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CSC RESOLUTION NO. 89-007

RELATIVE TO PETITIONING THE LEGISLATURE FOR
EQUAL AND JUST IMPLEMENTATION OF OPTIONS
1 AND 2 AS PRESENTED IN THE CIVIL SERVICE
COMMISSION'S CLASSIFICATION AND PAY
MAINTENANCE REPORT OF NOVEMBER 1985.

- WHEREAS**, a Classification and Pay Maintenance Review Task Force was formed by the Governor on or about 1984, at the urging of the Civil Service Commission; and
- WHEREAS**, the Task Force was spearheaded by the Civil Service Commission; and
- WHEREAS**, the classification and pay maintenance review study was completed and approved by the Commission on or about November 1985; and
- WHEREAS**, the study presented two (2) options, referred to as Option 1 and Option 2; and
- WHEREAS**, Option 1 was designed to achieve pay parity and equity with certain GovGuam agencies who are authorized by law to maintain their own salary scales independent of the Commission; and
- WHEREAS**, Option 1 was expected to be phased in across-the-board for all covered classes of positions; and
- WHEREAS**, other autonomous agencies opted to adopt the Commission's new pay plan; and
- WHEREAS**, the Legislature authorized full implementation of Option 1 exclusively for teachers, beginning August, 1986; and
- WHEREAS**, Guam Memorial Hospital nurses were next authorized full implementation of Option 1 salaries to July 1987; and
- WHEREAS**, the Superior Court and Public Defender's Service Corp. adopted the Option 1 plan and were authorized full implementation on November 1987; and
- WHEREAS**, the Guam Community College, the University of Guam, and Guam Memorial Hospital were also authorized full implementation on November 1987; and
- WHEREAS**, remaining covered GovGuam employees were authorized incremental implementation on a 25%, 60% basis in Fiscal Year 1988; and 100% implementation was finally authorized in Fiscal Year 1989, retroactive to October 1, 1987; and
- WHEREAS**, Option 2 was intended to be a short-term solution to bring GovGuam salaries closer to parity and equity; and Option 2 was to be implemented October 1, 1986, across-the-board for all classes of positions; and
- WHEREAS**, retroactive implementation of Option 2 was authorized to October 1, 1984, for Department of Administration, Guam Power Authority, the Public Utility Agency engineers, the Environmental Protection Agency engineers; and
- WHEREAS**, retroactive implementation of Option 2 was authorized to October 1, 1985, for GCC support staff and the Guam Airport Authority; and
- WHEREAS**, retroactive implementation of Option 2 was authorized to January 1986, for the Guam Fire Department firefighters, the Department of Agriculture conservation officers; and
- WHEREAS**, retroactive implementation of Option 2 was authorized to April 1986 for the Department of Education accounting staff and to June 1986 for the Guam Telephone Authority; and
- WHEREAS**, the piecemeal implementation scheme for Options 1 and 2 for favored groups not only perpetuated the inequities which Options 1 and 2 were intended to overcome or minimize, but further imposed a grave injustice upon other equally deserving GovGuam employees, denying them equal treatment and equal protection; and

WHEREAS, unjustified piecemeal implementation for favored groups generate more problems and more avoidable costs to the taxpayers; and

WHEREAS, the Superior Court in a recent decision involving piecemeal legislation, viewed the discriminatory implementation of Option 1 with great disfavor in that it denies similarly situated GovGuam employees equal protection of the law; now, therefore, be it

RESOLVED, the Civil Service Commission hereby respectfully petitions the Guam Legislature to authorize full implementation of Option 1 to August 1986, for all those covered employees who were denied the benefit of early implementation; be it further


RESOLVED, the Civil Service Commission further petitions the Guam Legislature to authorize implementation of Option 2 from September 30, 1986 to October 1, 1984, for those covered employees who were denied the benefit of early implementation of Option 2; or from July 1986 to October 1, 1984, if Option 1 retroactivity is approved to August 1986; be it further

RESOLVED, the Civil Service Commission deplores the selective implementation of Options 1 and 2 which were originally intended to benefit all covered employees and preserve the integrity and stability of the civil service pay plan; be it further

RESOLVED, that the Civil Service Commission respectfully appeals to the Guam Legislature and the Governor to join the Civil Service Commission in supporting the elimination of the injustice imposed upon thousands of GovGuam employees; and be it further

RESOLVED, that this Resolution be transmitted to the Speaker of the Twentieth Guam Legislature and to the Governor.


DULY AND REGULARLY ADOPTED this 28th day of February, 1989.



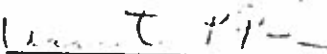
WILLIS S. CANNON, Acting Chairperson



DEBRA R. CRUZ, Commissioner



EDWARD P. MENDIOLA, Commissioner



VICENTE P. PEREZ, Commissioner

FACTS NOT FLUFF

A. PIECEMEAL IMPLEMENTATION OF OPTION 1: Departments that implemented Option 1 prior to October 1, 1987.

<u>Department</u>	<u>Position Affected</u>	<u>Effective Date</u>
1. DOE	Teachers Administrators	Aug. 1986 Oct. 1, 1986
2. GMH	Nurses	July 1, 1987

B. DECISION AND ORDER, CIVIL CASE NO. 1264-87: The Superior Court in the decisions of November 21, 1988 and February 17, 1989 involving piecemeal salary legislations, viewed the discriminatory implementation of Option 1 with great disfavor in that it denies similiary situated GovGuam employees equal protection of the law.

<u>Plaintiffs</u>	<u>Defendants</u>	<u>Decision</u>
Rosalita T. Perez, et al. (Public Health Nurses)	Wilfred Aflague, Director Dept. of Administration and The Honorable Joseph F. Ada Governor of Guam	Plaintiffs entitled to 100% of their Option 1 pay raises retroactive to August 1986, the date the teachers received their Option I increases.

