)

21. Respondents are inferior persons under 7 GCA § 31202.
22. Respondents have the legal authority and ability to perform their clear and present duty under the Hazard Pay Law, but they have failed to do so.
23. Respondents' duty mandated by the Hazard Pay Law entails ministerial action.
24. Because twenty-one members of Petitioner GFT are entitled to receive the hazardous pay differential provided by the Hazard Pay Law but are not receiving the differential, (see Decl. I. Olivares at ¶ 5, Ex. A; see generally Decl. J. Mabini; Decl. M. Puno; Decl. D. Sucgang), Petitioner GFT has a clear and present right, and a beneficial interest in Respondents performing their duty mandated by the Hazard Pay Law.
25. Petitioner does not have another "plain, speedy, and adequate remedy in the ordinary course of law," 7 GCA § 31203, because there is no other efficient legal means to compel Respondents to perform their duty mandated by the Hazard Pay Law.

#### **REQUEST FOR RELIEF**

Based on the foregoing, along with the accompanying memorandum of points and authorities and declarations, Petitioner requests:

1. An alternative writ of mandamus be issued under the seal of this Court commanding Respondents to perform their duty mandated by 4 GCA § 6225.1 within thirty days or show cause, if any they have, before this Court, at a time and place specified by Court order, why they have not done so, and why a peremptory writ should not issue.



2. On the return of the alternative writ and hearing on the order to show cause, a peremptory writ of mandamus be issued under the seal of the Court to Respondents compelling them to immediately perform their duty mandated by 4 GCA § 6225.1.

3. The Court order that GFT's Members and all other GBWHC employees entitled to the hazard pay differential mandated by 4 GCA § 6225.1 are to be retroactively paid the differential for any hours worked since October 1, 2015 for which they should have received the differential but did not.

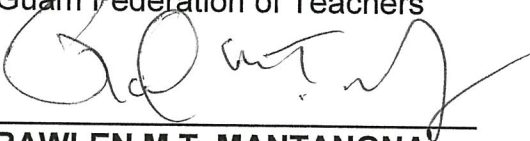
4. The Court order that Petitioner recovers the costs of this action.

5. The Court grant such other relief as may be just and proper.

Dated this 18 day of September, 2016.

**CABOT MANTANONA LLP**  
Attorneys for Petitioner  
Guam Federation of Teachers

By:

  
\_\_\_\_\_  
**RAWLEN M.T. MANTANONA**

**VERIFICATION**

TERRITORY OF GUAM     )  
  )  
TAMUNING                    )     ss.:

I, **TIMOTHY FEDENKO**, President of the Guam Federation of Teachers, AFT Local 1581, being the Petitioner named above, do swear under penalty of perjury that I have read the above petition for writ of mandate, and know its contents, and the same is true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters, I believe them to be true.

  
\_\_\_\_\_  
**TIMOTHY FEDENKO**

SUBSCRIBED AND SWORN to before me this 12<sup>th</sup> day of September, 2016.

  
\_\_\_\_\_  
Notary Public

**NANCI OGO AQUINO**  
**NOTARY PUBLIC**  
In and for Guam, U.S.A.  
My Commission Expires: **APRIL 04, 2019**  
P.O. Box 6052 Tamuning, Guam 96931

