



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



**IN THE MATTER OF:**

**Charles Hardy,**

**Employee,**

**vs.**

**Department of Education,**

**Management.**

**GRIEVANCE APPEAL  
CASE NO. 0811-GRE-11**

**DECISION AND JUDGMENT**

**I. INTRODUCTION**

This grievance was remanded back to CSC for a Hearing on the Merits pursuant to the April 10, 2012 Decision and Order from the Honorable Alberto C. Lamorena, Presiding Judge, Superior Court of Guam vacating the Commission's November 5, 2008 decision that it lacked jurisdiction to determine any issue affecting labor relations set forth in a CBA between the Management and Employee. The Court concluded that the Commission has jurisdiction to hear employee grievance appeals filed under a valid and binding CBA and the matter came before the Civil Service Commission on remand November 3, 2012. Present at the hearings was the Employee's Attorney Robert Kutz and present for Management was Lay Representative Mr. Robert E. Koss, Employee/Management Relations Officer and Antonette Santos, Personnel Administrator. All Commissioners were present for the scheduled hearing.

**II. JURISDICTION**

The jurisdiction of the Civil Service Commission is based upon the Organic Act of Guam, 4 G.C.A., et seq., and the Department of Education Personnel Rules and Regulations.

### III. FACTUAL BACKGROUND

1. August 8, 2006 Honorable Judge Barrett-Anderson ruled in *Guam Public School System v. Marilyn Castro and Civil Service Commission*, Special Proceeding Case No. 163-05 Decision on Petition for Writ of Review set forth that the CSC had no authority to make any determination as to the enforcement of the terms and working conditions under the expired CBA. The matter was further remanded to the Civil Service Commission to either dismiss the appeal entirely for lack of jurisdiction over the specific CBA violations claimed in the grievance, or as an alternative to resolution, to grant review over those portions of the grievance, such as sick leave, which are covered under leave procedures in the DOE Personnel Rule and Regulations, provided the parties stipulate to the alternative resolution.
2. Charles Hardy ( hereinafter referred to as "Employee" ) initiated a Step 4 Grievance Appeal to the Civil Service Commission on November 5, 2008 for three (3) alleged violations of provision in the Guam Education Policy Board/Guam Federation of Teachers Collective Bargaining Agreement ("CBA") in effect at the time. Specifically, the Employee alleged CBA violations for Article 1.B.5 Duty Day for Secondary Teachers, Article 5.A.1 Lunch and Breaks and 5.A.1.C. Instructional Load.
3. The referenced Guam Education Policy Board/Guam Federation of Teachers Collective Bargaining Agreement ("CBA") for Teachers in the DOE was in full force and effect from November 6, 2006 until midnight on November 5, 2011.
4. On August 27, 2009 by a vote of 4 to 0, CSC denied the Employee's Grievance Appeal in its Decision and Judgment. Specifically, the Civil Service Commission found that it does not have jurisdiction to hear a grievance filed under the Collective Bargaining Agreement where it states:  
  
*"Pursuant to a ruling made in Guam Public School System vs. Civil Service Commission and Marilyn Castro. SPO 163-05 (2006), the Superior Court has held that the Civil Service Commission does not have authority to determine any issue affecting labor relations between the Management and Employee. The Civil Service Commission's jurisdiction is limited to solely personnel matters within the scope of 4 GCA § 4104 et seq., and Management's personnel rules and regulations."*
5. The Commission's Decision and Judgment for the Grievance was brought before Honorable Alberto C. Lamorena III on November 28, 2011 on Petition for Judicial Review. The narrow question presented to the Court in this case was whether the Commission erred in determining that it lacked jurisdiction to hear a grievance appeal filed pursuant to the terms of a valid collective bargaining agreement.
6. On the 10th day of April 2012, Honorable Alberto C. Lamorena, Presiding Judge, Superior Court of Guam vacated the Commission's decision that it lacked jurisdiction to determine any issue affecting labor relations set forth in a CBA between the Management and Employee. The Court concluded that the Commission has jurisdiction to hear employee grievance appeals filed under a valid and binding CBA. The matter was remanded back to CSC for a hearing on the Merits.

1 7. On November 6, 2011 the CBA in effect during the period of the Employee's grievance  
2 expired under its own terms and conditions. No subsequent Collective Bargaining  
3 Agreement has been entered into and no CBA is currently in effect or binding on the  
4 parties at this time.

3 **IV. FINDINGS**

4 On November 6, 2011 the CBA in effect during the period of the Employee's grievance  
5 expired under its own terms and conditions. No subsequent Collective Bargaining Agreement  
6 has been entered into and no CBA is currently in effect or binding on the parties at this time.

7 The Commission is guided by the August 8, 2006 Barrett-Anderson ruling in Guam Public  
8 School System v. Marilyn Castro and Civil Service Commission, SP Case No. 163-05 that denies  
9 the Commission authority to make any determination as to the enforcement of the terms and  
10 working conditions under the expired CBA. In light of this controlling precedent, the  
11 Commission is without jurisdiction to hear the Employee's grievance appeal.

12 **V. HOLDINGS**

13 The Civil Service Commission, by a vote of 4-0 rules that based on the evidence presented at  
14 hearing the Commission is without subject matter jurisdiction and the Employee's grievance is  
15 dismissed without prejudice.

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17 **SO ORDERED THIS** 24<sup>th</sup> January **2013 as determined by a vote of**  
18 **4-0 on August 27, 2009.**

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21 Luis R. Baza  
22 **LUIS R. BAZA**  
**Chairman**

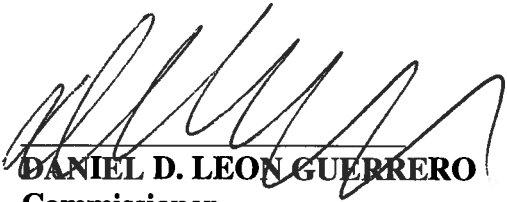
21 Manuel R. Pinauin  
22 **MANUEL R. PINAUIN**  
**Vice-Chairman**

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**LOURDES HONGYEE**  
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**DANIEL D. LEON GUERRERO**  
Commissioner

  
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**EDITH C. PANGELINAN**  
Commissioner