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



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IN THE MATTER OF:

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DAVID ASOMBRADO,

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Employee,

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vs.

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**GUAM MEMORIAL HOSPITAL
AUTHORITY,**

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Management.

**GRIEVANCE APPEAL
CASE NO. 14-GRE-06**

DECISION AND ORDER

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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 (4) 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 §

ORIGINAL

1 55102, as amended by PL 29-105 was applicable to hospital guards and Employee was
2 therefore due to retroactive wages dating back to October 1, 2008, with interest. The
3 Hospital Administrator responded that it was GMHA's position that the pay increase
4 authorized by PL 29-105 was not intended for hospital security personnel.

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

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

13 DISCUSSION

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

- 18 1. Title 4 GCA §8104(p), entitled Public Officers & Employees, defines
19 Uniformed Personnel (i.e., law enforcement and public safety uniformed
20 personnel) and includes a list of specific government agencies, but does *not*
21 include GMHA security personnel.
- 22 2. Section 3 of PL 29-105 amends 10 GCA § 55102(a) and directs the Director
23 of Administration ("DOA") to conduct reviews of public safety and law
24 enforcement officers in specific government agencies, but does *not* direct a
25 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.

1 4. Exhibits submitted by Employee included a copy of a news article published
2 in the Marianas Variety Guam Edition on May 10, 2011, in which Vice
3 Speaker Benjamin Cruz expressed concern about the public law's application
4 to the GMHA because hospital security personnel were not listed in the
5 review of uniformed officers under PL 29-105 and were "not considered part
6 of the deliberations when the bill was discussed in 2008."

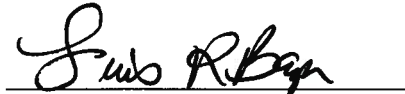
7 5. Employee also submitted a copy of a KUAM news article published on June
8 15, 2011, in which then Public Safety Oversight Chair Senator Adolpho B.
9 Palacios said that "the law [PL 29-105] was intended for traditional uniform
10 law enforcement officers" and that GMHA did not have a right to implement
11 pay raises for security guards "under the guise of PL 29-105."

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

16 CONCLUSION

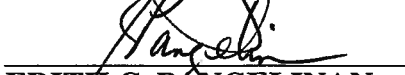
17 By a vote of 6 to 1, the Commission holds in favor of Management GMHA.


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

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

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


LOU HONGYBE
Commissioner


EDITH C. PANGELINAN
Commissioner


MANUEL R. PINAUIN
Vice-Chairman


JOHN SMITH
Commissioner


DANIEL D. LEON GUERRERO
Commissioner