



CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

OFFICE OF THE SPEAKER

Date: 6/21/95
Time: 2:50 PM
Checked By: Justin Buzman
Print Name: JUSTIN BUZMAN

JUN 21 1995

The Honorable Don Parkinson
Speaker
Twenty-Third Guam Legislature
424 West O'Brien Drive
Julale Center - Suite 222
Agana, Guam 96910

OFFICE OF THE LEGISLATIVE SECRETARY
ACKNOWLEDGMENT RECEIPT

Received By:
Time: 8:40
Date: 6/22/95

Dear Speaker Parkinson:

Enclosed please find copy of Substitute Bill No. 225 (LS), "AN ACT TO AMEND §§4102, 4105, 4106, 6102, 6103, AND 4406 OF TITLE 4 AND §§31106, 31113(a), 16112, AND 16113 OF TITLE 17, TO REPEAL §31113(c) OF TITLE 17, AND TO ADD A NEW SUBSECTION (i) TO §4403 AND A NEW SUBSECTION (c) TO §4402 OF TITLE 4, ALL OF THE GUAM CODE ANNOTATED, PERTAINING TO THE ACADEMIC PERSONNEL AND AUTONOMY OF THE GUAM COMMUNITY COLLEGE AND THE UNIVERSITY OF GUAM, AND OTHER RELATED MATTERS", which was overridden by the Twenty-Third Guam Legislature notwithstanding my objections on June 6, 1995

Substitute Bill No. 225 (LS) is now Public Law 23-26.

Very truly yours,

CARL T. C. GUTIERREZ

Attachment

230514

TWENTY-THIRD GUAM LEGISLATURE
1995 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 225 (LS), "AN ACT TO AMEND §§4102, 4105, 4106, 6102, 6103, AND 4406 OF TITLE 4 AND §§31106, 31113(a), 16112, AND 16113 OF TITLE 17, TO REPEAL §31113(c) OF TITLE 17, AND TO ADD A NEW SUBSECTION (i) TO §4403 AND A NEW SUBSECTION (c) TO §4402 OF TITLE 4, ALL OF THE GUAM CODE ANNOTATED, PERTAINING TO THE ACADEMIC PERSONNEL AND AUTONOMY OF THE GUAM COMMUNITY COLLEGE AND THE UNIVERSITY OF GUAM, AND OTHER RELATED MATTERS," returned to the Legislature without approval of the Governor, was reconsidered by the Legislature and after such reconsideration, the Legislature did, on the 6th day of June, 1995, agree to pass said bill notwithstanding the objection of the Governor by a vote of two-thirds or more of all the members thereof, to wit: by a vote of twenty (20) members.



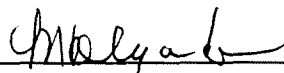
DON PARKINSON
Speaker

Attested:



JUDITH WON PAT-BORJA
Senator and Legislative Secretary

This Act was received by the Governor this 16 day of June,
1995, at 10:30 o'clock A.M.



Assistant Staff Officer
Governor's Office

TWENTY-THIRD GUAM LEGISLATURE
1995 (FIRST) Regular Session

Bill No. 225 (LS)

As substituted by the Author
and as further substituted on the floor

Introduced by:

J. Won Pat-Borja
H. A. Cristobal
E. Barrett-Anderson
T. S. Nelson
T. C. Ada
J. P. Aguon
A. C. Blaz
J. M. S. Brown
F. P. Camacho
M. C. Charfauros
M. Forbes
A. C. Lamorena V
C. Leon Guerrero
L. Leon Guerrero
S. L. Orsini
V. C. Pangelinan
D. Parkinson
J. T. San Agustin
A. L.G. Santos
F. E. Santos
A. R. Unpingco

AN ACT TO AMEND §§4102, 4105, 4106, 6102, 6103, AND 4406 OF TITLE 4 AND §§31106, 31113(a), 16112, AND 16113 OF TITLE 17, TO REPEAL §31113(c) OF TITLE 17, AND TO ADD A NEW SUBSECTION (i) TO §4403 AND A NEW SUBSECTION (c) TO §4402 OF TITLE 4, ALL OF THE GUAM CODE ANNOTATED, PERTAINING TO THE ACADEMIC PERSONNEL AND AUTONOMY OF THE GUAM COMMUNITY

COLLEGE AND THE UNIVERSITY OF GUAM,
AND OTHER RELATED MATTERS.