C. PIECEMEAL IMPLEMENTATION OF OPTION 2: Departments that implemented Option 2 prior to October 1, 1986.

<u>Department</u>	<u>Positions Affected</u>	<u>Effective Date</u>
1. DOA	All Positions	Oct. 1, 1984
2. GPA	All Positions	Oct. 1, 1984
3. PUAG	Engineers	Oct. 1, 1984
4. GEPA	Engineers	Oct. 1, 1984
5. GCC	Support Staff	Oct. 1, 1985
6. GAA	All Positions	Oct. 1, 1985
7. GFD	Firefighter Positions	Jan. 1, 1986
8. Agriculture	Conservation Officers	Jan. 1, 1986
9. DOE	Accounting Staff	April 8, 1986
10. GTA	All Positions	June 9, 1986

D. WHAT'S NEXT?

IN THE SUPERIOR COURT OF GUAM FILED
TERRITORY OF GUAM

Nov 23 3 49 PM '88

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4 ROSALIA T. PEREZ, et al.,)
5 Plaintiff,)
6 vs.)
7 WILFRED [G.] AFLAGUE, Director)
8 of the Department of Administration,)
9 THE HONORABLE JOSEPH F. ADA, Governor)
10 of the Territory of Guam, and the)
11 GOVERNMENT OF GUAM,)
12 Defendant.)

CIVIL CASE NO. 1264-87

DECISION AND ORDER

(11/21/88)

12 This matter came before the Court on both parties' motions for summary
13 judgment, pursuant to Rule 56 of the Rules of Civil Procedure. Oral arguments
14 were heard on 27 September 1988, after which the matter was taken under
15 advisement. Plaintiffs were represented by Frederick J. Horecky, defendants
16 Aflague and Ada were represented by Assistant Attorney General R. Happy Rons.

17 During the period in which the Court was preparing the decision, the Guam
18 Legislature overrode the veto of Bill No. 622 and full implementation of
19 Option I became the law of the Territory as P.L. 19-32. The Court then met
20 with counsel in chambers to discuss that event and the possible mootness of
21 this case. Counsel disagreed on the effect of the legislature's act; this
22 decision was therefore published.

23 The principal judicial inquiry required by Rule 56 is whether there exists
24 a genuine issue of material fact. See Wright, Miller & Kane. Federal
25 Practice and Procedure; Civil 2d Section 2726, p.75. See Also Vette Co. v.
26 Aetna Cas. & Sur. Co., 612 F.2d 1076 (8th Cir. 1980).

27 Plaintiff's complaint and amended complaint filed on 13 November and
28 14 December 1987 respectively, allege that defendants have granted certain

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1 GovGuam employees full Option 1 salary increases while unlawfully denying such
2 increases to plaintiffs and other GovGuam employees. This, plaintiffs say,
3 violates plaintiffs' rights to due process and equal protection of the laws as
4 well as the Compensation Laws of Guam. Arguing that there exists no triable
5 issue as to any material fact, plaintiffs seek summary judgment in their favor
6 as a matter of law. Plaintiffs assert they have been damaged by loss of
7 income, retirement benefits, and other rights and privileges appurtenant to
8 their classified positions, and that they have no speedy or adequate remedy at
9 law.

10 Defendants too have moved for summary judgment arguing that they are
11 immune from this suit and that plaintiffs have failed to state a claim upon
12 which relief may be granted.

13 IMMUNITY

14 The named defendants are not immune from suit. Courts have long held that
15 sovereign immunity does not bar governmental officials from suit when they act
16 in either ultra vires or unconstitutional ways. Larson v. Domestic & Foreign
17 Commerce Corporation, 337 U.S. 682, 69 S.Ct. 1457, 1461 (1949) (See also
18 Lawrence v. United States, 631 F.Supp. 631, 637-8, (E.D. Pa. 1982 where it was
19 held that immunity does not bar an action to review unconstitutional agency
20 action.) (And See United States v. Commonwealth, 394 F.Supp. 261, 266 (M.D.
21 Pa. 1975) Nor does a state's sovereign immunity exempt defendants in a
22 declaratory relief action. Tehachapi-Comings County Water Dist. v.
23 Armstrong, 49 Cal.App. 3d 992, at 1000 122 Cal.Rptr. 918 at 923 (1975) nor
24 injunctive relief against unconstitutional state action San Diego Unified
25 Port. Dist. v. Gianturco, 457, F.Supp. 283, 287 (S.D. Cal. 1978).

26 FACTUAL BACKGROUND

27 Plaintiffs as GovGuam employees occupy positions in the field of nursing
28 for the Department of Public Health and Social Services, an agency of the

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1 Government of Guam. Defendant Ada as the Governor of Guam, exercises the
2 executive power of the Territory of Guam while defendant Aflague is the
3 Director of the Department of Administration and as such, is responsible for
4 authorizing and issuing salary payments to GovGuam employees.

5 On or about 26 September, 1986, the Civil Service Commission made its
6 recommendation to the Governor of Guam to reassign every class of employment
7 in the Government of Guam to higher pay ranges within a pay schedule. Such an
8 increase in salary and implementation of such is termed "Option 1" salary
9 increases. (See exhibit 5 to Plaintiff's Notice of Intent to Request Judicial
10 Notice)

11 On or about 24 April 1986, by virtue of Public Law No. 18-32 Section 34,
12 defendants authorized, implemented and paid out in full, Option 1 salary
13 increases to a specific group of employees, namely persons occupying positions
14 as teachers for the Government of Guam. Such teachers' salary increases were
15 to become effective beginning the school year 1986-87. On or about 21 August
16 1987, defendant Ada, by virtue of his approval of Public Law No. 19-5 Section
17 43, reassigned the pay ranges of certain nurses of the Guam Memorial Hospital,
18 (herein "hospital nurses") increasing their salary to 100% of the Option 1
19 level.

