

Rec DSS - JIM
3/20/14



**BEFORE THE
GUAM CIVIL SERVICE COMMISSION**



IN THE MATTER OF:

CAROL SOMERFLECK, et al.,

Employee,

vs.

DEPARTMENT OF EDUCATION,

Management.

**GRIEVANCE APPEAL
CASE NO. 13-GRE-13**

DECISION AND JUDGMENT

This matter came before the Civil Service Commission (the "Commission") on January 23, 2014 on Guam Department of Education's Motion to Dismiss and for a Grievance Hearing at its office in Sinajana, Guam. Present for Guam Department of Education ("DOE") were Taling Taitano and DOE's counsel of record, Rebecca Perez, Esq. Also present were Carol T. Somerfleck, Maybell A. Mendiola, Welma Quitugua, Barbara F. Salas, Anna B. Cepeda, Angella M.A. Lujan, Selina C. Castro, JoAnn T. Brown, Ignacia Maria C. Gumataotao, Dolores Cayanyan, Neldie Pendon-Limtiaco and Lisa G. Villanueva (collectively, the "Employees") with their counsel of record, Daniel S. Somerfleck, Esq. of Somerfleck & Associates, PLLC.

I. FACTS

In June of 2003, Elizabeth Taimanao, then-President of the Guam Federation of Teachers and a DOE teacher, filed a request for review of a certain personnel action with the Civil Service Commission. After reviewing the matter, the Civil Service Commission issued a Decision and Judgment adopting the findings and recommendations contained in a post-audit report generated.

ORIGINAL

1 by the Commission's staff. Specifically, the Commission mandated that DOE pay Taimanao and
2 others similarly situated compensation for a 2003/2004 School Year furlough. Thereafter, DOE
3 sought a Writ of Mandate in the Superior Court on the grounds that the Civil Service
4 Commission had exceeded its jurisdiction when ordering retroactive pay for all affected teachers,
5 rather than just the grieving employee, Taimanao. The trial court in that matter issued a Decision
6 ratifying the Civil Service Commission's Decision and ordering DOE to pay all affected
7 teachers.

8 On September 28, 2008, the Superintendent of Education wrote a letter to then Governor
9 Felix P. Camacho acknowledging the trial court's Decision and requesting funding to comply
10 with the trial court's Decision. Thereafter, GFT's then-President Matt Rector filed a class action
11 for payment of such wages and a Writ of Mandate to Compel Payment which was later dismissed
12 and a further Judgment was entered ordering payment to the parties in accordance with the Civil
13 Service Decision.

14 The 30th Guam Legislature passed Public Law PL30-196 which in Chapter I Section 7(c)
15 which provides the following:

16 "(c) Excess Available Business Privilege Tax Revenue.
17 Notwithstanding any other provision of law, monthly revenue
18 collections in excess of the monthly revenue budget in Chapter I,
19 Section 6(b)(2) of his Act from the categories defined in Chapter I,
20 Section 7(d) of this Act as Business Privilege Tax Revenues *shall*
21 be appropriated for the payment of Prior Year Obligations and
22 Future Obligation Proposals as defined and prioritized below:

19 ...

20 (2) Forty percent (40%) of all excess collections identified
21 in Chapter I, Section 7(e) of this Act shall be appropriated
22 for payment of principal and interest obligations pursuant
23 to Guam Federation of Teachers v. Government of Guam,
24 et. al., Superior Court Case No. SP 0009-07." See
25 Taimanao Brief pg. 3

23 DOE's counsel before Judge Lamorena on March 6, 2009 admitted the government was
24 liable for the payment of the 2003/2004 School Year wages. On August 12, 2013, the Supreme

1 Court of Guam issued a Decision in *Guam Federation of Teachers v. Government of Guam, et*
2 *al. / Department of Education v. Civil Service Commission and Elizabeth Taimanao*, 2013 Guam
3 14 (hereinafter "GFT"). Until the issuance of the Supreme Court opinion in GFT, there was no
4 indication that the order of the Civil Service Commission to pay the parties in accordance with
5 Civil Service Commission Decision and Judgment would not be given full force and effect.
6 Within fifteen (15) days of the issuing of the Decision, the Employees had already gone to Step 2
7 of the grievance process which was filed on August 27, 2013.

8 The Employees asserted that since the start of the 2003/2004 school year, there had been
9 an ongoing violation in failure to pay wages due and owing for a period where Employees were
10 on a non-pay status. Employees seek wages lost as a result of the non-pay status plus statutory
11 interest be paid to the following employees, Carol T. Somerfleck, Maybell A. Mendiola, Welma
12 Quitugua, Barbara F. Salas, Anna B. Cepeda, Angella M.A. Lujan, Selina C. Castro, JoAnn T.
13 Brown, Ignacia Maria C. Gumataotao, Dolores Cayanyan, Neldie Pendon-Limtiaco and Lisa G.
14 Villanueva. The Employees followed the grievance process to Step 4 on October 13, 2013. On
15 November 12, 2013 Management filed a Motion to Dismiss Grievance. Employees filed their
16 opposition on November 19, 2013.

17 **II. ISSUES PRESENTED**

18 At hearing the following issues were presented for the Commission:

19 1. Whether the grievance should be dismissed: (a) Because it was not presented
20 within fifteen (15) days of the action or occurrence; and (b) because the issues have already been
21 decided by the Guam Supreme Court.

22 2. Whether the Grievance provided notice to Management with regards to the
23 timeframe from which the remedy is sought.

1 **B. Whether the Grievance provided notice to Management with regards to the**
2 **timeframe from which the remedy is sought.**

3 The Commission found based upon the exhibits and arguments presented, by a vote of 7-
4 0, that the Employees were not paid from August 1 through August 18, 2003.

5 **C. Whether the Employees should be paid for wages not received as a result of non-pay**
6 **status at the commencement of the 2003/2004 school year during the timeframes of**
7 **August 1, 2013 through August 18, 2013.**

8 Based upon the Commission's ruling on Management's Motion to Dismiss and
9 clarification of the time when the Employees were not paid, the Commission found by a vote of
10 7-0 that the Employees requested relief in their grievance should be granted.

11 **IV. CONCLUSION**


12 **WHEREFORE** based upon the three (3) unanimous determinations of 7-0 in favor of
13 Employees, the Commission enters the following Judgment:


14 a) Employees shall receive back pay for all wages withheld from Employees during
15 the period of August 1, 2003 to August 18, 2003.


16 b) Management shall deduct Employee's retirement contribution from their back pay
17 and then pay both Employees' and Management's contributions to the Government of Guam
18 Retirement Fund for the period from August 1, 2003 to August 18, 2003.


19 c) That the Employees shall be paid the statutory interest on the unpaid wage (see 4
20 G.C.A. §6221) of 10% per annum on all amounts from August 1, 2003 to August 18, 2003 until
21 wages and interest not paid are received.

22 **SO ADJUDGED THIS** 20th **DAY OF** March **2014.**


23 
24 **LUIS R. BAZA**
25 **Chairman**

23 
24 **MANUEL R. PINAUN**
25 **Vice-Chairman**


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24 **PRISCILLA T. TUNCAP**
25 **Commissioner**

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24 **JOHN SMITH**
25 **Commissioner**

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LOURDES HONGYEE
Commissioner



DANIEL D. LEON GUERRERO
Commissioner



EDITH C. PANGELINAN
Commissioner