1 **BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF**
2 **GUAM:**

3 **Section 1.** §4102 of Title 4, Guam Code Annotated, is hereby
4 amended to read as follows:

5 **"§4102. Classified and Unclassified Services.** All offices and
6 employment in the Government of Guam, except for employment as
7 academic personnel of the Guam Community College (GCC) and the
8 University of Guam (UOG), as the term "academic personnel" is
9 defined in enabling laws of GCC and UOG, shall be divided into
10 classified and unclassified services as follows:

11 (a) The unclassified service shall include the positions of:

12 (1) elective officials;

13 (2) judges;

14 (3) Superior Court marshal, chief clerk, chief probation
15 officer and court administrator of the Superior Court;

16 (4) heads of agencies and instrumentalities and not
17 more than one (1) secretary for each such officer;

18 (5) the first assistant, by whatever title denominated, to
19 the heads of agencies and instrumentalities stated in paragraph
20 (4) of this Subsection; except that the first assistant to the Police
21 Chief of the Guam Police Department shall be the classified
22 position of Deputy Police Chief and the person occupying that
23 position, or if that position is vacant, a person occupying
24 another classified position in the Guam Police Department,

1 shall be the Acting Police Chief in the absence of the Police
2 Chief and, notwithstanding any other provision of law, there
3 shall be no Deputy Director of the Guam Police Department;

4 (6) persons employed on a temporary basis;

5 (7) members of boards and commission;

6 (8) executive director of the Commissioner's Council;

7 (9) all offices and employment in the Executive Branch
8 whose appointment are required to be confirmed by the Guam
9 Legislature;

10 (10) all offices and employment made, by law, to be at
11 the pleasure of any board, commission or officer;

12 (11) all legislative employees;

13 (12) members of the Guam Gaming Commission;

14 (13) physicians and health care administrators employed
15 at the Guam Memorial Hospital Authority;

16 (14) all positions in the Department of Military Affairs;
17 and

18 (15) employees of the office of the Governor and
19 Lieutenant Governor including off-island offices and
20 Government House, as authorized in the applicable
21 appropriation law.

22 (16) Property Management Officer at the Department of
23 Corrections.

24 (b) The classified service shall include all other positions in
25 the government of Guam."

1 **Section 2.** A new subsection (c) is hereby added to §4102 of Title 4,
2 Guam Code Annotated, to read as follows:

3 “(c) Notwithstanding any law or rule to the contrary,
4 employment as academic personnel of the Guam Community College
5 and the University of Guam shall be governed by rules adopted by
6 the Board of Trustees and the Board of Regents, respectively, in order
7 to provide academic freedom and autonomy to the institutions, as
8 intended by P.L. 14-77 as to GCC, and P.L. 19-40 as to UOG.”

9 **Section 3.** §4105 of Title 4, Guam Code Annotated, is hereby
10 amended to read as follows:

11 “§4105. **Departmental Rules.** Rules subject to criteria
12 established by this chapter governing the selection, promotion,
13 performance, evaluation, demotion, suspension and other
14 disciplinary action of classified employees shall be adopted by the
15 Board of Directors of the Guam Airport Authority, Board of Directors
16 for Guam Economic Development Authority, Board of Directors for
17 Guam Housing Corporation, Board of Commissioners for Guam
18 Housing and Urban Renewal Authority, Judicial Council, the Board
19 of Directors of the Guam Telephone Authority, the Board of Directors
20 of the Port Authority of Guam, the Board of Directors of the Guam
21 Power Authority, the Board of Education, the Board of Regents of the
22 University of Guam, the Guam Community College Board of
23 Trustees, the Board of Trustees of the Guam Memorial Hospital
24 Authority and by the Public Utility Agency of Guam with respect to
25 personnel matters within their respective branches, agencies or
26 departments, and by the Director of Administration as to all other

