

BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS



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IN THE MATTER OF:

ELEUTERIO J. MESA,

Employee,

vs.

DEPARTMENT OF EDUCATION,

Management.

ADVERSE ACTION APPEAL
CASE NO. 11-AA13T

DECISION AND ORDER

33-16-2170

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

Date: *11/4/16*

10:21 a.m.

By: *CS*

The above-captioned matter came before the Civil Service Commission (the "Commission") during the January 28, 2016, Continued Motion Hearing regarding the Guam Department of Education's ("GDOE") Motion Regarding Compliance With Order for Payment of Back Wages; Motion to Deny Payment of Increment (the "Motions"), such Motions received by the Commission on September 2, 2014. Present during the Continued Motion Hearing was Employee, Eleuterio J. Mesa, and his attorney, G. Patrick Civile. In addition, Management Representative, GDOE Acting Superintendent, Taling M. Taitano, was present with GDOE Legal Counsel, Jesse N. Nasis.

// *Office of Speaker The Barnes*

// **RECEIVED**

// *CS* *11/4/16* *10:10 a.m.*
INITIAL DATE

ORIGINAL

I. 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 Department of Education Personnel Rules and Regulations.

II. PROCEDURAL AND FACTUAL BACKGROUND

On March 14, 2011, Mesa was served with a Final Notice of Adverse Action terminating him from his classified position of Principal of Untalan Middle School. On October 24, 2013, a Decision and Judgment was signed by the Commission revoking the adverse action against Mesa. The October 24, 2013, Decision and Judgment reinstated Mesa to his earlier position and awarded him full back pay and benefits, minus his withdrawals from the Retirement Fund.

Usually, the issuance of a Decision and Judgment ends our involvement in a matter. Parties displeased with our decisions are able to file a Petition for Judicial Review with the Superior Court of Guam. Yet, in this case a significant amount of involvement continued as a dispute arose between the parties regarding the issue of back pay.

In summary, it appears that Mesa, having been terminated in March 2011 and reinstated in October 2013 would receive the back-pay from that period, approximately 2.5 years' worth of pay, all in the taxable year of 2013. As such, Mesa was going to be taxed by the Department of Revenue and Taxation at a higher rate than if he received those 2.5 years of pay spread out over 2.5 years. Mesa believes this is unjust. Mesa also believes that his back-pay should include an increment he could have earned had he still been working.

It appears that in the time period between October 2013 and the 2016 hearing before the Commission that there have been extensive negotiations. GDOE has met with Mesa, met with Revenue & Tax representatives, and so on with other meetings. In the end, it seems that Revenue & Tax has been unwilling to yield from their position that the taxation of back-pay in the year paid (2013) is appropriate. GDOE is unwilling to yield from their position that Mesa is not entitled to

1 an increment. Mesa has thus far refused to accept his check from GDOE under the belief that it
 2 would be evidence of some sort of acquiescence on these fronts. Thus, an impasse exists.

3 Therefore, after years of ongoing negotiations, GDOE has filed these Motions in an effort
 4 to bring an end to this case or at least their role in it. Their position is that they have offered the
 5 payment to Mesa, sans increment, and have no control over Revenue & Tax. Mesa's refusal to
 6 accept the check, GDOE contends, absolves them of any further duties.

7 **III. ANALYSIS**

8 **A. The taxation of Mesa's back-pay.**

9 In support of Mesa's position that his back-pay should be taxed in the respective years it
 10 would have been earned (spread out over 2011, 2012, and 2013) instead of being taxed entirely in
 11 2013, he cites IRS Publication 957. Unfortunately, Mesa's reliance on this document seems
 12 misplaced. It appears that Mesa conflates the treatment of back-pay awards by SSA with that of
 13 the IRS. Where SSA treatment of back-pay can vary depending upon whether it is due to a
 14 statutory award, IRS Publication 957 clearly says, "for all income tax purposes, the IRS treats all
 15 back pay as wages in the year paid." Since this dispute surrounds income tax, it appears Revenue
 16 & Tax is correct in their assessment.

17 Regardless, even if we found that Revenue & Tax was completely wrong in their
 18 assessment, we do not believe this Commission has jurisdiction to tell them how to tax. The
 19 jurisdiction of the Commission is created by statute. While making the argument that his tax
 20 treatment is unjust, Mesa has cited no statute or other authority to convince us that we have the
 21 jurisdiction to order the Department of Revenue & Taxation how to tax the back-pay award
 22 resulting from one of our Judgments. Therefore, we hold that we do not have jurisdiction to decide
 23 the matter of the appropriate method of taxing Mesa's back-pay.

1 **B. Mesa’s claim for an increment.**

2 Our October 24, 2013, Decision and Judgment made no mention of awarding
3 Mesa an increment. It specifically stated that Mesa was to, “forthwith be reinstated... to the
4 position he held immediately prior to the adverse action taken against him.” Thus, GDOE’s
5 Motion to Deny an Increment asks us to deny something that was never awarded. For this reason,
6 it is denied.

7 **C. Absolving GDOE of payment to Mesa.**

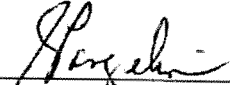
8 We recognize that over the years that the parties have returned before us regarding these
9 matters, we have encouraged the parties to continue discussion in the hopes that an amicable
10 resolution would take place. As such, it would appear inequitable to find that GDOE has no
11 obligation to pay Mesa under our October 24, 2013, Decision and Judgment. It is not even clear
12 that the Commission has jurisdiction to absolve an agency from payment, and GDOE did not
13 provide sufficient authority and argument to persuade us that we do at this time. Thus, this motion
14 by GDOE is also denied.


15 It is hoped, however, that with the issuance of this judgment that it is clear to the parties that this
16 Commission is not the forum to continue their dispute. If they persist in having disagreements
17 they are unable to resolve between themselves, they should seek a forum that could have the power
18 to compel the Department of Revenue & Taxation.


19 **IV. CONCLUSION**

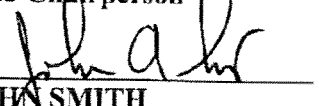
20 After hearing from the parties on this matter, the Commission determined by unanimous
21 vote of the five (5) Commissioners present to deny GDOE’s Motions.

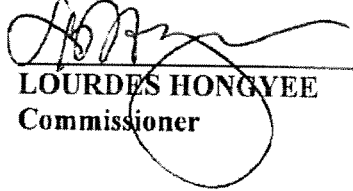
1 SO ADJUDGED THIS 3rd DAY OF November 2016.

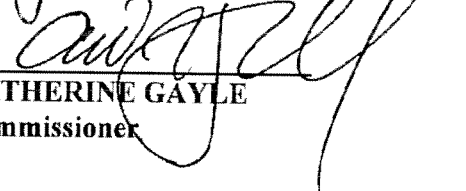
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3 **EDITH PANGEDINAN**
4 **Chairperson**


5 **DANIEL D. LEON GUERRERO**
6 **Vice-Chairperson**

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8 **PRISCILLA T. TUNCAP**
9 **Commissioner**

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11 **JOHN SMITH**
12 **Commissioner**

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14 **LOURDES HONGYEE**
15 **Commissioner**

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17 **CATHERINE GAYLE**
18 **Commissioner**

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