20 Although full Option 1 salary increases were approved for the hospital
21 nurses, retroactive to 1 July 1987, plaintiffs and other GovGuam employees did
22 not receive such beneficial treatment. Defendant Ada did however approve an
23 unequal and lesser salary increase for plaintiffs and other GovGuam employees
24 whereby they would receive 25% of the Option 1 salary increase effective 1
25 October 1987, and on additional 50% of the Option 1 salary effective 1 October
26 1988, with the final 25% of the Option 1 salary increase effective 1 October
27 1989. On two occasions thereafter, defendant Ada received from the 19th Guam
28 Legislature Bills (Substitute Bill No. 455, dated 18 September 1987 and

1 Substitute Bill No. 263, dated 30 September 1987) which provided for full
2 implementation of Option 1 salary increases to plaintiffs and all GovGuam
3 employees previously not reclassified as Option 1. Defendant Ada refused to
4 approve both bills.

5 On or about 14 November 1987, defendant Ada received Bill No. 611 and
6 approved it as Public Law No. 19-10 which gave full Option 1 salary increases
7 to five GovGuam Agencies, specifically Guam Community College, University of
8 Guam, Superior Court of Guam, Public Defender's Service, and the Guam Memorial
9 Hospital. Bill 611 also carried the substantive provisions for the 18 million
10 dollar appropriation for full Option 1 implementation for all GovGuam
11 employees, indicative that the legislature intended full Option 1 coverage to
12 be implemented. But again, plaintiffs and other GovGuam employees failed to
13 receive such beneficial treatment; instead plaintiffs received a lesser
14 staggered salary increase of 60% of the salary increase under Option 1
15 effective 1 October 1987 with the additional 40% of the salary increase under
16 Option 1 to be effective 1 October 1988.

17 As a threshold issue, Plaintiffs allege that since Pub. Law No. 19-10 does
18 not delineate the pay ranges and class lists of GovGuam employees, Option 1
19 has never been enacted into law. The relevant section of Pub. Law No. 19-10
20 reads:

21 (a) Option 1 of the proposed salaries recommended by
22 the Civil Service Commission in the Classification and Pay
23 Maintenance Review Task Force Phase I Report, dated
November 7, 1985, shall be implemented.

24 Since the Report itself contains the class lists and pay ranges, this
25 Court finds that Option 1 has been enacted into law albeit by reference.

26 A statute is not invalid simply because something it refers to does not
27 appear within the statute itself. Incorporation by reference in laws is often
28 a matter of convenience and is not uncommon. (See 26 U.S.C. §§ 6621(b)(2) and

1 (3) which provide that the Secretary of the Treasury shall determine the short
2 term federal interest rate, in accordance with §1274(d) and §1274(d)(c)(i)
3 provides that the rate shall be determined by the average market yield during
4 specified periods of time. Nowhere in 26 U.S.C. §§6621(b)(2) and (3) and
5 §1274(d) is the federal interest rate listed, those laws simply define how the
6 interest rate will be measured. See Also 4 GCA §4103, which states that
7 GovGuam may temporarily employ a person in a nonprofessional capacity for up
8 to 120 days, the statute then defines a professional as a person whose job
9 description is listed in the Dictionary of Occupational Titles which is
10 published by the United States Department of Labor. (Again, with this law one
11 must "go outside" the statute to fully implement the law.)

12 Finally, by the language of Pub.L. No. 19-10, the Court concludes that it
13 was indeed, the legislature's intent to implement Option 1 salary increases as
14 defined in the Civil Service Commission's Report. Where the legislative
15 intent is clear, the Court need look no further into the meaning of a
16 statute. See Abourezk v. Reagan, 785 F.2d 1043, 1053 (D.C. D.C. 1986).

17 Public Law No. 19-5 provided full Option 1 increases to hospital nurses
18 yet denied full Option 1 salary increases to plaintiff nurses despite the fact
19 that plaintiffs have been categorized as in the same pay range according to
20 the Civil Service Commission; Public Law No. 19-10 approved full Option 1
21 salary increases to only five GovGuam agencies. This Court has looked at the
22 record for circumstances or special characteristics which might justify those
23 agencies receiving such special treatment. At the hearing, the Government did
24 proffer two reasons for implementing disparate Option 1 salary increases to
25 the hospital nurses and plaintiff nurses; first the defendants argue that the
26 two groups of nurses are demonstrably different, each group having different
27 requirements and qualifications. As an adjunct to that argument, the
28 government contends that hospital nurses have a more demanding job and in

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1 order to keep the only public hospital on the island well staffed, the
2 government is compelled to authorize a higher salary as both an incentive to
3 hiring and a means of retaining nurses at the hospital. The second argument
4 the government has offered to justify disparate Option 1 implementation, is
5 that the Governor, dedicated to achieving a balanced budget, has implemented
6 the Option 1 salary increases in steps, so as not to overburden the public
7 coffers. And that is indeed a worthwhile goal. As Thomas Paine said almost
8 two centuries ago:

9 The public money ought to be touched with the most
10 scrupulous conscientiousness of honor. It is not the
11 produce of riches only, but of the hard earning of labor
12 and poverty. It is drawn even from the bitterness of want
13 and misery. Not a beggar passes, or perishes in the
14 streets, whose mite is not in that mass.

