



BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS



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IN THE MATTER OF:

MARISTELA O. OFTANA,

Employee,

vs.

DEPARTMENT OF EDUCATION,

Management.

GRIEVANCE APPEAL
CASE NO. 14-GRE-61

DECISION AND ORDER

32-14-2098
Office of the Speaker
Judith T. Won Pat, Ed.D

Date: 10-9-14
Time: 12:00pm
Received By: [Signature]

I.
INTRODUCTION

This matter came before the Civil Service Commission of Guam on the form of an Ex-Parte Motion on Tuesday, August 19, 2014 at 5:45 pm. Employee was present with her legal counsel Daniel Somerfleck, Attorney at Law. Mr. Joseph Sanchez, Deputy Superintendent of C&II appeared on behalf of the Superintendent with his Lay Representative Robert E. Koss, for the Department of Education (Management).

Employee's Ex-Parte Motion sought to enjoin the Department of Education from modifying the Status Quo.

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 Guam Personnel Rules and Regulations.

2014 OCT -9 PM 12:05

Office of the Legislative Secretary
Senator Tina Rosa M. Barnes
Date 10-9-14
Time 10:00
Received by J. Cordo

ORIGINAL

III.
FACTUAL BACKGROUND

1. On May 15, 2014 Employee was notified that Management had changed her teaching assignment from First Grade to Kindergarten for School Year 2014-2015.
2. Employee was dissatisfied and initiated a grievance on May 15, 2014 immediately following notification the change of assignment.
3. On July 25, 2014 the Employee's grievance was appealed to the Civil Service Commission at Step four (4) of the Department's grievance procedures.
4. August 11, 2014 Employee filed an Ex Parte Motion to Enforce the Status Quo as it existed for the past five years. Specifically, the Employee sought the intervention of the Commission to enjoin Management from proceeding forward with the implementation of the change of assignment for the upcoming school year scheduled to commence on August 18, 2014 on the grounds that the Employee's right to remain Status Quo was based on the last actual, peaceable and uncontested status which preceded the controversy.
5. August 13, 2014 Management entered its opposition the Employee's motion asserting that the Employee has misinterpreted and misapplied the rule and was not entitled to remedy she seeks.
6. Grievances in DOE are governed by Chapter 9 of its Personnel Rules and Regulation. Section 909.402 of those rules specifically addresses the Employee's Status During Grievances Procedures as follows:

"An employee's status during each procedural level shall be status quo."
7. This right to remain status quo is further reinforced in CSC's Rules of Procedure for Grievance Appeals that state:

*Rule G12 Employee's Status during Grievance Procedures:
An employee's status during each procedural level shall be status quo.*

Rule G12.1 Definition of Status Quo:
Status Quo is defined as the existing state at any given date (CSC Resolution No. 2010-01).
8. 4 GCA § 101.12. Management Responsibilities.
Government Management officials shall retain the right and responsibility, in accordance with applicable law and regulations to:
 - (a) maintain efficient government operations and direct public employees;
 - (b) hire, promote, transfer and assign employees to government positions;
 - (c) suspend, demote, discharge or take other disciplinary action against employees for just cause;

(d) to determine the methods, organization and assignment of personnel for the conduct of operations, including necessary actions in emergency situations.

9. 17 GCA § 3103, (N). Notwithstanding any other provision of law or personnel rules and regulations, the Superintendent shall have the authority to assign, detail, or transfer employees to various physical locations within the Department. The Superintendent shall exercise such authority only in accordance with a policy adopted by the Board and shall not (1) cause a change in position title or job duties, or (2) contradict the provisions of any collective bargaining agreement in effect at the time of the transfer not violate any employee's rights there under.

IV. FINDINGS

1. Grievances in the Department of Education are governed by Chapter 9 of its Personnel Rules and Regulations. Section 909.402 Employee's Status during Grievance Procedures state: "An employee's status during each procedural level shall be status quo."
2. CSC Resolution No. 2010-01 clarifies that Status Quo is defined as the existing state at any given.
3. The employee's right to remain Status Quo commences upon the initiation of a grievance.
4. The facts in this case indicate that the Employee was informed of her reassignment from First Grade to Kindergarten prior to or before she initiated her grievance. Therefore, the "Status Quo" or existing state of things at the time the employee initiated her grievance is inclusive of her new assignment to Kindergarten.

V. HOLDINGS

By a vote of 6-0 the Commissioners find that the Employee failed to prove that Management violated her right to remain *Status Quo*. The Employee's motion and the remedy she sought therein is denied.

IT IS SO ORDERED THIS 7th DAY OF October 2014.



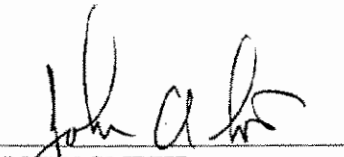
LUIS R. BAZA
Chairman



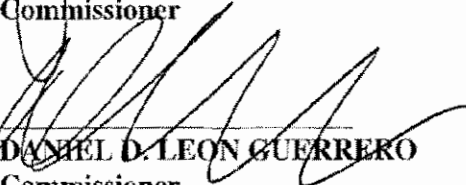
MANUEL R. PINAUIN
Vice-Chairman


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FRISCILLA T. TUNCAP
Commissioner


JOHN SMITH
Commissioner


LOU HONGYER
Commissioner


DANIEL D. LEON GUERRERO
Commissioner


EDITH C. PANGELINAN
Commissioner