

Alicia G. Limtiaco
Attorney General



Phillip T. Tydingco
Chief Deputy Attorney General

OFFICE OF THE ATTORNEY

March 10, 2010

Via Hand Delivery

Daniel S. Somerfleck, Esq.
148 Hernan Cortez Avenue
Hagatna, Guam 96910

SOMERFLECK & ASSOCIATES, PLLC
R E C E I V E D

MAR 12 2010

Re: Status of Contract Negotiations
AG Ref. No.: GFD 08-0772

Time: α:31 By: DJ

Daniel:

In response to the Guam Federation of Teachers ("GFT") failure or otherwise refusal to present a contract containing terms and conditions agreed to by the parties, the Guam Fire Department ("GFD") requested my office's assistance in preparing a substitute draft contract. Enclosed you will find a draft Collective Bargaining Agreement for GFT's review and consideration. The draft contains a number of provisions which although verbally agreed to were never added to the Union's form contract. For example, the enclosed draft incorporates the Department of Administration's ("DOA") definitions by reference. This change is needed as GFT's draft not only contained an incomplete list of definitions but also altered many definitions, neither of which is acceptable to the Department. The enclosed draft also clearly delineates those management areas that are governed by Guam law or that are deemed to be the sole purview of the Fire Chief.

I am aware that the GFT will need some time to review the Department's draft. At the time the parties reconvene negotiations the Department is asking that I or another Assistant Attorney General assist with the negotiations. Unless otherwise instructed we assume this is okay with GFT.

Please contact me if you have any questions or concerns regarding this matter.


Thomas P. Keeler
Assistant Attorney General

Cc: Fire Chief David Q. Peredo

COLLECTIVE BARGAINING
AGREEMENT
BETWEEN THE
GUAM FEDERATION OF TEACHERS
AFT LOCAL 1581
AFL-CIO
AND THE
GUAM FIRE DEPARTMENT
FOR
FIREFIGHTERS, FIRE SERVICE
SPECIALISTS and 911 EMERGENCY
MEDICAL DISPATCHERS

SOMERFLECK & ASSOCIATES, PLLC
R E C E I V E D

MAR 12 2010

Time: 9:37 By: DD

TABLE OF CONTENTS

PREAMBLE -----	page 1
ARTICLE I – COMPLIANCE WITH APPLICABLE LAW-----	page 2
ARTICLE II – MEMBER GRIEVANCES -----	page 2
ARTICLE III – COMMITTEES -----	page 7
ARTICLE IV UNIFORMS AND EQUIPMENT-----	page 8
ARTICLE V – MISCELLANEOUS PROVISIONS -----	page 8
APPENDIX A-----	page 13

Above to be corrected

This **Collective Bargaining Agreement** ("Agreement") is entered into on the date set forth in Section 16.1 below, between the **Guam Federation of Teachers, Local 1581** ("Union") and the **Guam Fire Department, Government of Guam** ("Department").

1.0 Purpose and Intent

1.1 The general purpose of this Agreement is to set forth provisions and conditions of employment and to promote orderly and peaceful labor relations for the mutual interest of the Department, the Employees and the Union.

1.2 The parties recognize that the interest of the people of Guam and the job security of the employees depend upon the Department's success in establishing a proper service to the island.

1.3 To these ends, the Department and Union encourage to the fullest degree, friendly and cooperative relations between the respective representatives at all levels and among all employees.

2.0 Right to Organize

2.1 Pursuant to and in accordance with all applicable provisions of Public Law 25-125, the "*Right to Work Act of 2000*", as last amended, of the Territory of Guam, Department employees have the right of self-organization to join a union and to bargain through representatives of their own choosing on questions of and other conditions of employment.

3.0 Definitions

3.1 Except as specifically provided herein all terms and definitions shall have the same meaning as set forth in the Definition section of the Government of Guam, DOA's *Personnel Rules and Regulations* (defined herein), which are incorporated herein by reference.

3.2 Additional definitions specific to this Agreement, are as follows:

3.2.1 "DOA's Personnel Rules and Regulations" means the Department of Administrations Personnel Rules and Regulations, as may be amended or added to from time to time.

3.2.2 "Employees" means all permanent Department employees, inclusive of Members.

3.2.3 "Fire Chief" means the head of the Guam Fire Department.

3.2.4 "Members" means those Department employees that have formally elected in writing to join the Union. This term *shall not* include temporary or part time employees and the Fire Chief.

3.2.5 "NFPA" means the National Fire Protection Association.

3.2.6 "Stations" means the Department's twelve (12) stations and the Department's three (3) rescue stations, as may be increased, decreased, relocated or otherwise changed by the Fire Chief.