1 executive branch employment. Such rules shall, to the extent
2 practicable, provide standard conditions for entry into and the other
3 matters concerning the government service. The personnel rules
4 adopted for the University of Guam, Guam Community College,
5 Guam Airport Authority, Guam Telephone Authority, Port Authority
6 of Guam, Guam Power Authority, Department of Education, Guam
7 Memorial Hospital Authority, the Director of Administration and by
8 the Public Utility Agency of Guam shall require that all their
9 classified employee appeals be heard by the Civil Service
10 Commission. The personnel rules adopted for the Judiciary Branch
11 by the Judicial Council shall require that all their classified employee
12 appeals be heard by the Council. Personnel rules governing any
13 other Executive Branch entities may require that their classified
14 employee appeals be heard by the Civil Service Commission. Rules
15 concerning the Executive Branch shall take effect upon their approval
16 by the Civil Service Commission, by Executive Order of the Governor
17 and filing with the Legislative Secretary. Rules concerning the
18 Judicial Council shall take effect upon adoption by the Judicial
19 Council of Guam.

20 Such rules shall include the following provisions:

21 (a) That the minimum rate of each pay range shall be
22 the normal rate for initial employment in the positions and classes
23 assigned thereto; provided, however, that directors or other
24 departmental heads may, with the approval of the Civil Service
25 Commission, authorize initial employment in a position at a higher
26 step in the position's pay range if such action is warranted by

1 recruitment difficulties or by the new employee's special or unusual
2 qualifications, including experience;

3 (b) That no spouse of any director, chief administrator
4 or other department head within the government of Guam may be
5 employed within the department, agency or instrumentality so
6 headed by such director, chief administrator or other officer;

7 (c) That overtime for those employees entitled hereto
8 shall be calculated at one and one-half (1 1/2) times their regular
9 wage; and

10 (d) That employees may work at outside employment
11 not in conflict with their government service nor such as would bring
12 the government of Guam or its employees into disrepute, but that
13 any employee may undertake such employment only if such is not in
14 conflict with his duly scheduled hours if such is not in conflict with
15 his duly scheduled hours of government employment and only with
16 the consent in writing of his department or agency head, which
17 consent may not be unreasonably withheld.

18 Adoption of such rules are not subject to the
19 Administrative Adjudication Act.

20 (e) That no person shall be required to work overtime
21 unless the employee has received certification by the Director that
22 funds for overtime pay as provided in Subsection (c) above are
23 available."

24 **Section 4.** §4106 of Title 4, Guam Code Annotated, is hereby
25 amended to read as follows:

1 “§4106. Personnel Rules. The personnel rules provided for in
2 §4105 of this Chapter shall provide procedures for their employment
3 of persons on the basis of merit, and shall include an orderly and
4 systematic method of recruitment and the establishment of qualified
5 lists for employment purposes. They shall provide for a probationary
6 period of not less than three (3) nor more than twelve (12) months for
7 all original appointments, during which time the employee may be
8 dismissed at any time without right of appeal and without right of
9 being given reasons or charges in writing. Specific procedures and
10 policies shall be included, governing the following:

11 (1) The announcement of vacancies and acceptance of
12 applications for employment;

13 (2) Preparation and conduct of examinations;

14 (3) Establishment and use of employment lists
15 containing names of persons eligible for employment;

16 (4) Establishment of promotional policies;

17 (5) Certification of employment of persons from
18 employment lists to fill vacancies and the making of temporary and
19 emergency appointments;

20 (6) Evaluation of the work of employees, including
21 those serving a probationary period;

22 (7) Transfer, promotion and reinstatement of
23 employees in the competitive service;

