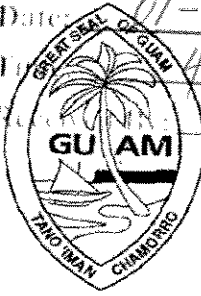


22-10-1225
Office of the Speaker
Judith T. Won Pat, F.D.D.
33-16-1225

Date: 01-08-16



BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS



IN THE MATTER OF:

BETH PEREZ,

Employees,

vs.

DEPARTMENT OF EDUCATION,

Management.

ADVERSE ACTION APPEAL
14-AA04D

DECISION AND JUDGMENT

Office of the Legislative Secretary
Senator Ting Rose Muike Barne
Date 1/8/16
Time 12:56 p.m.
Received by [Signature]

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I. INTRODUCTION

This matter came before the Civil Service Commission of Guam for a hearing on the merits at its regularly scheduled meetings held on October 6, 8, 13, 15, 20, 21, and 22, 2015. Present with Beth Perez, "Employee," were her attorneys of record, Christopher R. Odoca and Richard L. Johnson, of Blair Sterling Johnson & Martinez, PC. Robert Koss, Lay Representative, and Joe Sanchez, Deputy Superintendent of C&II, and Christopher Anderson, Deputy Superintendent of Assessment and Accountability (Acting) were present on behalf of the Department of Education ("DOE"), hereafter "Management".

II. JURISDICTION

The Civil Service Commission has jurisdiction over this matter pursuant to the Organic Act of Guam, Title 4 of the Guam Code Annotated §4401, *et seq.*, and the Department of Education's Personnel Rules and Regulations.

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Beth Perez vs DOE; Case No. 14-AA04D
Decision and Judgment

ORIGINAL

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III. FACTUAL BACKGROUND

1. On Saturday, November 16, 2013, Department of Public Health and Social Services Division of Environmental Health, Public Works CIP Engineers, the Guam Fire Department, Guam Environmental Protection Agency, conducted assessments of Simon Sanchez High School at the request of the Governor of Guam stemming from expressed public concerns for the health, safety and welfare of the students attending the school. Each regulatory agency subsequently submitted individual reports reflecting findings within their respective jurisdiction.
2. The findings of these regulatory agencies warranted the immediate shut down of the school until various health and safety concerns pertaining to the cleanliness and existing fire safety hazards could be mitigated. The Superintendent of Education voluntarily closed the school.
3. On January 6, 2013, Beth Perez was served a Final Notice of Adverse Action that demoted her from Principal at Simon Sanchez High School (Pay Grade RT, Step 14, \$85,108 per annum) to L.P. Untalan Middle School Assistant Principal, (Pay Grade OT, Step 18, \$79,555 per annum) on the basis of her failure to perform duties and responsibilities to ensure that a clean and safe school environment was maintained at Simon Sanchez High School on November 16, 2013. The specific charge was stemmed from eighteen specific findings set forth in detail by the Department of Public Health Environmental Division pertaining to the cleanliness of the school and Guam Fire Department pertaining to fire safety violations found at the school and that were properly within the responsibility and means of the school principal.

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IV. FINDINGS

After a careful consideration of the evidence in this case and after hearing oral arguments of the parties and testimony from witnesses, the Commission finds as follow:

1. Employee had adequate written notice of her responsibility and duty to maintain a clean and safe school at:

A. 1 GCA §715 *Adequate public education means public schools which at the minimum provide:*

(g) *potable water sufficient to provide each student a daily ration of drinking and washing water;*

(i) *proper sanitation to include clean restrooms and classrooms*

(l) *a healthful, safe, sanitary learning environment;* and,

B. Board Policy 620 School Facilities: *"The school principal will be charged with overseeing the care and upkeep of the facility."*

C. Guam Administrator Standards 3.20: *"The administrator facilitates processes and engages in activities ensuring that a safe, secure and clean school environment is created and maintained."*

D. Various Memorandums and Bulletins submitted into evidence provided notice to all Principals that DOE has a clear expectation that all Principals shall maintain clean restrooms, classrooms, hallways, organize storage rooms, clear electrical rooms, school yards must clear of debris, grass must be cut, fire extinguishers must be full, maintained and in place, and to obtain regular trash pickup service and keep the area clear of trash, locker rooms and showers will be clean, clean water fountains, toilet paper will be provided in addition to soap and paper towels for the restrooms.

1 E. Employee attended training directly on point and conducted by the Department of
 2 Public Health and Social Services, Environmental Division.

3 2. Employee testified at hearing that she was aware that it was her duties and responsibilities to
 4 maintain a clean and safe school environment.

5 3. The health and safety violations cited by the regulatory agencies were not disputed in the
 6 appeal proceedings and reports generated by regulatory agencies are construed to be reliable
 7 information for the purposes of adverse action appeals before the Civil Service Commission.

