9

10

11

12

13

14

15

16

17

18

19

20

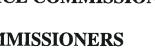
21

22

23

24

# **BEFORE THE GUAM CIVIL SERVICE COMMISSION BOARD OF COMMISSIONERS**





IN THE MATTER OF:

44 Signatories, Simon Sanchez High School, And

38 Signatories, Agana Heights **Elementary School.** 

Employee,

VS.

DEPARTMENT OF EDUCATION.

Management.

**GRIEVANCE APPEAL** CASE NOS. 14-GRE-04 and 14-GRE-05

JUDGMENT OF DISMISSAL

This matter came before the Commission on Wednesday, November 5, 2014, for a Grievance Hearing. Present were Employee representative Carol Somerfleck with counsel Daniel Somerfleck. Management representative Taling Taitano was present with counsel Rebecca Perez. At the start of the hearing, Commissioner Luis Baza raised a question regarding the Commission's jurisdiction over this subject matter because it involves issues of classification or compensation. After hearing from counsel, the Commission deliberated the question and determined by six affirmative votes that the Commission does not have jurisdiction to hear this matter and will accordingly dismiss.

#### **CLASSIFICATION AND COMPENSATION**

Prior to fiscal year 2006, the Civil Service Commission was empowered with both adjudicatory and non-adjudicatory functions. Under this statutory regime, the Commission did more than protecting the due process rights of government employees through adjudicatory

**ORIGINAL** 

hearings on the merits. During that period, the Commission also oversaw the overall classification and compensation scheme of government employees in a more plenary fashion through non-adjudicatory functions.

Yet, on September 30, 2005, Public Law 28-68 was signed by the Governor. Although P.L. 28-68 was a budget bill, it also established "Miscellaneous Administrative Provisions," that included a sweeping overhaul of the functions of the Commission. In brief, the non-adjudicatory functions of the Commission were transferred overwhelmingly to the Department of Administration. The results were that the oversight powers of the Commission were at the lowest ebb since its inception. In particular, the jurisdiction over classification and compensation matters was no longer with the Commission.

On March 12, 2010, Public Law 30-112 was signed by the Governor. As a result of popular discontent with the limitations on the Commission's jurisdiction, P.L. 30-112 repealed and reenacted key statutes central to the Commission's operations, "Relative to Restoring Certain Jurisdictions, and to Clarify Certain Functions of the Civil Service Commission." While P.L. 30-112 restored "certain jurisdictions," it did not restore all jurisdictions transferred away by P.L. 28-68. Jurisdiction over classification and compensation matters was not restored, but rest with the Department of Administration. Thus, the present-day jurisdictional authority of the Commission to act on government employment matters is greater than it was between 2005-2010, but still lesser than it was prior to P.L. 28-68.

As the above relates to the present case, it appears that prior to P.L. 28-68, the grievances brought here would be appropriately heard by the Commission. Yet, since the passage of P.L. 28-68, such jurisdiction does not lie with this body. Even though P.L. 30-112 restored certain jurisdictions to the Commission, we do not read it to have restored the ability to hear classification and compensation matters of this kind. In other words, the employees in this matter seek upward modification of their classification and compensation as part of a grievance complaint, outside of, for example, adverse actions appeal of a demotion. Even if the Commission could hear such a case, it does not appear there is any enforceable remedy that we can fashion for this grievance.

### 

## 

#### **THE COMPETITIVE WAGE ACT OF 2014**

There do not appear to be any allegations in this case that the management of the Department of Education did anything other than follow the directives of the Department of Administration. Further, there do not appear to be any allegations in this case that the Department of Administration issued any directives to the Department of Education other than those set forth in the Competitive Wage Act of 2014. Employees take issue with the implementation of the Competitive Wage Act.

On September 11, 2013, Public Law 32-068 was signed into law. Chapter IX, Section2(e) of the act stated that a "final, implementable plan to adjust compensation, classification and benefits" would need to be submitted to the Speaker by January 15, 2014, from which time it would go into effect in 30 calendar days unless disapproved or amended by *I Liheslaturan Guahan*. On January 15, 2014, a plan was submitted to the Speaker, giving *I Liheslaturan Guahan* until February 14, 2014, to disapprove or amend it. On February 1, 2014, Bill 268-32 was passed which sought to amend certain provisions; however, the Governor vetoed Bill 268-32 on February 13, 2014, and no subsequent disapproval or amendment was enacted. The executive branch then implemented the plan.

Employees argue: (1) the plan submitted was not sufficiently "final" or "implementable," and/or (2) the *I Liheslaturan Guahan* did amend the plan, notwithstanding the Governor's veto, rendering the current plan unlawful. The Commission finds questions of propriety of legislative enactment such as these to be beyond the purview of this body. Cases involving separation of powers between branches of government are better brought before a court of law and not this administrative body. Consequently, we also find we lack jurisdiction since it is beyond our jurisdiction to consider such arguments.

**THEREFORE** by a vote of 6-0 the Civil Service Commission shall not hear this grievance on the basis that it involves issues of classification or compensation, and that the Commission does not have jurisdiction over such issues.