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**CIVIL SERVICE COMMISSION  
GOVERNMENT OF GUAM**

**IN THE MATTER OF :**

**ELIZABETH TAIMANAO,**

**Petitioner- Employee,**

**vs.**

**DEPARTMENT OF EDUCATION,**

**Respondent - Management.**

**D.O.E POST AUDIT REPORT OF  
FURLOUGH AND LAYOFF  
CASE NO. 0306-FLA-21**

**DECISION AND JUDGEMENT**

This case came before the Civil Service Commission (hereinafter "C.S.C.") for hearing on June 24, 2004. The C.S.C.'s staff post audit review of the action taken by the Department of Education in changing the school calendar and thereby not paying the full annual salary amount to Petitioner and all other similarly situated employees within a 26 pay period cycle which amounted to a furlough, was presented by Elaine Faculo-Gogue, Personnel Management Analyst III and Juan K. Calvo, Personnel Management Administrator of the C.S.C.. The Guam Department of Education (hereinafter "D.O.E") was represented by Juan Flores, Superintendent for D.O.E and Fred Nishihira, Legal Counsel for D.O.E.

**I.**

**PROCEDURE**

On March 26, 2003, the Guam Educational Policy Board decided to start the school year 2003-2004 on August 18, 2003 and end on June 4, 2004. The 21<sup>st</sup> pay period for

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2 teachers who elected to be paid on a 21 pay period worked during school year 2002-2003 was  
3 May 23, 2003. The 26<sup>th</sup> pay period would be after August 8<sup>th</sup> 2003 and as such, would not  
4 provide the full annual salary amount within the 26 pay period cycle.

5 On July 15, 2003, Petitioner Ms. Elizabeth Taimanao, a teacher at the Department of  
6 Education (D.O.E) filed a personnel action appeal before the C.S.C.. Petitioner alleges that  
7 she was not paid by D.O.E for the period beginning August 1, 2003 to August 17, 2003. This  
8 action is alleged to be a furlough and that D.O.E failed to initiate the proper procedures for a  
9 furlough.  
10

11 C.S.C. staff had five different meetings with D.O.E personnel inclusive of Ms. Rosa  
12 Salas Palomo (then Chairperson of the Guam Educational Policy Board); Mr. Juan Flores,  
13 current Superintendent D.O.E; Mr. Patrick Mason, then Legal Counsel for D.O.E; Ms. Annie  
14 Cruz, Personnel Specialist for D.O.E; and Ms. Rosie Duenas, Payroll Supervisor for D.O.E,  
15 regarding this matter.  
16

17 On April 12, 2004, D.O.E filed a request for an Alternate Writ of Prohibition against  
18 C.S.C. and its Commissioners in their official capacity alleging that the C.S.C. did not have  
19 jurisdiction to hear this matter as the authority of the C.S.C. is limited to those specified in  
20 Title 4 G.C.A. Section 4403.

21 On April 13, 2004, the Superior Court of Guam granted D.O.E.'s request and issued  
22 an Alternative Writ of Prohibition ordering C.S.C. to cease proceedings in this matter, or in  
23 the alternative, to answer and show cause why they had not done so.  
24

25 On May 5, C.S.C. answered the Writ request stating that pursuant to 4 G.C.A. Section  
26 4403(d); 4 G.C.A. Section 6302(a) and the Department of Administration's Rules and  
27 Regulations, Does provide the C.S.C. with jurisdiction to hear this case.  
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On June 15, 2004, the Superior Court of Guam in Case No. SPO077-04, denied the request for a Writ of Prohibition and stated that the C.S.C. had jurisdiction to hear this matter on three (3) separate grounds:

- (1) C.S.C. Resolution 2001-03, which adopted the definition of “personnel action” was within the scope of the C.S.C. and is reasonable and not overly broad. As such, the C.S.C. had authority under 4 G.C.A. Section 4403(d) to review the actions of D.O.E and to null and void any action taken that was not in compliance with the merit system.
- (2) Under 4 G.C.A Section 4105, the Superior Court of Guam indicated that since “[t]he personnel rules adopted for the ...Department of Education...shall require that all classified employee appeals be heard by the Civil Service Commission.”, the C.S.C. has jurisdiction to hear and determine the merits of a case wherein a furlough is alleged to have occurred and the complainant requests C.S.C.’s review to ensure that proper procedures were followed.
- (3) Finally, the Court stated that pursuant to 4 G.C.A. Section 6302(a), C.S.C. has vested authority to administer the unified pay schedule and salary administration for the Government of Guam employees, and as such, in this case, C.S.C. does have jurisdiction to hear this matter.