4.0 Prohibited Practices

4.1 No employee shall be favored or discriminated against, either by the Union or Department because he maintains or terminates membership in the Union, holds any office in the Union, bargains for the Union, files a grievance, participates in a picket line or similar demonstration, or makes statements to the press, the public or any appointed or elected official on any matter not involving a current department investigation, provided that the employee is off-duty and not in uniform.

4.2 The Department and Union and their agents are prohibited from restraining or coercing employees in the exercise of their right to join or not join the Union, to maintain or to terminate membership in the Union.

4.3 No person employed by, nor applicants for, employment with the Department, nor any applicant for Union membership shall be discriminated against because of race, creed, color, national origin, age, sex, marital status, or political affiliations.

4.4 It is understood that the services performed by Department employees are essential to the public health, safety and welfare of the island. The Union therefore, agrees that during the term of this Agreement that it will not engage in a strike, work stoppage, slow down, or other interference with the Department's operations. Likewise, the Department agrees that during the term of this Agreement, there shall be no lockout of Members.

4.5 It is recognized that the Department has the right to take disciplinary action, including discharge, against any Member who is responsible for, or participates in, a breach of the provisions of Section 4.4, and that such action shall not be subject to dispute by the Union but such employee shall be entitled to a determination as to whether he did violate the provisions of Section of Section 4.4, in the manner provided for under DOA's Personnel Rules and Regulations.

4.0 Recognition – Members Covered

4.1 The Department recognizes the Union as the sole and exclusive collective bargaining representative for the purpose of collective bargaining for Members in respect to conditions of employment, and, for the terms of this Agreement.

5.0 Management Rights

5.1 It is recognized that the management of the Department, the control of its properties and the maintenance of order and efficiency, is solely a responsibility of the Department. Other rights

and responsibilities belonging solely to the Department are hereby recognized, prominent among which, but by no means inclusive, are: the rights to decide the number and location of its facilities, stations, etc. work to be performed within the unit, maintenance and repair, amount of supervision necessary, machinery and tool equipment, methods, schedules of work, together with the selection, procurement, designing, engineering and control of equipment and materials. The Department shall be the exclusive judge of all matters pertaining to methods, processes or means of accomplishing its objectives, including, but not limited to the right to choose to effect new or improved methods and facilities and to change existing methods and facilities. The Department reserves all rights that ordinarily vest in and are exercised by management, except as specifically relinquished in this Agreement.

It is further recognized that the responsibility of the management of the Department for the selection and direction of the working forces, including the right to hire, suspend or discharge for just cause, assign, promote or transfer, to determine the amount of overtime to be worked, to relieve employees from duty because of lack of work or for other legitimate reasons vested exclusively in the Department, subject only to the Guam Civil Service Rules, grievance procedures and other express provisions of this Agreement.

5.2 The Department reserves the right to sub-contract any work, functions or operations.

5.3 No policies and procedures covered in this Agreement shall be construed as delegating to others or as reducing or abridging any of the following authority conferred on The Fire Chief and other Department officials.

- (a) The Fire Chief as chief administrative officer for enforcing the fire laws of the Territory of Guam, and rules and regulations, recommending an annual budget and the efficient performance of executive responsibilities.
- (b) The responsibility of the Guam Civil Service Commission for administering a merit system of employment and exercising other personnel responsibilities, except as specifically modified by the express terms of this Agreement.
- (c) The responsibilities of the Fire Chief in determining the functions and organization of the Department.
- (d) The responsibilities of the Fire Chief, governed by Guam law and rules and regulations, including the Guam Civil Service rules and procedures to:
 - (i) to hire, assign, transfer and promote employees to positions within the Department;
 - (ii) to suspend, demote, discharge or take other disciplinary action against employees;
 - (iii) to relieve employees from duties because of lack of work or lack of funds;

- (iv) to determine the methods, means and personnel necessary for departmental operations;
- (v) to control the Department's budget; and
- (vi) to take whatever actions are necessary in situations of emergency to perform the functions of the Department.

6.0 Union Membership

6.1 The Department recognizes the right of the Union to solicit membership from any employees.

6.2 The Department agrees that it will, as part of its personnel procedure, inform new employees of the fact that the Union is the exclusive bargaining agent for Members, and inform such new employees of the right to join or refrain from joining the Union.

7.0 DOA Responsible for Union Dues Deduction

7.1 The Department of Administration is solely responsible for deducting Union membership dues from the pay of each Member.

8.0 Representation and Committees

8.1 Promptly following the effective date of this Agreement, the Union and Department shall provide each other with a written list of names and titles of their respective representatives, which can be changed upon prior written notice.

8.2 Special conferences for important matters may be arranged between the Union and the Fire Chief or his designee.

9.0 Resolution of Disputes Procedure

9.1 A dispute for purposes of this Agreement shall mean a complaint by the Union and/or a Member or group of Members based upon an event, condition or circumstances under which a Member works which is allegedly caused by violation or misinterpretation of any of the provisions of this Agreement, including discipline, up to and including discharge.