15 The Court also agrees that keeping Guam's only public hospital well
16 staffed with nurses, or paying certain nurses more for a more demanding job
17 could be valid reasons to pay hospital nurses more than plaintiff nurses.
18 (The Court makes no finding as to the relative burdens of the two types of
19 nursing.)

20 However, where a state distributes benefits unequally, the distinctions it
21 makes are subject to scrutiny under the equal protection clause of the
22 Fourteenth Amendment. Hopper v. Bernalillo County Assessor 105 S.Ct. 2862,
23 2866 (1985) 472 U.S. 612, 619.

24 DISCUSSION

25 Defense cites California State Employees Association v. Flournoy, 106
26 Cal.Rptr. 251 (1973) 32 Cal. App. 3d. 219 for the well stated proposition that
27 the test in economic (and wage) regulation is that the classification bears
28 some rational relationship to conceivable legitimate state purposes. The
29 Court agrees. However, even assuming there exist legitimate differences
30 between the classes of plaintiff nurses and hospital nurses, this Court finds

1 that the goals of a balanced budget and keeping the hospital staffed with
2 nurses, can not be extrapolated to justify the arbitrary distinction between
3 the five GovGuam agencies which have received full Option 1 privileges and
4 those remaining GovGuam agencies which have not. The Government cannot
5 justify its arbitrary and disparate treatment of all its employees with the
6 justification that two groups of nurses have different types of jobs. The
7 Court finds that neither the "balanced budget" defense nor the defense of
8 keeping the hospital well staffed, justifies disparate treatment of GovGuam
9 employees. It is difficult to conceive of a legitimate state purpose which
10 would justify such discrimination.

11 The goal of a balanced budget would be acceptable as a valid excuse not to
12 ~~implement any Option 1 salary increases, or even partial implementation to all~~
13 employees but a "statute makes an improper and unlawful discrimination if it
14 confers particular privileges upon a class arbitrarily selected from a larger
15 number of persons, all of whom stand in the same relation to the privileges
16 granted, and between whom and the person not so favored, no reasonable
17 distinction or substantial difference can be found justifying the inclusion of
18 the one and the exclusion of the other." Cossack v. City of Los Angeles, 114
19 Cal.Rptr. 460, 466 (1974) 11 Cal.3d 726, (1974). Citing 5 Cal.Jur. 285, and
20 cases cited.

21 However, there is no natural, intrinsic or constitutional distinction
22 between the classes which have selectively received full Option 1 salary
23 increases and those classes which have not. (See Loff v. City of Long Beach,
24 314 P.2d 518, 523, 153 Cal.App.2d 174 (1957).

25 Therefore, this Court finds that Public Law 19-5 and Public Law 19-10
26 violate equal protection of the law as guaranteed to plaintiffs by the U.S.
27 Constitution and the laws of Guam in that:

28 All GovGuam employees were reclassified as to the Option 1 pay ranges.

1 An unjust, inequitable and discriminatory system of compensation exists
2 whereby some GovGuam employees were granted full Option 1 salary increases
3 whereas others were not.

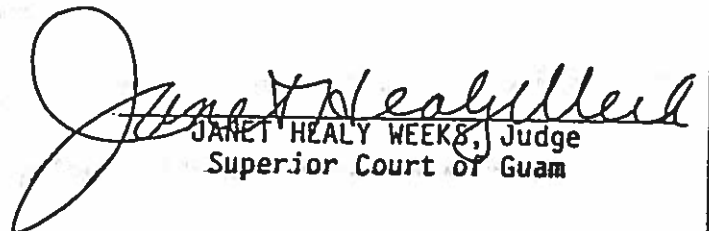
4 There is no rational relationship for such an action to legitimate
5 Territorial purposes.

6 Having decided that the above Public Laws violate plaintiffs' right to the
7 equal protection of the laws, this Court need not reach a decision as to
8 whether such laws also violate the Compensation Laws of Guam.

9 After hearing testimony offered at the hearing, and consideration of all
10 documents submitted to this Court and having heard parties' oral arguments,
11 this Court finds that there are no triable issues as to any material fact,
12 that defendants' actions are in violation of plaintiffs' right to equal
13 protection under the law and plaintiffs are entitled to summary judgment as a
14 matter of law. Defendant's motion for summary judgment is denied.

15 The Court sets 2 December at 2:00 pm for hearing on the matter of damages,
16 costs and attorney's fees.

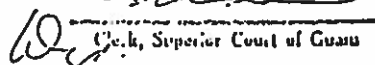
17 SO ORDERED, this 21st day of November, 1988.

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21 JANET HEALY WEEKS, Judge
22 Superior Court of Guam

23 I do hereby certify that the foregoing
24 is a full and correct copy of the
25 original file in the office of the
26 clerk of the Superior Court, Guam

27 Dated at Agaña, Guam

28 NOV 21 1988


Clerk, Superior Court of Guam

IN THE SUPERIOR COURT OF GUAM

TERRITORY OF GUAM

FEB 17 10 27 AM '89

SUPERIOR COURT

CIVIL CASE NO. 0264807AM

ROSALIA T. PEREZ, et al.,
 Plaintiffs,
 vs.
 WILFRED [G.] AFLAGUE,
 Director of the Department of
 Administration,
 THE HONORABLE JOSEPH F. ADA,
 Governor of the Territory of Guam,
 and the GOVERNMENT OF GUAM,
 Defendants.