On June 24, 2004, the Civil Service Commission heard the Post-Audit report of the C.S.C.’s staff findings and recommendations. This Post-Audit Report was transmitted to D.O.E prior to the court hearing. A copy of the post-audit report was transmitted on June 22, 2004.

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**II.**

**ISSUES**

1. Does the C.S.C. have jurisdiction to hear this action?
2. Did the actions of D.O.E comply with the law and its accompanying rules and regulations for a furlough?

**III.**

**HOLDINGS**

1. By a vote of 5-0, the C.S.C. holds that it does have jurisdiction to hear this matter and that the action taken against the Petitioner and all similarly situated employees violated 4 G.C.A. Section 4403(d); 4 G.C.A. 6302(a) and D.O.E.'s furlough rules and regulations and the Organic Act of Guam.
2. Further, the C.S.C. ordered that D.O.E was to review its records to determine which employees may have been previously overpaid and to take all of the appropriate steps to recover such funds.

**IV.**

**FINDINGS**

The C.S.C. makes the following findings of facts and conclusions of law based upon the evidence and argument presented by the parties:

1. The C.S.C. adopts the findings of the Civil Service Commission's staff report submitted as evidence (Attached hereto as Exhibit A).
2. The C.S.C. acknowledges the decision of the Superior Court of Guam case number SPO077-04 as it relates to the jurisdiction of the C.S.C..

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3. Ms. Taimanao is a full-time classified employee who is entitled to 40 hours a workweek with no lapse in her employment status.
4. D.O.E failed to cite any personnel laws or rules, policies and procedures that would prohibit them from compensating the Petitioner for 40 hours for the pay periods ending August 9, 2003 and August 23, 2003.
5. No personnel actions were processed by D.O.E to implement the non-payment of Petitioner's salary inclusive of 1,832 permanent classified teachers for the pay periods ending August 9, 2003 and August 23, 2003.
6. The Department of Education did not clarify its position of teachers who were placed on a non-duty and non-pay status for the period of August 1-17, 2003. Although D.O.E Personnel indicated that this period was not a furlough, the action taken meets the definition of one.
7. A furlough action is the placement of an employee in a temporary non-duty and non-pay status on a continuous basis (in this case, 17 consecutive days). By deferring the start of the school year 2003-2004 to August 18, 2003, and not making the proper arrangements for such an interruption, the employment status of the teachers were disrupted.
8. The Employee Furlough Procedures rule 910.13.12 and Public Law 27-05, specifically requires D.O.E to notify all employees in writing of an impending furlough thirty (30) days prior to the effectuating of such action.
9. To pay Petitioner the forty (40) hours for the pay periods ending August 9, 2003 and August 23, 2003.

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10. To pay the 1,823 permanent classified teachers the forty (40) hours for the pay period ending August 9, 2003 and August 23, 2003.
11. That D.O.E is to determine which teachers were allegedly overpaid by an earlier opening of the school year and to recoup such funds.

V.

**JURISDICTION**

The issue of C.S.C.'s jurisdiction to hear this case was decided in **Department of Education v. Civil Service Commission; and Luis R. Baza; Manuel R. Pinauin; Joaquin T. Angoco; Pricilla T. Tuncap; John V. Gerber; Jose L.G. Techaira; and Maria T.C. Ramos** all in their official capacities. Case Number SPO077-04. The Decision and Order made the following determinations:

1. 4 G.C.A Section 4403(d) provides as follows:

The Commission has the following duties, powers, and responsibilities:

(d) It may set aside and declare null and void any personnel action taken by any entity of the Government under its jurisdiction when it has found that such action was taken without compliance with personnel laws and rules.

C.S.C. Resolution 2001-03 defined "personnel action" to be:

A personnel action is defined as any action taken by management that substantially changes the status quo of the employee. Personnel actions are not limited to actions reflected in G.G. #1 forms.

C.S.C. had the authority of adopting a definition for "personnel action". The adoption by C.S.C. of C.S.C. Resolution 2001-03 is a reasonable one and not overly broad.

