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AFT Local 1581
AFL-CIO

January 13, 2011

Nerissa Bretania Underwood, Ph.D.
Superintendent
Guam Department of Education
P.O. Box D.E.,
Hagatna, GU 96932

RE: FREEDOM OF INFORMATION REQUEST

Dear Dr. Underwood:

Buenas yan Hafa Adai! Buenas Yan Hafa Adai, I am writing to you on a matter of grave concern to DOE, Guam, and all of the hard working professionals that educate our children. On Monday, March 21st, 2011 we believe that DOE's EMRO, Robert Koss, violated multiple employees' constitutional, organic and civil rights while conducting investigative interviews at your behest. This has not only left the department and certain management officials potentially liable for criminal and civil litigation but it has severely damaged employer-employee relations.

On the morning of March 21st, I represented a number of employees at Price Elementary School that were being interviewed by Robert Koss. During the interview process Mr. Koss asked employees if they "had personal email or facebook accounts" and if they had received certain communications in either one. By their very nature these communications are personal and said employees have the very reasonable expectation of privacy. While he might have the right to ask this question, employees of DOE, like all citizens of our great nation and island, have the fourth amendment Constitutional and Organic right of the expectation of privacy against unlawful search and seizure by the Government; thus have the right not to answer the question if they so choose. Henceforth, I advised the employees that they did not have to answer the question. Mr. Koss, in every instance, threatened the employees with "adverse action up to and including termination" if they refused to answer and disclose the contents of their personal electronic communications.

Mr. Koss' conduct is clearly disgraceful with wide reaching ramifications that will adversely affect employer-employee relationships for a long time and is quite possibly criminal which is why we will be forwarding a copy of this letter to the Attorney General of Guam's office as a well. Employees at Price elementary school will from this day forward mistrust DOE management due to Mr. Koss' threats and illegal efforts to invade their privacy. Will he threaten to fire any employee that doesn't allow him to search their house, read their mail or answer any personal question he can think of? How can any employee ever trust a management that so blatantly and illegally tries to usurp their rights and invade their privacy?

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MAR 24 2011
SECONDARY DIVISION
REC'D BY: [Signature]
1:24 PM

GUAM DEPARTMENT OF EDUCATION
Office of the Superintendent
Rec'd by: [Signature] 1:25 PM
Date/Time: 3/24/11

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DOE: FINANCIAL AFFAIRS

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Office of the Attorney General of Guam
Civil Solicitor Division

The fourth amendment of the US constitution as well as the Organic Act of Guam protect our people's right "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures". As a result of the Stored Communications Act and multiple court decisions, personal email and other personal online communications are subject to these same protections. In fact, the courts have decided that in order for the Government to get access to anyone's email account the Government must secure a warrant which of course is subject to probable cause.

While we understand that you are off island and the authorizing signature was not yours, Mr. Koss still used your name when he committed what we believe to be a blatant and illegal abuse of power. We also believe that his actions constitute an invasion of privacy of the employees so threatened, which is a misdemeanor under Guam's penal code. We also believe that it could be a civil rights violation. Therefore we request that you immediately remove Mr. Koss from his position, while a thorough investigation of Mr. Koss' actions is conducted, not only by you but by the Attorney General of Guam and any other relevant agency. I cannot stress enough how urgent and dire this situation is, which is why we request your immediate attention.

Si Yu'os Ma'ãse.

Sincerely,



Matthew J. Rector
President

Cc: Taling Taitano, Deputy Superintendent
Finance and Administrative Services
Arlene Unpingco, Duty Superintendent
Educational Support and Community Learning
Leonardo M. Rapadas, Attorney General of Guam