9.2 An aggrieved Member shall mean the person or persons making the complaint.

9.3 The primary purpose of the procedure set forth in this Section is to secure, at the earliest possible level, equitable solutions of complaints or grievances. Both parties agree that proceedings under this Section shall be kept as informal and confidential as may be appropriate, subject to the provisions of law.

9.4 It shall be the policy of the Department to assure to every Member an opportunity to have the unobstructed use of this Resolution of Disputes Procedure without fear of reprisal or without prejudice to his employment status.

9.5 **Presentation of Disputes** – A Member having a dispute may present the dispute as follows:

Step 1 A Member having a dispute shall first present the matter to his supervisor, with or without the Member's Union representative present, at the Member's option. concerning a continuing practice or condition at any time. Any grievance not taken up with the immediate supervisor within thirty (30) calendar days after the aggrieved acquires knowledge of the incident giving rise to the dispute shall not be entitled to consideration. The immediate supervisor shall render a decision within ten (10) calendar days of the presentation of the grievance. If the immediate supervisor fails to render a decision within the period prescribed, the grievance shall be deemed denied.

Step 2 If a satisfactory settlement is not reached in Step 1, the Member may, within fifteen (15) calendar days, present his written dispute to the Department official who is the next higher supervisor than the immediate supervisor. The next higher representative shall then furnish a written answer within five (5) calendar days of receipt of the written grievance.

Step 3 If a satisfactory settlement is not reached in Step 2, the Member may, within fifteen (15) days after receipt of the answer in Step 2, present to the Fire Chief for review. The Fire Chief shall then furnish a written answer within five (5) calendar days.

Step 4 If a satisfactory settlement is not reached in Step 3, the Union, through its Executive Board, or the Member shall have fifteen (15) days in which to petition the Guam Civil Service Commission for a Civil Service Hearing. The petition shall be in a form prescribed by the Commission, contain sufficient details to identify the basis of the grievance, include copies of the grievance forms submitted in Steps 2, and 3 and specify the personal relief requested by the Member.

9.6 Any dispute not appealed from a decision in one of the Steps above, to the next step, as prescribed, shall be considered dropped. The Department shall not be authorized by this procedure to file disputes against the Union.

9.7 Grievance files are open records. It is open at all times for review by the Member and his duly authorized representative(s).

9.8 Any step, or procedure compliance, within a specified time, can be extended by mutual consent of the parties, which consent, if made other than before the Guam Civil Service Commission, shall be in writing signed by both parties.

10. Bulletin Board

10.1 The Union agrees to furnish a bulletin board for the use of the Union in each station. The bulletin board is to be used only for notice of Union meetings, Union business, Union elections

and results, and social functions in connection with the Union. The Department is allowed however to post transmittal messaged on the bulletin board.

11. Department Materials

11.1 A Member leaving the service of the Department, whether through resignation, retirement, lay off or discharge, is responsible for returning any Department property which he may have in his possession.

12.0 Layoffs

12.1 The Department may, pursuant to an Executive Order of the Governor of Guam, or the Guam Legislature enacting legislation, determining for reasons of economy, for more efficient administration or for lack of sufficient appropriation of funds, abolish positions in the Department and lay off employees. Any layoffs shall be accomplished as authorized by Guam law.

13.1 Uniform Allowance

13.1 The Department shall provide all Members with the necessary uniforms and/or equipment at no cost to the Member or they shall provide a uniform allowance in an amount not less than authorized by the Guam Legislature in the Department's annual budget. The Fire Chief may, but is not required to, elect to increase the uniform allowance.

13.2 Newly employed employees shall only be entitled to a pro-rated uniform allowance for the second fiscal year of employment if hired full time after the first six (6) months of the then fiscal year. For example, if an employee is hired July 31 they shall receive the necessary uniforms and/or equipment however will only be entitled to one sixth ($1/6^{\text{th}}$) of the standard allowance for the Department's next fiscal period.

14 Conflict of Interest

14.1 No Member may engage in any business or transaction nor have a financial interest, direct or indirect, which is incompatible with the proper discharge of his official duties in the public interest or would tend to impair his independence of judgment or action in the performance of his duties.

15 Safety and Sanitary Conditions

15.1 The Department agrees to provide sanitary, safe and healthful stations and facilities. Stations shall be provided with hot and cold potable running water, showers, a refrigerator, reasonable air conditioning, lockers, beds, or bunks and linens, desk and chair, filing cabinet, medical supply storage, stove, clothes washer and dryer, working sewage, a telephone, and basin sinks.