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2. That pursuant to D.O.E.'s Personnel Rules and Regulations Appendix H, Section 910.13.2, it states:

A furlough action is the placement of an employee in a temporary non-pay status on a continuous basis (for example: 10 consecutive days), or a non-continuous basis (for example: 4 hours per week). A furlough is not a layoff or reduction in force action.

Section 910.13.12(1)(h) states in part:

...furloughed employees have the right to appeal to the Civil Service Commission.

The Superior Court recognized that this language is consistent with 4 G.C.A. Section 4105 which states in pertinent part:

Section 4105: Department Rules. Rules subject to criteria established by this chapter governing the selection, promotion, performance, evaluation, demotion, suspension, and other disciplinary action of classified employees, shall be adopted by...the Board of Education...with respect to personnel matters within their respective branches, agencies or departments[.] Such rules shall, to the extent practicable, provide standard conditions for entry into and the other matters concerning the government service. **The personnel rules adopted for the ...Department of Education...shall require that all their classified employee appeals be heard by the Civil Service Commission.** (Emphasis added).

Based upon the above statutes, the Superior Court of Guam stated that "...C.S.C. has jurisdiction, pursuant to 4 G.C.A. Section 4105, to hear and determine the merits of a case wherein a furlough is alleged to have occurred and the complainant requests C.S.C.'s review to ensure that proper procedures were followed".

3. 4 G.C.A Section 6302(a) provides in pertinent part:

The Commission shall adopt and apply the unified pay schedule and the Hay methodology of positions classification and salary administration to the extent and manner it deems appropriate.

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The Superior Court of Guam stated: “However, the Civil Service Commission has the authority to administer the unified pay schedule and salary administration for Government of Guam employees pursuant to 4 G.C.A. Section 6302(a).”

The Superior Court of Guam went on further and stated:

If Respondents preliminarily find that its vested authority to administer the unified pay schedule and salary administration for Government of Guam employees is being circumvented by actions of another instrumentality of the government, then it is incumbent upon Respondents to hear the issues and make a final determination if such is actually the case.

The Superior Court decision then agreed that the C.S.C. did have authorization pursuant to 4 G.C.A. Section 6302(a) to hear this matter.

Based upon the above, the C.S.C. finds that the Employee had merit system protection and was, therefore, entitled to those protections and benefits afforded to classified employees pursuant to the furlough procedures, salary administration, and the authority of the C.S.C. to null and void any personnel action that is taken by management that substantially changes the status quo of the employee. Personnel actions are not limited to actions reflect in G.G. #1 forms.

VI.

CONCLUSION

C.S.C. has determined that while they understand the financial condition and hardship that D.O.E is undergoing, D.O.E was required to follow the furlough rules and regulations, and the salary schedule established by C.S.C., for its employees. D.O.E.’s failure to do so violated the merit system principles afforded to the Petitioner and all other similarly situated employees whose salary was affected by D.O.E.’s action.



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D.O.E has alleged that they had double paid its teachers when it opened the school year earlier to accommodate the 1997-1998 South Pacific Games. The C.S.C. orders that D.O.E investigate the matter and determine if such payment occurred and take the appropriate steps to collect such amounts back from those individuals.


VII.

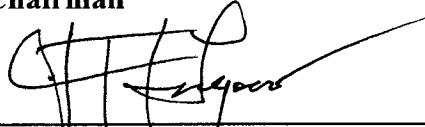
JUDGEMENT


That the Post-Audit Report on the Petitioner and all other similarly situated employees at the Department of Education is upheld. The actions of D.O.E were that of a furlough and such furlough did not meet the requirements and procedures for such an action. D.O.E is to pay the Petitioner and all other similarly situated employees the amount that was withheld from their pay.

SO ADJUDGED THIS 29<sup>th</sup> DAY OF July 2004

  
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LUIS R. BAZA  
Chairman

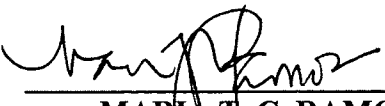
  
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MANUEL R. PINAUN  
Vice-Chairman

  
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JOAQUIN T. ANGOCO  
Commissioner

  
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PRISCILLA T. TUNCAR  
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JOHN V. GERBER  
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Commissioner

  
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MARIA T. C. RAMOS  
Commissioner