DECISION AND ORDER

(2/17/89)

~~This matter came~~ before the Court on 19 January 1989. Defendants were represented by H. Happy Rons, Assistant Attorney General; plaintiffs by Fred Horecky. This Court had earlier issued a ruling that P.L. 19-5 and P.L. 19-10 violated the Fourteenth Amendment's equal protection clause on their face and so found for plaintiffs in opposing summary judgment motions. [Decision and order of 21 November 1989, Weeks, J.] The factual background of the case is set out therein. Plaintiffs appeared this date to apply for attorney's fees pursuant to CCP §1022.1 and to argue the date to which this Court should back date its award of an Option I salary increase to plaintiffs.

Defendants did not oppose the attorney's fees prayed for and documented by plaintiffs and this Court finds therefore good cause to award fees and costs in the amount of \$11,827.60 to plaintiffs. The Court further orders that payment to counsel for plaintiff be made within 60 days of this order.

As to implementation of the Option I sums awarded by this Court, plaintiffs urge the Court to find August 1986, the date Guam's teachers received their Option I pay raise, as the operative date for the Public Health nurses' Option I pay raise. The basis for this is the language of

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1 4 G.C.A. §6309:

2 §6309. Reassignment of Classes.

3 The Governor may, upon the recommendation of the
4 Civil Service Commission when he finds the economic
5 conditions warrant the necessity therefor, reassign
6 classes of positions to higher or lower pay ranges within
7 the pay schedule than those to which they are assigned in
8 §6201 of this Compensation Law; provided, however, that
9 all classes of positions in the classified service are
10 reassigned at one and the same time and in the same manner
11 and to the same extent: and provided further, that such
12 reassignment shall not become effective without the prior
13 concurrence of the Legislature, by resolution.

14 The issue before this Court is whether §6309 requires that once the
15 Governor has reassigned a "class of positions" to a different pay range, that
16 all other classified positions be similarly reassigned? In other words, who
17 precisely falls within the term "all classes of positions in the classified
18 service?"

19 Plaintiffs interpret the phrase "all classes of positions in the
20 classified service" broadly and argue that by raising the salary of the
21 teachers, the Governor was obligated under §6309 to raise the salary of
22 plaintiffs. Under this view, all other GovGuam classified employees would be
23 entitled to a similar raise.

24 Defendants counter that the nurses are by definition a different class of
25 employees than the teachers and that any retroactive implementation should
26 commence at the date the hospital nurses received their raises, not the
27 teachers. The hospital nurses received their raise on 1 July 1987, upon the
28 passage of P.L. 19-5. Defendants interpret the phrase at issue as limited to
"all nurses" or "all teachers" per §6301.

The starting point in every case involving statutory construction is the
language itself. Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 756, 95
S.Ct. 1917, 1935, 44 L.Ed.2d 539 (1975). In crafting §6309, the Legislature
chose to modify the legal term "classes of positions" with the adjective

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1 "all." The definition of "all" before a plural noun is that the statement is
2 true as to each and every individual considered. See, Webster's Third
3 International Dictionary (1981). Further, the Legislature did not select the
4 singular form of "class of positions" nor did it precede that term with "the,"
5 "a" or "each" which would have effectively focused the meaning of the phrase
6 on one individual "class." The plain meaning of the statute thus appears to
7 sweep broadly - and literally - over "all classes of positions."

8 However, §6309 is ambiguous because "class of positions" is a term of art
9 within the Compensation Laws:

10 § 6301 Definitions.

11 * * * *

12 (b) ~~"Class" or "class of positions"~~ includes all
13 positions which are sufficiently similar, as to:
14 (1) kind or subject-matter of work;
15 (2) level of difficulty and responsibility; and
16 (3) the qualification requirements of the work, to
17 warrant similar treatment in personnel and pay
18 administration.

19 Since the plaintiffs fall into the same class of position as the hospital
20 nurses (but not the teachers), did not the Legislature intend to limit the
21 application of §6309 to the term of art in §6301?

22 Ascertaining the meaning apparent on the face of a single statute need not
23 end the inquiry. Train v. Colorado Public Interest Research Group, 426 U.S.
24 1, 10, 96 S.Ct. 1938, 1942, 48 L.Ed 2d 434 (1976). A statute is passed as a
25 whole and not in parts or sections and is animated by one general purpose and
26 intent. Consequently, each part or section should be construed in connection
27 with every other part so as to produce a harmonious whole. Sutherland Stat.
28 Const. §46.05 (4th Ed.).

29 What is the "harmonious whole" of the Compensation Laws and how does §6309
30 relate to that entire body of laws?

31 ///

1 4 G.C.A. §4101 outlines the policy reasons underlying GovGuam employment:

2 §4101. Personnel Policy.

3 (a) Employment in the service of the government of Guam
4 shall be based upon merit, and selection of employers
5 shall be free of personal or political consideration. No
6 person shall be discriminated against in an application
7 for employment or dismissed from employment on account of
8 race, color, age, religion, sex, national origin or
9 physical or mental impairment. All personnel actions,
including appointments and promotions, shall be based,
insofar as practicable, on competitive practical tests and
evaluations. Continuity of employment shall be dependent
upon good behavior, satisfactory performance of work and
availability of funds.

10 GovGuam policy is thus consistent with the general purpose of civil
11 service laws which rest on principles of merit instead of a spoils system in
12 the matter of appointment and tenure of office. See, 153 So.2d, Civil
13 Service §1. See also, Grumbine v. United States, 586 F.Supp. 1144, 1149
14 (D.D.C. 1984); Birkeland v. State of New York, 456 N.Y. S.2d 297 (Sup. 1982),
15 aff'd 470 N.Y. S.2d 661 (A.D. 2d Dep't, 1984), aff'd 485 N.Y.S.2d 248 (Ct.App.
16 1984); Bell v. Dep't of Health and Human Resources 483 So.2d 945, 949 (La.
17 1986), cert. denied, 107 S.Ct. 105 (1986); Borough of Blawnox Council v.
18 Olszewski, 477 A.2d 1322, 1326 (Pa. 1984).

