

IN THE SUPERIOR COURT OF GUAM

JURY

DEPARTMENT OF EDUCATION,) CASE NO. SP0077-04
)
PETITIONER,)

v.)

CIVIL SERVICE COMMISSION; and)
LUIS R. BAZA; MANUEL R. PINAUI;)
JOAQUIN T. ANGOCO; PRICILLA T.) DECISION AND ORDER
TUNCAP; JOHN V. GERBER; JOSE L.G.)
TECHAIRA; and MARIA T.C. RAMOS;
all in their official capacities,

RESPONDENTS.

INTRODUCTION

This matter came before this Court on May 10, 2004. Petitioner herein is the Department of Education (D.O.E.), represented by Fred Nishihara. Respondents are the Civil Service Commission (CSC) and its Board, represented by Robert H. Kono. After reviewing the briefs and supporting documents, and hearing the arguments of the parties, this Court now renders its Decision and Order.

BACKGROUND

On March 26, 2003, the Guam Education Policy Board (GEPB) adopted the 2003-04 school year calendar school. The start of the school year was moved from August 1, 2003 to August 18, 2003. On June 23, 2003, the CSC received a personnel action appeal entitled "Motion to Void Personnel Action Placing Employee in Furlough for Procedural Defects" which, on July 15, 2003, was amended by "Appeal Personnel Action Placing Employee in Furlough for Procedural Defects (Amended)", hereinafter CSC Case No. 0306-FLA-21. In that case, D.O.E. employee Elizabeth Taimano (Taimano) complained that moving the start of the 2003-2004 school year from August 1, 2003 to August 18, 2003 constituted a furloughing of teachers for a duration of seventeen consecutive days. Taimano alleges that in so doing, D.O.E.

1 failed to follow law and rules for implementing a furlough. Taimano requested the CSC to
2 "...review the actions of the Board to insure compliance with law and rule and in the event that
3 the actions of the Board are determined to be improper, the employee seeks the relief as stated
4 herein on behalf of all teachers and affected employees."

5 On April 12, 2004, Petitioner filed a Petition For Alternative Writ of Prohibition asking
6 the court to command Respondents to refrain from further proceedings in CSC Case No. 0306-
7 FLA-21. Petitioner argued that Respondents lacks jurisdiction to review the case because
8 Respondents' scope of duties and responsibilities is limited to those specified in Title 4 of the
9 Guam Code Annotated Section 4403.

10 On April 13, 2004, the Superior Court granted Petitioner's request and issued an
11 Alternative Writ of Prohibition ordering Respondents to cease proceedings in the above
12 mentioned case, or in the alternative, to answer and show cause why they had not done so. On
13 the same day, the judge issuing the Writ disqualified himself from this action. This case was
14 assigned to this Court on April 15, 2004.

15 On May 5, 2004, Respondents filed their Answer and Memorandum of Points and
16 Authorities in Opposition for the Writ of Prohibition. They argue that pursuant to 4 G.C.A.
17 §4403(d), 4 G.C.A. §6302(a) and the Department of Administration Rules and Regulations, the
18 CSC has jurisdiction to hear CSC Case No. 0306-FLA-21. Respondents assert that they are only
19 interested in determining whether the actions by the GEPB, in adopting the 2003-04 school year,
20 interferes with the employees merit system protection rights, which is protected under the
21 Organic Act.

22 **DISCUSSION**

23 The central issue here is whether Respondents have jurisdiction to hear and determine the
24 matter in CSC Case No. 0306-FLA-21. Petitioner argues that Respondents' duties and
25 responsibilities are limited to those specifically listed in 4 G.C.A. § 4403. Any matter that does
26 not fall within those duties specified under this section of the code is a matter that should not be
27 entertained by Respondents. Title 4 Guam Code Annotated Section 4403 provides in part:
28

1 **§4403. Duties of the Commission.** The Commission has the following
2 duties, powers, and responsibilities:

- 3 (a) It shall provide by rule standards relating to position classification,
4 creation of new positions or classes of positions, . . . , and as required
5 for positions in the other branches of the Government as such
6 positions are placed within the jurisdiction of the Commission;
- 7 (b) It shall hear appeals from the adverse actions taken to suspend,
8 demote or dismiss an employee from the classified service if such
9 right of appeal to the Commission is established in the personnel
10 rules governing the employee;
- 11 (c) It shall investigate conditions of government as it deems necessary
12 and report findings and recommendations to the Governor and
13 legislature annually;
- 14 (d) It may set aside and declare null and void any personnel action
15 taken by any entity of the Government under its jurisdiction when it
16 has found that such action was taken without compliance with
17 personnel laws and rules,...

18 On its face, this Section lays out the responsibilities, duties and powers over which Respondents
19 have jurisdiction. In the case at bar, Petitioner specifically cites subsection (d) of Section 4403 as
20 the pertinent part of the code that limits Respondents' jurisdiction to hear and determine CSC
21 Case No. 0306-FLA-21.

