BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS

GRIEVANCE APPEAL
CASE NO. 14-GRE-06

DECISION AND ORDER

IN THE MATTER OF:
DAVID ASOMBRADO,
Employee,

vs.

GUAM MEMORIAL HOSPITAL
AUTHORITY,
Management.

This matter came before the Civil Service Commission (the “Commission”) for
grievance hearing on September 18, 2014. Management Guam Memorial Hospital
Authority (“GMHA”) was represented by the law firm of Fisher & Associates through
Minakshi V. Hemlani, Esq. Also present for Management was Hospital
Administrator/CEO Joseph P. Verga. Employee David Asombrado (“Employee”) was
present and represented by David C. Babauta from Guam Federation of Teachers.

FACTUAL & PROCEDURAL HISTORY

On August 14, 2008, the Governor of Guam signed Public Law 29-105 relative to
the Compensation of Public Safety and Law Enforcement Officers. PL 29-105 amended
Title 10 Guam Code Annotated, Chapter 55, Division 3, Section 55102 to authorize a
forty percent (40%) increase for certain safety and law enforcement positions over a four
year period at no less than ten percent (10%) each year commencing October 1, 2008.

Employee holds the position of “Guard” at the GMHA. On January 3, 2014,
Employee filed a grievance with the Hospital Administrator arguing that 10 GCA §
55102, as amended by PL 29-105 was applicable to hospital guards and Employee was therefore due to retroactive wages dating back to October 1, 2008, with interest. The Hospital Administrator responded that it was GMHA’s position that the pay increase authorized by PL 29-105 was not intended for hospital security personnel.

On January 10, 2014, Employee proceeded to Step II of GMHA’s grievance procedure. GMHA’s Board of Trustee’s Human Resources Subcommittee held hearing before Grievance Review Board on March 11, 2014. The HR Subcommittee resolved, on March 13, 2013, to deny Employee’s request for retroactive back wages with interest, and further resolved to reject Employee’s request that the GMHA fully implement PL 29-105.

On March 19, 2014, Employee proceeded to Step III and appealed to the GMHA Board of Trustees. The Board affirmed the resolutions of the HR Subcommittee. On April 4, 2014, Employee filed his Grievance Appeal before the Commission.

**DISCUSSION**

GMHA contends that the pay increase authorized by 10 GCA § 55102, as amended by PL 29-105, does not apply to the GMHA’s security personnel, and that Employee is not due retroactive back wages. In support of its contention, GMHA set forth the following arguments:

1. Title 4 GCA §8104(p), entitled Public Officers & Employees, defines Uniformed Personnel (i.e., law enforcement and public safety uniformed personnel) and includes a list of specific government agencies, but does not include GMHA security personnel.

2. Section 3 of PL 29-105 amends 10 GCA § 55102(a) and directs the Director of Administration (“DOA”) to conduct reviews of public safety and law enforcement officers in specific government agencies, but does not direct a review of the GMHA’s public safety and/or law enforcement positions.

3. Pursuant to Section 21 of Chapter XIII of PL 30-55, the Fiscal Year 2010 Budget Act, the Attorney General’s office found that the DOA properly computed and implemented pay increases. Therefore, on October 14, 2009, the DOA issued Organization Circular No. 2010-003 (which included pay schedules for positions held by certain Government of Guam agencies) to specific government agencies, but did not include the GMHA.
4. Exhibits submitted by Employee included a copy of a news article published in the Marianas Variety Guam Edition on May 10, 2011, in which Vice Speaker Benjamin Cruz expressed concern about the public law’s application to the GMHA because hospital security personnel were not listed in the review of uniformed officers under PL 29-105 and were “not considered part of the deliberations when the bill was discussed in 2008.”

5. Employee also submitted a copy of a KUAM news article published on June 15, 2011, in which then Public Safety Oversight Chair Senator Adolfo B. Palacios said that “the law [PL 29-105] was intended for traditional uniform law enforcement officers” and that GMHA did not have a right to implement pay raises for security guards “under the guise of PL 29-105.”

The Commission discussed the presentation of arguments and exhibits submitted by the Parties. By a vote of 6 to 1, the Commission determined that PL 29-105 was not intended for GMHA security personnel and ratified the GMHA Board of Trustees decision to deny Employee’s request for retroactive back wages with interest.

CONCLUSION

By a vote of 6 to 1, the Commission holds in favor of Management GMHA.

IT IS SO ORDERED THIS 6th DAY OF January, 2015 nunc pro tunc to September 18, 2014.

SRSR

LUIS R. BAZA
Chairman

MANUEL R. PINAUIIN
Vice-Chairman

PRISCILLA T. TUNCAP
Commissioner

JOHN SMITH
Commissioner

LOU HONG YEE
Commissioner

DANIEL D. LEON GUERRERO
Commissioner

EDITH C. PANGELINAN
Commissioner