19 What does §6309 effectively achieve in the context of the Compensation
20 Laws? The statute injects the Governor into the Civil Service Commission's
21 realm of power, while simultaneously mitigating any favorable (or unfavorable)
22 affect to any one class by requiring like treatment towards "all classified
23 positions in the classified service...." This interpretation of §6309 is
24 consistent with the creation of a merit-based civil service system.

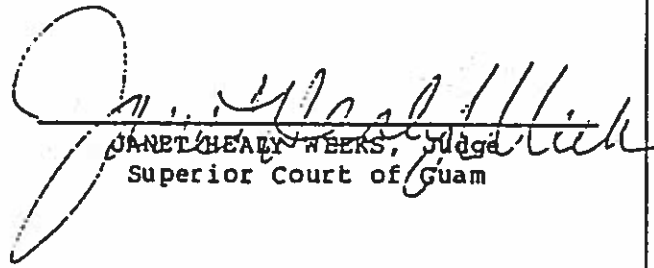
25 Lastly, it is a well established rule in certain jurisdictions to construe
26 civil service statutes liberally in order to promote their objectives and
27 assist the parties in obtaining justice. Brokaw v. Civil Service Commission,
28 342 N.W. 2d 874 (Iowa App. 1983), citing Millsap v. Cedar Rapids Civil Service

1 Commission, 249 N.W. 2d 679 (Iowa 1977).

2 Because of the sweeping language in §6309 seen in relation to the entire
3 construction of 4 G.C.A. §4101 et seq., this Court finds therefore that
4 plaintiffs are entitled to receive 100% of their Option I pay raises
5 retroactive to August 1986, the date the teachers received their Option I
6 increases. This Court orders further, to insure that the awards are
7 calculately corrected, that the Department of Administration compute and
8 submit to plaintiffs the retroactive Option I salary increases.

9 Defendants have withdrawn their motion for reconsideration. Therefore,
10 the Court considers the case to be concluded with this Decision and Order and
11 the submission of the necessary computations by Department of Administration.
12 Upon such submission, plaintiffs are to submit judgment in accordance with
13 this order and that of 21 November 1988.

14 SO ORDERED, this 17th day of February, 1989.

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17 JANET HEALY WEEKS, Judge
18 Superior Court of Guam

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Government of Guam



March 2, 1989

CSC No. 89-251

The Honorable Joe T. San Agustin
Speaker
Twentieth Guam Legislature
Agana, GU 96910

Dear Speaker San Agustin:

In the interest and spirit of fairness, the Civil Service Commission Board, at its meeting on February 28, 1989, adopted Resolution Nos. 89-005 and 89-007. These resolutions appeal to the 20th Guam Legislature to respectfully refrain from the enactment of piecemeal salary legislations, to mandate and appropriate funds for a comprehensive salary study, and to mandate and appropriate funds for the equal implementation of Options 1 and 2 salary increases for all covered GovGuam employees.

It is apparent that the Legislature has historically recognized the need to adequately compensate employees for the work they perform by authorizing the Port Authority, the Department of Education, the Department of Law, and other agencies to develop their own salary structure in one form or another. The Legislature, again in response to the need for better pay, has also resorted to the statutory reassignment of pay ranges for specific classes of positions.

While we disagree with the foregoing methods, we respect the rationale behind them. The fact of the matter, however, is that an intolerable situation has been created. On the one hand, we have a group of employees enjoying the satisfaction and benefits of better pay and early implementation of pay raises; on the other, we have several thousand of dissatisfied and restless employees (and their families) clamoring for equal pay for equal work and equal implementation of Options 1 and 2. Civil Service Commission is acutely observant of the situation. The employees of the Commission are also a part of this majority.

It has been said that the employees of the departments and agencies who have been authorized to execute pay raises are well deserving of this generosity because of the efficiency and profitability with which they have operated. We do not dispute the fact that these employees merit the pay raises; but, the use of "efficiency" and "profitability" as a facade to justify piecemeal raises to the

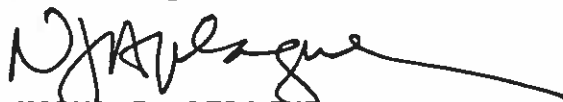
exclusion of others, is downright upsetting, demoralizing and un-just.

What some people seem to overlook is the fact that the Government of Guam is one body composed of interdependent units; each unit feeds off this body to some extent. The productivity of some are more easily measurable than others. This is especially true of income-generating and large organizations (that of the former is measured in terms of profits and losses, which is logical; that of the latter is gauged in terms of the budget lapses they generate, although lapses may be caused by factors other than efficiency). In terms of dollars and cents, these categories of government units have greater visibility than others. This high visibility, nevertheless, should not undermine or detract from the productive efforts of other less visible government counterparts. (The situation may be compared to an iceberg where only 1/3 of the iceberg is visible from the surface, while the remaining 2/3 is submerged and unseen. Yet the unseen 2/3's is what keeps the iceberg afloat and causes the greatest damage to unwary ships!)

We believe enough is enough, and we respectfully urge this august body to place the welfare of all government employees high on the priority list. After all, they are the infrastructure of the Government of Guam. We also urge the Legislature to redistribute Government of Guam funds so that all government workers may benefit in the equal implementation of Options 1 and 2 pay raises and in the benefit of a comprehensive salary study. The last major study which included both internal and external wage factors was conducted in 1975.

We hope to hear from you soon and to join us in partnership to end the continuing pay injustice for the good of all.