22 Petitioner concedes that pursuant to subsection (d) of this Section, Respondents have the
23 authority to null and void any personnel action. Petitioner argues, however, that upon GEPB's
24 decision to adopt the 2003-04 school year, it did not initiate any new personnel actions based
25 upon this decision. Petitioner asserts that a "personnel action is the document or form known as a
26 G.G. #1, or for the Department of Education form D.E. #1".¹ Thus, since no G.G. #1s or D.E.
27 #1s were initiated relative to the adoption of the 2003-04 school year, no personnel action exists
28 for Respondents to review. Therefore, Respondents are without jurisdiction to hear CSC Case
No. 0306-FLA-21.

¹ Petitioner's Memorandum Supporting Petition For Alternative Writ Of prohibition, page 6.

1 Respondents argue that the term "personnel action" is not a form or a document known as a
2 G.G. #1 or a D.E. #1. In fact, Respondents argue, pursuant to the authority granted to them under
3 4 G.C.A. §4402, CSC Resolution No. 2001-03 was adopted, wherein "personnel action" is
4 defined as follows:

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

8 The stated basis for CSC Resolution No. 2001-03 was the need for "procedural rules to govern
9 actions to void personnel actions" pursuant to the authority granted Respondents under 4 G.C.A.
10 §4403(d). Therefore, based upon this definition of "personnel action", Respondents claim
11 jurisdiction to hear and determine the merits of CSC Case No. 0306-FLA-21.

12 The initial issue raised here is whether Respondents were within the scope of their
13 authority to define the term "personnel action". The term, while mentioned in various places of
14 the Guam Code Annotated, is not defined within the Code. However, under 4 G.C.A. §4402, the
15 CSC is authorized to "adopt rules to govern its procedures." In Civil Service Resolution No.
16 2001-03, its stated purpose was to address the need for "procedural rules to govern actions to
17 void personnel actions". Respondents' discretion to declare null and void any personnel action
18 that is found to be taken without compliance with personnel law and rules, pursuant to 4 G.C.A.
19 §4403(d), necessitated Respondent's act of adopting a definition for "personnel action".
20 Therefore, this Court finds that Respondents acted within the scope of their authority in adopting
21 CSC Resolution No. 2001-03 and in defining "personnel action".

22 Petitioner argues that Respondents' definition of "personnel action" is over broad and
23 expands CSC's jurisdiction to matters not authorized by law. Petitioner contends that a
24 "personnel action" is a form or a document known as a G.G. #1 or D.E. #1. However, this
25 definition is too limiting. In Petitioner's own words, a G.G. #1 or D.E. #1, is a document or a
26 form. In fact, it is a blank document or form that is filled in with pertinent information once a
27 determination is made by management to act on a particular status of an employee.

28 In Glenn v. State University of New York, 663 N.Y.S. 2d 633(1977), a former employee
of the University brought forth an action regarding her termination from employment. The

1 Supreme Court, Appellate Division held that the university substantially complied with civil
2 service regulations regarding notice for her termination. The court stated:

3 It is well settled that “the primary purpose of civil service laws and rules is
4 to promote the good of the public service, which purpose is not to be
5 frustrated by technical or narrow construction.” (Citations omitted).

6 Moreover, in Dobbins v. San Diego County Civil Service Commission, 89 Cal. Rptr. 2d
7 39 (1999), the Court of Appeals heard an appeal which denied the Appellants a writ of mandate
8 to require the Civil Service Commission to hear their case. The Court, quoting Department of
9 Health Services v. Civil service Commission, 17 Cal.App.4th, 487, 495 (1993) stated:

10 The enactment must be given a reasonable and common sense interpretation
11 consistent with the apparent purpose and intent of the lawmakers, practical
12 rather than technical in nature, and which, when applied, will result in wise
13 policy rather than mischief or absurdity. To that end, the court must
14 consider, in addition to the particular language at issue and its context, the
15 object sought to be accomplished by the statute, the evils to be remedied,
16 and public policy.

17 The Court further stated:

18 Generally, a court will defer to the construction given to an ambiguous
19 statute or rule by the agency charged with its enforcement if that
20 construction is a reasonable one.

21 “Personnel” is defined as “a body of persons usually employed in some service”.
22 Websters Third New International Dictionary, 1687 (1971). “Action” is defined as “the process
23 of doing something; conduct or behavior.” Black’s Law Dictionary, 31 (7th ed. 1999). Based on
24 the individual definitions of these two words, “personnel action” may be constructed to mean
25 conduct, or something done upon an employee. Respondents’ definition is congruent with this
26 rough construction. Therefore, this Court finds that Respondents’ definition of “personnel
27 action”, as adopted in CSC Resolution No. 2001-03, is reasonable and not over broad.

28 However, Petitioner argues that under Respondents’ definition, a custodian originally
assigned to clean the third floor of a building may file a personnel action appeal with the CSC if
his supervisor were to assign him to the first floor. The custodian could argue that the first floor
is a larger area to clean with a lot more foot traffic. The CSC would then hear the case, and
though the matter may be dismissed based on management’s authority to assign duties, valuable
time and resources would be wasted on a matter over which the CSC has no jurisdiction. The

1 problem with this argument is that under Respondents' definition, the hypothetical custodian's
2 reassignment does not amount to a *substantial* change in his status quo. Petitioner's analogy is
3 not representative of the issues ramifying from CSC Case No. 0306-FLA-21.