24 (8) Separation from the service of employees by
25 resignation, layoff, suspension, dismissal and for incapacity to
26 perform required duties, provided that the rules shall provide a

1 system for the employee to seek reconsideration of suspension,
2 dismissal and removal for incapacity to perform by answering any
3 charges within ten (10) days in having a conference with the
4 administrative head;

5 (9) Establishment of hours of work, attendance and
6 leave regulations and working conditions;

7 (10) Development of employee morale, welfare and
8 training;

9 (11) Rules governing the outside employment of
10 employees;

11 (12) Maintenance and use of necessary records and
12 forms;

13 (13) A uniform system of handing all grievances, except
14 where a different grievance system has been negotiated between a
15 recognized employee organization and the appropriate management
16 officials;

17 (14) Appeal of an adverse action not inconsistent with
18 §§4406 and 4407 of the Chapter;

19 (15) In the case of academic employees of the University
20 of Guam or the Guam Community College, and their successor
21 agencies, a system of tenure appropriate to the academic nature of the
22 respective institutions; and

23 (16) Such other matters as may be necessary to properly
24 carry out the intent and purposes of this Chapter.

1 Notwithstanding any provisions of law to the contrary, all
2 contracts for the hiring of non-resident, off-island employees shall
3 conform to the provisions of §6215 of this Title.”

4 **Section 5.** A new subsection (i) is hereby added to §4403 of Title 4,
5 Guam Code Annotated, to read as follows:

6 “(i). The jurisdiction of the Civil Service Commission shall not
7 extend to academic personnel of the Guam Community College and
8 the University of Guam, except upon mutual consent by the
9 governing board of the respective institutions and the commission.”

10 **Section 6.** §6102 of Title 4, Guam Code Annotated, is hereby
11 amended to read as follows:

12 “§6102. **Purpose.** The purpose of this Chapter is to provide a
13 uniform and unified system of position classification and
14 compensation for the Executive and Judicial Branches of the
15 Government of Guam. The only exception is for academic personnel
16 of the Guam Community College and the University of Guam which
17 as institutions of higher education, must adhere to accreditation
18 standards established by the appropriate accrediting bodies. The
19 term ‘academic personnel’ refers to the definitions provided §§31106
20 and 16112 of Title 17, Guam Code Annotated, governing academic
21 personnel of Guam Community College and the University of
22 Guam.”

23 **Section 7.** §6103 of Title 4, Guam Code Annotated, is hereby
24 amended to read as follows:

25 “§6103. **Scope.** Unless otherwise specified, this Chapter shall
26 apply to all positions, officers, and employees, classified and

1 unclassified, as the case may be, inclusive of the Executive and
2 Judicial Branches, autonomous and semi-autonomous agencies,
3 public corporations, and other public instrumentalities of the
4 government of Guam. The provisions of this Chapter do not apply to
5 academic personnel of the Guam Community College and the
6 University of Guam. The employment and terms and conditions of
7 employment of academic personnel shall be exclusively governed by
8 provisions of the enabling laws of Guam Community College and the
9 University of Guam pertaining to academic personnel, as set forth in
10 Title 17, Guam Code Annotated."

11 **Section 8.** §31106 of Title 17, Guam Code Annotated, is hereby
12 amended to read as follows:

13 "§31106. **Personnel Rules. Academic Personnel.** Rules and
14 regulations governing selection, compensation, promotion,
15 performance evaluation and disciplinary action and other terms and
16 conditions of employment affecting academic personnel shall be
17 adopted by the board in accordance with 4 GCA §§4104 and 4105.
18 Such rules and regulations shall provide for the employment of
19 persons on the basis of merit, and shall include an orderly and
20 systematic method of recruitment and the establishment of a list of
21 qualified applicants for employment purposes. Academic personnel
22 are defined as faculty and administrators. For the purposes of this
23 Section, an administrator is defined as one who holds any of the
24 following positions: President or Vice-President, Assistant or
25 Associate to the President or Vice-President, Dean or Director,
26 Associate or Assistant Director, Associate or Assistant Dean;