Sincerely,


NORMA J. AFLAGUE
Executive Director

Enclosures: CSC Resolution No. 80-005
CSC Resolution No. 89-007
Decision and Order Civil
Case No. 1264-87
Facts Not Fluff

cc: Governor of Guam

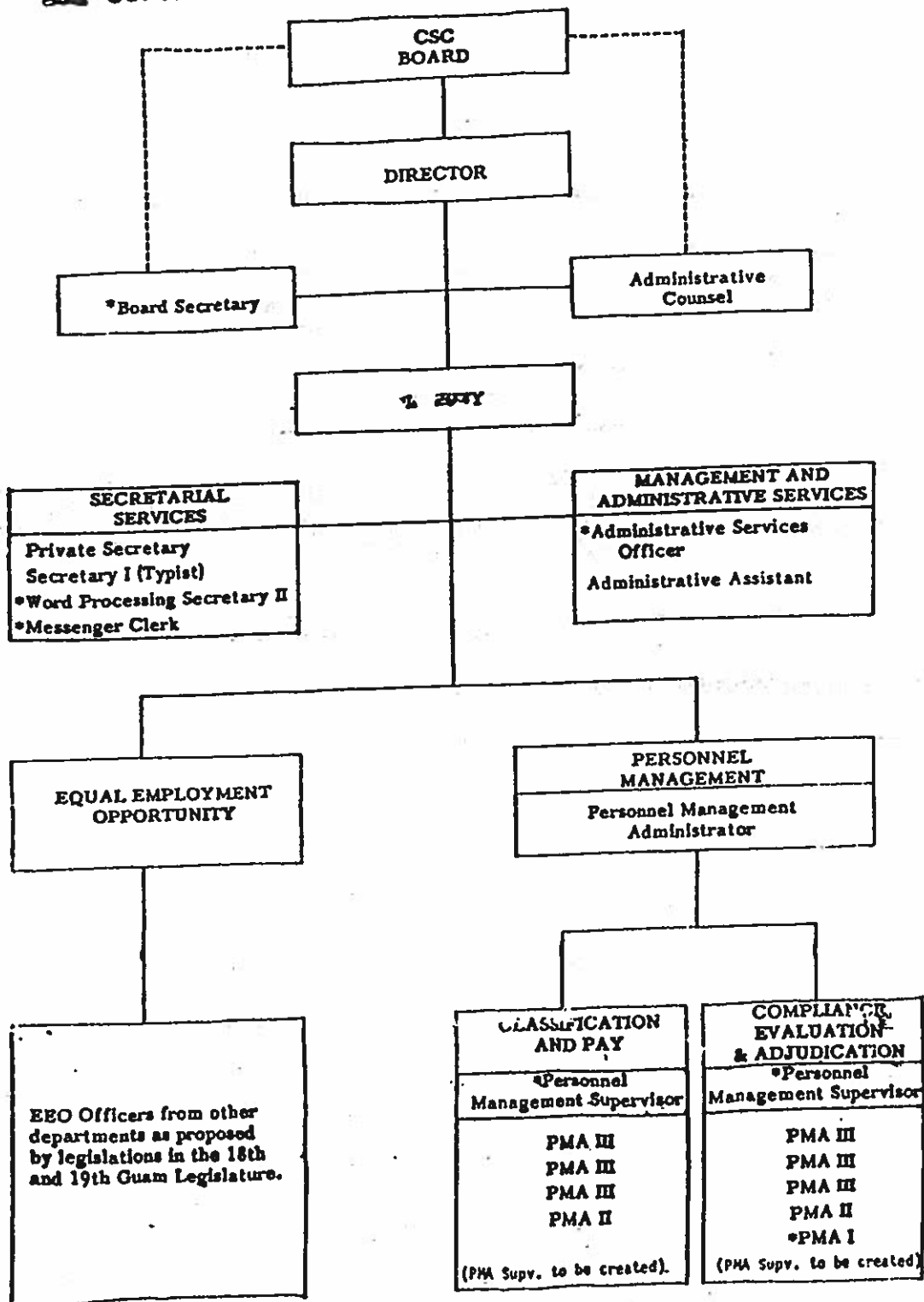


MERIT!



Organizational Chart

FY '90 Proposed



*New Positions

John Stalge
2/28/89

Script for Phone Solicitation of Support for

CSC Resolution 89-007

The Superior Court in its recent decision of February 17, 1989, found that the Public Health Nurses are entitled to receive 100% of their Option 1 pay raises retroactive to August 1986, the date the teachers received their Option 1 increases.

The Superior Court in arriving at their decision viewed the discriminatory implementation of Option 1 with great disfavor in that it denies similarly situated Gov-Guam employees equal protection of the law.

The Civil Service Commission Board at today's meeting of Tuesday, February 28, 1989 commencing at 5:00 p.m. will be reviewing for adoption and transmittal to the Speaker of the Twentieth Guam Legislature and to the Governor CSC Resolution No. 89-007 in support of equal implementation of Option 2 pay increases to October 1, 1984, and Option 1 pay increases to August, 1986 for all covered employees who were denied the benefit of early implementation.

Your ^{*attentive*} attention and encouragement of your fellow employees' attendance at today's CSC Board meeting will demonstrate support and encouragement to the CSC Board for the adoption of this Resolution.



MERIT!



CSC RESOLUTION NO. 89-007

RELATIVE TO PETITIONING THE LEGISLATURE FOR EQUAL AND JUST IMPLEMENTATION OF OPTIONS 1 AND 2 AS PRESENTED IN THE CIVIL SERVICE COMMISSION'S CLASSIFICATION AND PAY MAINTENANCE REPORT OF NOVEMBER 1985.