8 4. Management's action to demote the employee to an Assistant Principal was reasonable
 9 based on: (1) the employee failed to perform her duties and responsibilities to ensure that a
 10 clean and safe school was maintained; (2) the Employee had clear notice that it is her duty and
 11 responsibility to ensure a clean and safe school environment was maintained; (3) the Employee
 12 was provided with adequate training; (4) the Employee's failure was a repeated violation; (5)
 13 in her position of Principal, the Employee had adequate human resources available and
 14 adequate authority to direct them; (5) a contracted cleaning services was provided to assist the
 15 employee in maintaining a clean and safe school; (6) a contracted grounds maintenance
 16 services was in place; (7) a trash removal services was either available or should have been
 17 retained by the Employee for the regular removal of refuse; (8) adequate financial resources
 18 were provided and available to the employee for ensuring a clean and safe school was
 19 maintained; and, (9) other community based resources were also available to the Employee.

20 **V. ANALYSIS**

21 In her defense, the Employee did not contest that the numerous violations actually
 22 occurred. The defense presented instead an attempt to justify the violations through various
 23 excuses. These primarily consisted of allegations that: 1) DOE provided Employee with
 24 inadequate resources to maintain Simon Sanchez; 2) the building's structure itself was old and in

1 disrepair; 3) the night before the inspection there was a large school event: "Shark Night"; 4) the
 2 inspection took place on a Saturday; 5) the cleaning crew provided to maintain Simon Sanchez
 3 was lazy and incompetent; and, 6) Ms. Perez had numerous times gone above and beyond the
 4 call of duty to maintain the school as best she could given the above.

5 Even taking into account "Shark Night," the age of the building, and the cleaning crew,
 6 there were numerous violations that had nothing to do with the above excuses. Without
 7 recounting all of the examples, one is the inadequately serviced fire extinguishers. Service of
 8 fire extinguishers is not the role of the cleaning crew, has nothing to do with the structural
 9 integrity of the building, and would not be involved in "Shark Night" occurring the night before
 10 or the fact that the inspection took place on Saturday. Thus, even if we accepted the veracity of
 11 Employee's excuses, there remained items within her control that were not fulfilled.

12 In regards to the cleaning crew, we also note that not everything in her power appeared to
 13 be attempted by Employee. There is a trail of emails from Ms. Perez to DOE bemoaning her
 14 perceived inadequacies of the cleaning crew. Yet, more could have been done than complaints
 15 alone. Itemization of the work done on the cleaning contract could have resulted in percentages
 16 of payments being withheld from the cleaners. Hitting the cleaning crew in the pocketbook
 17 would likely have given them greater incentive to do a more vigorous job over mere complaints.
 18 Such attempts at pecuniary suppression do not appear to have been made by Employee.

19 We do note that this is not a critique of Ms. Perez herself. It should be recognized that
 20 she was not terminated. Rather, Ms. Perez was transferred from principal of Simon Sanchez,
 21 earning approximately \$85k/year, to assistant principal of another school with a salary of
 22 approximately \$80k/year. Obviously DOE continues to value her judgment and ability and we
 23 see no need to question it either. It is clear from the evidence that Ms. Perez worked very hard.
 24 Being Principal of Simon Sanchez is probably one of the most difficult positions on Guam,

1 requiring a great deal of diligence, creativity, ingenuity, innovation, and fortitude to accomplish
2 successfully.

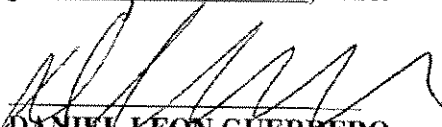
3 Ultimately, the position of principal is the pinnacle of authority at a school and the buck
4 must stop somewhere. It is a position that individuals volunteer to take on and one they can elect
5 to step down from if they believe they cannot fulfill the requirements given the resources
6 provided. Being principal of a school is akin to being in a senior management position in DOE.
7 If the job is not being done and the Superintendent believes another can do it with the same
8 resources, then DOE needs the flexibility to ensure that schools are properly run and maintained.

9 **VI. CONCLUSION**

10 The Civil Service Commission, by a vote of 4-1 rule that management met its burden of proof by
11 clear and convincing evidence to show that its action was proper to hold this school principal
12 accountable for the health and safety violations that were well within the employee's responsibility
13 and means to address. The demotion of the employee to Assistant Principal is upheld.

14 It is so ordered this 7th day of January, 2016.

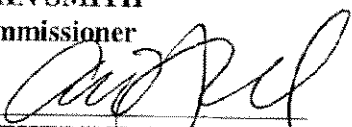
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17 **EDITH PANGELINAN**
18 **Chairman**

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17 **DANIEL LEON GUERRERO**
18 **Commissioner**

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19 **PRISCILLA T. TUNCAP**
20 **Commissioner**

18 Not Present
19 **JOHN SMITH**
20 **Commissioner**

20 
21 **LOURDES HONGYEE**
22 **Commissioner**

20 
21 **CATHERINE GAYLE**
22 **Commissioner**