15.2 The Department will provide adequate first aid facilities.

15.3 Members, in the performance of their jobs, shall at all times use safety devices and protective equipment which may be furnished to them and will comply with safety, sanitary and fire regulations. In the event the Department due to budgetary or other reasons is unable to furnish a Member with the standard safety devices and protective equipment the Member shall not participate, nor shall the Department allow the Member to participate in _____.

16 Effective Date and Term of Agreement

16.1 This term of this Agreement shall commence once signed by the Governor and shall remain in full force and effect for a period of five (5) years. Negotiations concerning a successor Agreement shall commence not later than _____.

16.2 The parties in recognition of the fact that vital services are involved agree that this contract shall remain in force and effect until a new contract is negotiated, but not to exceed two (2) years.

16.3 Nothing contained herein is intended to bar or otherwise restrict the parties from modifying all or any part of this Agreement. A party may at any time make a written request to the other for a negotiating session. The written request will identify the term(s) the issuing party wishes to renegotiate and set forth a proposed schedule for the negotiations. Both parties agree to act in good faith in coordinating on any proposed new or amended terms.

17 Notices

17.1 All notices shall be in writing and shall be delivered personally, by United States _____ mail, or by a recognized overnight delivery service. Any notice must be delivered to the parties at the following addresses:

Guam Federation of Teachers, Local 1581:

President
Guam Federation of Teachers, Local 1581
Union Office

Guam Fire Department:

Fire Chief
Guam Fire Department
PNB Building, 9th Floor
238 AB Flores Street
Hagatna, Guam 96910

Either party may change or update their contact information by providing notice as provided herein.

18 Miscellaneous

18.1 Neither party may assign this Agreement without first obtaining the other parties prior written consent.

18.2 This Agreement sets forth the entire agreement and understanding of the parties. This Agreement supersedes any and all prior agreements, negotiations, correspondence, promises and communications, whether oral or written, between the parties with respect to its subject matter.

18.3 If any provision of this Agreement shall be deemed by a court of competent jurisdiction to be invalid, then such provision shall be deemed stricken from this Agreement, and this Agreement shall be enforced according to its valid and subsisting terms and provisions.

18.4 Failure of either party to insist on strict compliance with any of the terms, covenants, and conditions of this Agreement shall not be deemed a waiver of such terms, covenants, and conditions, or of any similar right or power at any subsequent time.

18.5 This Agreement may be amended or modified only by a writing signed by both parties.

18.6 The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of Guam.

18.7 The parties shall comply with all applicable Federal and Territorial laws, rules and regulations concerning performance of this Agreement. Nothing contained herein is intended to nor shall be interpreted as superseding any Federal or Territorial law or rules and regulations.

19. Transition

19.1 The President of the Union and the Fire Chief and/or their respective designees shall meet as reasonably needed to ensure an orderly transition to this Agreement.

IN WITNESS WHEREOF, the parties, through their duly authorized representatives, have signed this Agreement.

ratified for the Department:

ratified for the UNION:

DAVID PEREDO

DATE

Fire Chief
Guam Fire Department

MATT RECTOR

DATE

President of the
Guam Federation of Teachers

CHIEF UNCANGCO

DATE

Chief Negotiator
Guam Fire Department

TIM FEDENKO

DATE

Chief Negotiator
Guam Federation of Teachers

Approved as to form and legality:

Approved:

Alicia Limtiaco DATE

Attorney General of Guam

FELIX P. CAMACHO Effective Date:

Governor of Guam

APPENDIX A

UNIFORMS AND EQUIPMENT

Subject to the terms of the Agreement the uniform and equipment to be provided to Members by the Department are as follows:

Uniforms:

- a. 5 Working Uniforms
- b. 1 Dress Uniform
- c. 1 pair Black Uniform Shoes
- d. Officer's collar brass be by utilization of bugle rank system
- e. Designated badges be silver or gold for the appropriate rank (Officer's gold badge and collar brass)
- f. required belt(s)

Personal Protective Equipment (NFPA/OSHA approved):

- a. 1 Fire Fighting Helmet / with Hood
- b. 1 Complete set of Turnout Gear (Pants, coat, boots, and Suspenders)
- c. 1 SCBA Personal face piece
- d. 1 Personal Flashlight
- e. 1 Personal Stethoscope (for ambulance assignments and Ambulance Life Support members)
- f. 2 pairs of work gloves
- g. 1 pair of firefighting gloves

Emergency Vehicles:

All Department fire trucks shall meet NFPA standards.

Reference Materials:

The Department may from time to time provide and maintain reference materials at one or more Stations. The Department's goal, subject to the availability of funds and other considerations, is that these materials include:

- a) Operations & Policy Manuals
- b) International Fire Service Training Association manuals
- c) A copy of the Civil Service Rules