



GFT, AFT Local 1581
Together We Win!

Timothy Fedenko, President
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May 7, 2015

Vice-Speaker Benjamin J.F. Cruz
Committee on Appropriations and Adjudication
33rd Guam Legislature
155 Hesler Place
Hagatna, Guam 96910
Re: Comments as to proposed Bill 81-33

Dear Vice-Speaker Cruz:

The Guam Federation of Teachers; hereinafter GFT, supports the good intentions of Bill 81-33 insofar as it seeks to make the Civil Service Commission; hereinafter CSC, more effective in its ability to meet its responsibilities pertaining to Guam's Merit System. However, GFT has several concerns as to the provisions of the proposed Bill as it is currently drafted, and they are as follows:

- A) The Bill puts the word "Shall" in place of the word "May" regarding the CSC employing an Administrative Law Judge; hereinafter ALJ, but that is not the problem, as GFT understands the issue from CSC, because the CSC wants to employ an ALJ; just as it is allowed to do presently under the existing law. The problem is that there has not been allocated funding for an ALJ; so instead of just substituting words, the Bill needs to identify funding for the position and should even say what the salary will be. In regard to the same subject, the ALJ, the GFT submits a permanently hired ALJ is what should be required in order to ensure, as much as possible independence and insulation of the position; versus hiring an ALJ from time as that may make the temporary ALJ more susceptible to trying to please; so as to receive more repeat temporary appointments. The same idea as an Article Three Judge being appointed for life.
- B) The proposed Bill would allow the CSC to assign to the ALJ Hearings on the "full merits", but that it is submitted would be an abrogation by the CSC of its role and responsibilities under existing Guam Law and perhaps the Organic Act itself. It is suggested that the idea can be addressed by doing the matter the same as in the Court System, and that is a Public Employee has the right to have his or her matter heard by the CSC; just as a defendant has a right to a Jury Trial, however, the Public Employee can waive, in writing, this right, and choose to have his or her matter decided on the Merits by the ALJ. Otherwise the ALJ should be restricted to matters such as Discovery etc.; that are Motions not dealing directly with the merits, and such adjudicatory matters of this nature only; so as to assist the CSC. If the ALJ hears a matter on the Merits, the Bill should be then amended to

allow either party to go directly to the Superior Court for review; just as if the CSC had heard the matter on the Merits, and remove a CSC Review Stage.

- C) Another point to also address is that if the CSC is to review decisions of the ALJ is there any kind of record made of proceedings before the ALJ; in other words what is the CSC to have before it to review, or would it be better to say the CSC reviews de novo?
- D) If there are proceedings before the ALJ in the daytime; now CSC Hearings are in the evening; who pays the individuals who come before the ALJ in the workday time period? Should some kind of Leave with Pay be identified for such proceedings both for the Public Employee whose matter is being heard; as well as witnesses that may be called?
- E) In regard to the Time Standards and Case Management Sections of the proposed Bill, The GFT believes the mandating of such is a good thing. However, there is no sanction identified. Thus it has no “teeth” to enforce the mandate. Insofar as the CSC and all others involved, except the Public Employee and his or her Representative, are the Government; just as the Superior Court is, the GFT submits the sanction for any violation of the mandated Time Standards set forth in the Bill; unless the delay is caused by the Public Employee or else waived by the Public Employee, the sanction should be the determination of the matter in favor of the Public Employee. That form of sanction alone will ensure that the spirit, intent and mandate of the Bill are met by the CSC and the Government/Management.

Respectfully submitted,



Timothy Fedenko
President
GFT Local 1581
AFL-CIO

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