1 provided, however, that nothing in this Chapter shall be construed as
2 preventing the Board from establishing other administrator positions
3 or abolishing any of the existing positions indicated herein and
4 further provided, however, that nothing in this section nor in any
5 other section of this Chapter involving the outlay of public funds
6 shall become effective unless funds therefore shall have been
7 provided in the college's annual budget. The term 'administrator'
8 does not include positions within the purview of the Civil Service
9 Commission under Chapter 6 of Title 4, Guam Code Annotated, or
10 other applicable laws."

11 **Section 9.** Subsection (a) of §31113 of Title 17, Guam Code
12 Annotated, is hereby amended to read as follows:

13 "(a). With the exception of academic personnel and
14 unclassified employees under §4102 and Chapter 2 of Title 4, Guam
15 Code Annotated, all other employees of the College shall be classified
16 employees. The employment of classified employees shall be
17 governed by Title 4, Guam Code Annotated, and other applicable
18 laws. The President shall serve the College on a contractual basis, and
19 notwithstanding any other provision of law, shall be entitled to all
20 benefits of the Government of Guam given to employees including
21 being a member of the Retirement Fund. The term of the contract of
22 employment between the President and the Board shall not be for
23 longer than six (6) years, which term may be renewable any number
24 of times."

25 **Section 10.** §16112 of Title 17, Guam Code Annotated, is hereby
26 amended to read as follows:

1 “§16112. Personnel Rules. Academic Personnel. Rules and
2 regulations governing selection, compensation, promotion,
3 performance evaluation, disciplinary action and other terms and
4 conditions of employment affecting academic personnel shall be
5 adopted by the Board of Regents. Such rules and regulations shall
6 provide for the employment and retention of persons on the basis of
7 merit, and shall include an orderly and systematic method of
8 recruitment and the establishment of a list of qualified applicants for
9 employment purposes. Academic personnel are defined as faculty
10 and administrators. For the purposes of this Section, an
11 "administrator" is defined as one who holds any of the following
12 positions: President or Vice-President, Assistant or Associate to the
13 President or Vice-President, Dean, Associate or Assistant Dean or
14 Director, Associate or Assistant Director, provided, however, that
15 nothing in this Chapter shall be construed as preventing the Board of
16 Regents from establishing other administrator positions or abolishing
17 any of the existing positions indicated herein and further provided,
18 however, that nothing in this section nor in any other section of this
19 Chapter involving the outlay of public funds shall become effective
20 unless funds therefor shall have been provided in the University's
21 annual budget. The term 'administrator' does not include positions
22 within the purview of the Civil Service Commission under Chapter 6
23 of Title 4, Guam Code Annotated, or other applicable laws.

24 Faculty shall have the right to form, join, assist and participate
25 in the management of employee organizations of their choice and to
26 act as organization representative or to refrain from any such activity,

1 without interference, restraint, coercion or discrimination and
2 without fear of penalty or reprisal; provided that, employees shall not
3 participate in the management of an organization or act as an
4 organization representative, where such activity would result in a
5 conflict of interest or otherwise be incompatible with law or with the
6 employee's official duties.

7 Within ninety (90) days of the effective date of this Act, the
8 Board of Regents, in cooperative consultation with the recognized
9 bargaining agent, shall develop and adopt reasonable rules for the
10 settlement of collective bargaining disputes, including access to
11 impartial mediation and arbitration."

12 **Section 11.** §16113 of Title 17, Guam Code Annotated, is hereby
13 amended to read as follows:

14 **"§16113. Classified Employees.** Notwithstanding any law,
15 rule or regulation to the contrary, all non-academic personnel, with
16 the exception of unclassified employees under §§4102 and 21031 of
17 Title 4, Guam Code Annotated, shall be classified. Matters relating to
18 employment of classified personnel shall be governed by and in
19 accordance with Title 4 of the Guam Code Annotated and other
20 applicable laws.