- WHEREAS,** a Classification and Pay Maintenance Review Task Force was formed by the Governor on or about 1984, at the urging of the Civil Service Commission; and
- WHEREAS,** the Task Force was spearheaded by the Civil Service Commission; and
- WHEREAS,** the classification and pay maintenance review study was completed and approved by the Commission on or about November 1985; and
- WHEREAS,** the study presented two (2) options, referred to as Option 1 and Option 2; and
- WHEREAS,** Option 1 was designed to achieve pay parity and equity with certain GovGuam agencies who are authorized by law to maintain their own salary scales independent of the Commission; and
- WHEREAS,** Option 1 was expected to be phased in across-the-board for all covered classes of positions; and
- WHEREAS,** other autonomous agencies opted to adopt the Commission's new pay plan; and
- WHEREAS,** the Legislature authorized full implementation of Option 1 exclusively for teachers, beginning August, 1986; and
- WHEREAS,** Guam Memorial Hospital nurses were next authorized full implementation of Option 1 salaries to July 1987; and
- WHEREAS,** the Superior Court and Public Defender's Service Corp. adopted the Option 1 plan and were authorized full implementation on November 1987; and
- WHEREAS,** the Guam Community College, the University of Guam, and Guam Memorial Hospital were also authorized full implementation on November 1987; and
- WHEREAS,** remaining covered GovGuam employees were authorized incremental implementation on a 25%, 60% basis in Fiscal Year 1988; and 100% implementation was finally authorized in Fiscal Year 1989, retroactive to October 1, 1987; and
- WHEREAS,** Option 2 was intended to be a short-term solution to bring GovGuam salaries closer to parity and equity; and Option 2 was to be implemented October 1, 1986, across-the-board for all classes of positions; and
- WHEREAS,** retroactive implementation of Option 2 was authorized to October 1, 1984, for Department of Administration, Guam Power Authority, the Public Utility Agency engineers, the Environmental Protection Agency engineers; and
- WHEREAS,** retroactive implementation of Option 2 was authorized to October 1, 1985, for GCC support staff and the Guam Airport Authority; and
- WHEREAS,** retroactive implementation of Option 2 was authorized to January 1986, for the Guam Fire Department firefighters, the Department of Agriculture conservation officers; and
- WHEREAS,** retroactive implementation of Option 2 was authorized to April 1986 for the Department of Education accounting staff and to June 1986 for the Guam Telephone Authority; and
- WHEREAS,** the piecemeal implementation scheme for Options 1 and 2 for favored groups not only perpetuated the inequities which Options 1 and 2 were intended to overcome or minimize, but further imposed a grave injustice upon other equally deserving GovGuam employees, denying them equal treatment and equal protection; and

WHEREAS, unjustified piecemeal implementation for favored groups generate more problems and more avoidable costs to the taxpayers; and

WHEREAS, the Superior Court in a recent decision involving piecemeal legislation, viewed the discriminatory implementation of Option 1 with great disfavor in that it denies similarly situated GovGuam employees equal protection of the law; now, therefore, be it

RESOLVED, the Civil Service Commission hereby respectfully petitions the Guam Legislature to authorize full implementation of Option 1 to August 1986, for all those covered employees who were denied the benefit of early implementation; be it further

RESOLVED, the Civil Service Commission further petitions the Guam Legislature to authorize implementation of Option 2 from September 30, 1986 to October 1, 1984, for those covered employees who were denied the benefit of early implementation of Option 2; or from July 1986 to October 1, 1984, if Option 1 retroactivity is approved to August 1986; be it further

RESOLVED, the Civil Service Commission deplores the selective implementation of Options 1 and 2 which were originally intended to benefit all covered employees and preserve the integrity and stability of the civil service pay plan; be it further

RESOLVED, that the Civil Service Commission respectfully appeals to the Guam Legislature and the Governor to join the Civil Service Commission in supporting the elimination of the injustice imposed upon thousands of GovGuam employees; and be it further

RESOLVED, that this Resolution be transmitted to the Speaker of the Twentieth Guam Legislature and to the Governor.

DULY AND REGULARLY ADOPTED this 28th day of February, 1989.



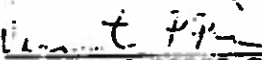
WILLIS S. CANNON, Acting Chairperson



EDWARD P. MENDIOLA, Commissioner



DEBRA R. CRUZ, Commissioner



VICENTE P. PEREZ, Commissioner



MERIT!

Government of Guam



MAR 02 1989

CSC No. 89-253

MEMORANDUM

TO: The Governor

FROM: Executive Director
Civil Service Commission

SUBJECT: CSC Resolution Nos. 89-005 and 89-007

The Civil Service Commission Board, at its meeting on February 28, 1989, adopted Resolution Nos. 89-005 and 89-007, which respectfully seek your support to discourage the enactment of piecemeal salary legislations; to conduct a comprehensive salary study; and to equally implement Options 1 and 2 salary increases for all covered GovGuam employees.

In your recent State of the Territory Address, you thanked the thousands of hard working employees of the government of Guam, you recognized them as the unsung heroes of public service, and you expressed how proud you are of each and every one of them.

We appreciate such a public acknowledgement of our workforce, and we look forward to your favorable support of these resolutions, which the Commission feels is a step toward ending the continuing pay injustice for the good of all.


NORMA J. AFLAGUE

Attachments

cc: Speaker and Senators, 20th
Guam Legislature

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cc: Speaker and Senators, 20th
Guam Legislature

NJA/smg
3/02/89

cc: Chrono
Option 1 & 2 File



MERIT!

Government of Guam



March 2, 1989

CSC No. 89-251

The Honorable Joe T. San Agustin
Speaker
Twentieth Guam Legislature
Agana, GU 96910

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