4 In CSC Case No. 0306-FLA-21, Taimano alleges that the action by the GEPB constituted
5 a furlough of D.O.E. employees for a period of seventeen consecutive days. Respondents aver
6 that upon investigation and review of the actions of the GEPB, the preliminary findings indicate
7 that the effect the adoption of the 2003-04 school year had on teachers and other school
8 personnel was consistent with the effect of a furlough. Pursuant to Appendix H, Section 910.13.2
9 of the Personnel Rules and Regulations of the Department of Education, a furlough is defined as
10 follows:

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

14 Appendix H also addresses various requirements, procedures, and other pertinent issues
15 associated with furloughs. Under section 910.13.12 (1)(h), "furloughed employees have the right
16 to appeal to the Civil Service Commission." This language is consistent with 4 G.C.A. § 4105,
17 which states in pertinent part:

18 **§4105. Departmental Rules.** Rules subject to criteria established by this
19 chapter governing the selection, promotion, performance, evaluation,
20 demotion, suspension, and other disciplinary action of classified employees
21 shall be adopted by...the Board of Education... with respect to personnel
22 matters within their respective branches, agencies or departments[.] Such
23 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).

24 Therefore, since the issue of furloughs is incorporated in the personnel rules and regulations
25 adopted for the Department of Education, Respondents have jurisdiction, pursuant to 4 G.C.A.
26 §4105, to hear and determine the merits of a case wherein a furlough is alleged to have occurred
27 and the complainant requests CSC's review to ensure that proper procedures were followed.

28 While the merits of CSC Case No. 030-FLA-21 are not before this Court to determine,
the ramifications of a furlough, if ultimately determined to have been actualized by GEPB's

1 decision, albeit not documented on a G.G.#1 or D.E. #1 form, amounts to a substantial change in
2 the status quo of those affected school personnel regarding their regular biweekly expectation of
3 receiving a pay check. This situation is vastly different and far more intrusive on the status quo
4 of the affected teachers than the situation of Petitioner's hypothetical custodian.

5 Respondents argue that the decision to move the start of the school year back prevented
6 those employees, who opted to receive their entire annual salary within a twenty-six (26) pay
7 period cycle,² from receiving all of the benefits that were due and owing to them within that
8 period of time they had chosen. Instead, they would receive the full amount of their annual salary
9 by the twenty-seventh (27) biweekly pay cycle. However, there is no twenty seven (27) pay
10 period cycle authorized by law. Thus, Respondents assert, the adoption of the 2003-04 school
11 calendar, in effect, interferes with the administration of the unified pay schedule as it applies to
12 over 1,800 school employees.

13 Whether the GEPB's decision interferes with the unified pay schedule is not before this
14 court to decide. However, the Civil Service Commission has the authority to administer the
15 unified pay schedule and salary administration for Government of Guam employees pursuant to
16 4 G.C.A. §6302(a). This Section states in pertinent part:

17 **§6302. Administration.** (a) The Commission shall adopt and apply the
18 unified pay schedule and the Hay methodology of positions classification
19 and salary administration to the extent and manner it deems appropriate.

20 If Respondents preliminarily find that its vested authority to administer the unified pay schedule
21 and salary administration for Government of Guam employees is being circumvented by actions
22 of another instrumentality of the government, then it is incumbent upon Respondents to hear the
23 issues and make a final determination if such is actually the case. 4 G.C.A §6302(a) provides
24 Respondents with jurisdiction to make such a determination in CSC Case No. 0306-FLA-21.
25 Moreover, it defeats Petitioner's argument that Respondents' duties and responsibilities are
26 limited only to those specifically listed in 4 G.C.A §4403.

27
28 ² 17 G.C.A. § 5119 provides:

§5119. School -Year Pay For Teachers. Persons employed as teachers and school health counselors shall, at their
option, be paid on either a twenty one (21) or twenty six (26) biweekly payments beginning on November 1, 1983.

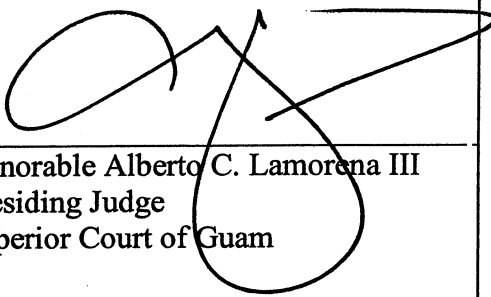
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CONCLUSION

Based on the foregoing, Petitioner's assertion that Respondents lack jurisdiction to hear and determine CSC Case No. 0306-FLA-21 cannot be sustained. This Court finds that Petitioner's petition for an Alternative Writ of Prohibition should be and is hereby DENIED.

IT IS SO ORDERED.

Dated this 11th day of June, 2004.



Honorable Alberto C. Lamorena III
Presiding Judge
Superior Court of Guam

I do hereby certify that the foregoing is a full true and correct copy of the original on file in the office of the clerk of the Superior Court of Guam.

JUN 15 2004

Domingo M. Negro
Deputy Clerk, Superior Court of Guam