

BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS



IN THE MATTER OF:

KATHLEEN A. AGUON et al.,

Employee,

vs.

DEPARTMENT OF EDUCATION,

Management.

GRIEVANCE APPEAL
CASE NO. 14-GRE-20

DECISION & JUDGMENT

Office of the Legislative Secretary,
Senator Tina Rose Mufia Barnes
Date 03-27-15
Time 2:45
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2015 MAR 30 AM 10:02 [Signature]

This matter came before the Civil Service Commission on December 11, 2014 for a hearing on Employee's grievance. Present were Employee Representative Kathleen Aguon, and Management Representative Yolanda Gabriel with Counsel Rebecca Perez. Before taking arguments, the Commission raised the issue of jurisdiction, noting that the case involved issues of compensation and classification. The Commission further noted its previous decision in similar cases, that is, Grievance Case Nos. 14-GRE-04 and 14-GRE-05, wherein it decided the Commission lacks jurisdiction to decide matters of compensation and classification. After discussion, the Commission determined by six affirmative votes that it does not have jurisdiction to hear this matter.

CLASSIFICATION AND COMPENSATION

Prior to fiscal year 2006, the Civil Service Commission was empowered with both adjudicatory and non-adjudicatory functions. Under this statutory regime, the Commission did more than protecting the due process rights of government employees through adjudicatory

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ORIGINAL

33-15-0264

Office of the Speaker
Judith T. Won Pat, Ed.D

Date: 3/27/2015
Time: 2:59 PM
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0264

1 hearings on the merits. During that period, the Commission also oversaw the overall
2 classification and compensation scheme of government employees in a more plenary fashion
3 through non-adjudicatory functions.

4 Yet, on September 30, 2005, Public Law 28-68 was signed by the Governor. Although
5 P.L. 28-68 was a budget bill, it also established "Miscellaneous Administrative Provisions," that
6 included a sweeping overhaul of the functions of the Commission. In brief, the non-adjudicatory
7 functions of the Commission were transferred overwhelmingly to the Department of
8 Administration. The results were that the oversight powers of the Commission were at the
9 lowest ebb since its inception. In particular, the jurisdiction over classification and
10 compensation matters was no longer with the Commission.

11 On March 12, 2010, Public Law 30-112 was signed by the Governor. As a result of
12 popular discontent with the limitations on the Commission's jurisdiction, P.L. 30-112 repealed
13 and reenacted key statutes central to the Commission's operations, "Relative to Restoring
14 Certain Jurisdictions, and to Clarify Certain Functions of the Civil Service Commission." While
15 P.L. 30-112 restored "certain jurisdictions," it did not restore all jurisdictions transferred away by
16 P.L. 28-68. Jurisdiction over classification and compensation matters was not restored, but rest
17 with the Department of Administration. Thus, the present-day jurisdictional authority of the
18 Commission to act on government employment matters is greater than it was between 2005-
19 2010, but still lesser than it was prior to P.L. 28-68.

20 As the above relates to the present case, it appears that prior to P.L. 28-68, the grievance
21 brought here would be appropriately heard by the Commission. Yet, since the passage of P.L.
22 28-68, such jurisdiction does not lie with this body. Even though P.L. 30-112 restored certain
23 jurisdictions to the Commission, we do not read it to have restored the ability to hear
24 classification and compensation matters of this kind. In other words, the employees in this
25 matter seek upward modification of their classification and compensation as part of a grievance
complaint, outside of, for example, adverse actions appeal of a demotion. Even if the

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1 Commission could hear such a case, it does not appear there is any enforceable remedy that we
2 can fashion for this grievance.

3 THE COMPETITIVE WAGE ACT OF 2014

4 There do not appear to be any allegations in this case that the management of the
5 Department of Education did anything other than follow the directives of the Department of
6 Administration. Further, there do not appear to be any allegations in this case that the
7 Department of Administration issued any directives to the Department of Education other than
8 those set forth in the Competitive Wage Act of 2014. Employees apparently take issue with the
9 implementation of the Competitive Wage Act.

10 On September 11, 2013, Public Law 32-068 was signed into law. Chapter IX,
11 Section 2(e) of the act stated that a "final, implementable plan to adjust compensation,
12 classification and benefits" would need to be submitted to the Speaker by January 15, 2014, from
13 which time it would go into effect in 30 calendar days unless disapproved or amended by the
14 Legislature. On January 15, 2014, a plan was submitted to the Speaker, giving the Legislature
15 until February 14, 2014, to disapprove or amend it. On February 1, 2014, Bill 268-32 was
16 passed which sought to amend certain provisions; however, the Governor vetoed Bill 268-32 on
17 February 13, 2014, and no subsequent disapproval or amendment was enacted. The executive
18 branch then implemented the plan.

19 Employees might argue as in Grievance Case Nos. 14-GRE-04 and 14-GRE-05, (1) the
20 plan submitted was not sufficiently "final" or "implementable," and/or (2) the Legislature did
21 amend the plan, notwithstanding the Governor's veto, rendering the current plan unlawful. The
22 Commission finds questions of propriety of legislative enactment such as these to be beyond the
23 purview of this body. Cases involving separation of powers between branches of government
24 are better brought before a court of law and not this administrative body. Consequently, we also
25 find we lack jurisdiction since it is beyond our jurisdiction to consider such arguments.

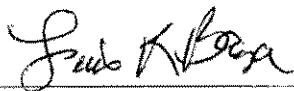
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THEREFORE by a vote of 6-0 the Civil Service Commission shall not hear this grievance on the basis that it involves issues of classification or compensation, and that the Commission does not have jurisdiction over such issues.

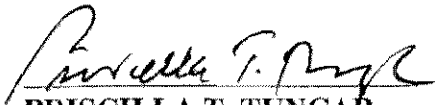
IT IS SO ADJUDGED THIS 26th DAY OF March 2015.



LUIS R. BAZA
Chairman



MANUEL R. PINAUIN
Vice-Chairman



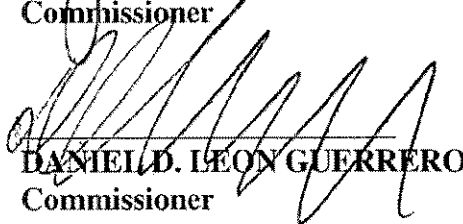
PRISCILLA T. TUNCAP
Commissioner



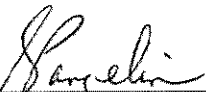
JOHN SMITH
Commissioner



LOU HONGYEE
Commissioner



DANIEL D. LEON GUERRERO
Commissioner



EDITH C. PANGELINAN
Commissioner