



BEFORE THE GUAM CIVIL SERVICE COMMISSION BOARD OF COMMISSIONERS



IN THE MATTER OF:

GEORGE MENDIOLA,

Employee,

vs.

DEPARTMENT OF EDUCATION,

Management.

GRIEVANCE APPEAL CASE NO. 14-GRE-68

JUDGMENT OF DISMISSAL

2015 SEP 15 AM 9:33

Office of the Legislative Secretary Senator Tony Jose Mota Barros Date 9/14/15 Time 8:00am Received by: Alicia, Jern

I. INTRODUCTION

On Thursday, July 30, 2015, the above referenced grievance appeal came before the Civil Service Commission of Guam on Management's Motion to dismiss for untimeliness, lack of standing and lack of subject matter jurisdiction. Mr. George Mendiola, the grievant employee appeared Pro Se at this hearing and Mr. Robert E. Koss, Lay Representative of the Department of Education and Mr. Christopher Anderson, Deputy Superintendent of Assessment and Accountability (acting) appeared on behalf of Management.

II. JURISDICTION

The jurisdiction of the Civil Service Commission is based upon the Organic Act of Guam, 4 G.C.A., §§ 4401 et seq., and the Guam DOE Personnel Rules and Regulations.

III. FACTUAL BACKGROUND

1. On October 23, 2014 Employee initiated a step 1 grievance with Carmen Taitano, Interim Supply Management Administrator. The employee's grievance is premised upon three parts:

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George Mendiola vs DOE Grievance Appeal No. 14-GRE-68

ORIGINAL

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

1 **Part 1.** Management has willfully neglected the manpower at its  
2 warehouse. Employee seeks immediate action to restore supervisory  
3 duties to rightful personnel assigned at its Warehouse and property  
4 sections and written notification be provided.

5 **Part 2.** Employee asserts that the Program Coordinator III position at the  
6 warehouse was opened but not announced to any employees in the  
7 Property Management and Warehouse Division. Employee asserts that the  
8 selection for the PCIII position should be retracted so everyone in the  
9 section and the department is given the opportunity to apply.

10 **Part 3.** Employee asserts that Mr. Juan P. Castro has been in an acting  
11 capacity status for a period on more than 90 days without additional  
12 compensation. Employee seeks to compel management to effectuate a  
13 personnel action to compensate Mr. Castro for the period of his temporary  
14 assignment to a higher position.

15 2. October 29, 2015 Carmen Taitano, Interim Supply Management Administrator responded  
16 to the grievance deferring it to the next higher supervisor, Taling Taitano, Deputy  
17 Superintendent of Finance and Administrative Services because the grievance was  
18 beyond the scope of her authority and purview.

19 3. October 31, 2015 Employee filed a Step 2 grievance with Taling Taitano, Deputy  
20 Superintendent of Finance and Administrative Services.

21 4. November 12, 2014 Step 2 response was as follows:

22 **Part 1.** Management denies that any supervisory duties have been taken away from the  
23 grievant employee.

24 **Part 2.** The referenced PC III position was announced 14 times during the calendar year  
25 2013 and 2014.

**Part 3.** Employee does not have standing to grieve on behalf of Mr. Castro. HR is  
instructed to look into Mr. Castro's assignment and rate of pay in order to determine if  
any additional compensation is due.

5. November 5, 2014, Employee filed a Step 3 Grievance appeal to the Superintendent of  
Education.

- 1 6. December 5, 20<sup>14</sup>~~15~~, Step 3 Grievance Committee report findings recommend that the PC  
2 position held by Marcus Pido should be vacated and re-announced. Superintendent of  
3 Education disagreed with the recommendation based on the negative impact it would  
4 have on the efficiency of service.
- 5 7. On December 11, 2014, the Employee filed a Step 4 Grievance appeal to the Civil  
6 Service Commission bearing Case No. 14GRE-68.

#### 7 IV. ANALYSIS

8 After a careful review of the written motions, exhibits, responses and oppositions filed by  
9 the parties and after hearing oral arguments, responses and rebuttals of the parties, the  
10 Commission on its own motion determined that the grievance process was not the appropriate  
11 format for a complaint of this nature because the employee's remedy sought the Commission to  
12 null and void at least one and potentially two personnel actions of classified Employees. The  
13 authority of the Commission to declare null and void any personnel action of an employee in the  
14 classified service is set forth in 4 GCA § 4403(d) that requires the Commission to first conduct  
15 an investigation in order to determine whether or not the personnel action was taken in violation  
16 of personnel laws or rules. Such Post Audit Investigation is initiated by filing a §4403(d)  
17 complaint and not by filing a grievance. A grievance is an inappropriate tool to try to effectuate  
18 such change.

19 The essence of Employee's grievance is that the PC III position was not properly  
20 announced, that as a result of the improper announcement he and others in his office were unable  
21 to effectively apply, that by being unable to apply there were individuals placed in those  
22 positions that are undeserving and should be removed, and that said removals (accompanied by  
23 proper promotions of those within the division) would restore the correct balance of supervisory  
24 duties. This is beyond the scope of a grievance. In particular, we do not use the broader, catch-  
25

1 all tool of a grievance when more specific, on-point rules are applicable. For example, we do not  
2 allow grievances to proceed that are actually cloaked adverse action appeals.

3 Here, the underlying issue is that of a personnel action in the form of a promotion. *If* an  
4 investigation reveals the promotion was improperly made then the promotion can be null and  
5 voided, the position would be re-announced, and the wronged individuals could apply. The  
6 proper vehicle for questioning a personnel action such as this is §4403(d), not a grievance.

7 **V. CONCLUSION**

8 The Civil Service Commission, by a unanimous vote of 7-0 dismisses the Employee's  
9 Grievance and refers the Employee to the Post Audit Investigation Procedures contained in 4 G.C.A.  
10 §4403(d). If necessary, CSC Staff can assist him with his complaint.

11 *So ordered this 10th day of September 2015.*

12 *[Signature]*

13 **LUIS R. BAZA**  
14 **Chairman**

12 *[Signature]*

13 **MANUEL R. PINAUI**  
14 **Vice-Chairman**

15 *[Signature]*

15 **PRISCILLA T. TUNCAP**  
16 **Commissioner**

15 *[Signature]*

15 **JOHN SMITH**  
16 **Commissioner**

17 *[Signature]*

17 **LOURDES HONGYEE**  
18 **Commissioner**

16 *[Signature]*

17 **DANIEL D. LEON GUERRERO**  
18 **Commissioner**

19 *[Signature]*

19 **EDITH C. PANGELINAN**  
20 **Commissioner**