21 All employees of the University of Guam who have acquired
22 government of Guam civil service tenure on the date of the enactment
23 of this Chapter and who are transferred to the University in
24 accordance with §16117 of this Chapter shall retain their tenure and
25 status as employees of the government of Guam."

1 **Section 12.** Subsection (c) of §31113 of Title 17, Guam Code
2 Annotated, is hereby repealed in its entirety.

3 **Section 13.** §4406 of Title 4, Guam Code Annotated, is hereby
4 amended to read as follows:

5 “**§4406. Adverse Action Procedures and Appeals.** An employee in
6 the classified service who is dismissed, demoted, or suspended shall be
7 given immediate notice of the action, together with a specific statement of
8 the charges upon which such action is based in the manner required by
9 Article 2 of this Chapter. Copies thereof shall be filed with the Civil Service
10 Commission and, if applicable, with the government entity charged with
11 hearing his appeal under the personnel rules governing his appointment
12 not later than the working day next following the effective date of the
13 action. In no event may an employee in the classified service be given the
14 notice and statement of the charges required by this Section after the
15 sixtieth (60) day after management knew or should have known the facts or
16 events which form the alleged basis for such action. Any action brought by
17 management in violation of this Section is barred and any decision based
18 on such action is void.

19 While an employee’s appeal is pending, he may be suspended by the
20 department, instrumentality or agency. The Civil Service Commission or
21 appropriate entity may order the employee reinstated to active duty during
22 pendency of the appeal.

23 The employee within twenty (20) days of effective date of the action,
24 may appeal to the Commission or appropriate entity by filing his written
25 answer to the charges against him. The Commission or appropriate entity
26 shall then set the matter for hearing as expeditiously as possible. The

1 employee or his representative shall be given the opportunity to inspect
2 any documents relevant to the action which would be admissible in
3 evidence at the hearing, and to depose, interview or direct written
4 interrogatories to other employees having knowledge of the acts or
5 omissions upon which the dismissal, demotion or suspension is based. The
6 Commission or appropriate entity may sustain, modify or revoke the action
7 taken. The decision of the Commission or appropriate entity shall be final
8 but subject to judicial review."

73-26



OFFICE OF THE GOVERNOR
TERRITORY OF GUAM

MAY 31 1995

OFFICE OF THE LEGISLATIVE SECRETARY

Date: 5.31.95

Time: 4:35 P

Received By: *[Signature]*

Print Name: AUCIA GUZMAN

The Honorable Don Parkinson
 Speaker
 Twenty-Third Guam Legislature
 424 West O'Brien Drive
 Julale Center - Suite 222
 Agana, Guam 96910

Dear Speaker Parkinson:

Enclosed please find Substitute Bill No. 225 (LS), "AN ACT AMEND §§4102, 4105, 4106, 6102, 6103, AND 4406 OF TITLE 4 AND §§31106, 31113(a), 16112, AND 16113 OF TITLE 17, TO REPEAL §31113(c) OF TITLE 17, AND TO ADD A NEW SUBSECTION (i) TO §4403 AND A NEW SUBSECTION (c) to §4402 OF TITLE 4, ALL OF THE GUAM CODE ANNOTATED, PERTAINING TO THE ACADEMIC PERSONNEL AND AUTONOMY OF THE GUAM COMMUNITY COLLEGE AND THE UNIVERSITY OF GUAM, AND OTHER RELATED MATTERS", which I have **vetoed**.

Although this bill "looks good" on the surface, if enacted there will be serious negative consequences to the professional security of the academic personnel of our educational institutions. First, this bill removes several basic employment rights, enjoyed by classified employees of the government of Guam, from the academic personnel of the Guam Community College and the University of Guam. Presently, all employees of the government of Guam are either classified or unclassified. Classified employees enjoy many personnel rights under the merit system provided for in the Organic Act of Guam and in Title 4, Guam Code Annotated. Substitute Bill No. 225 removes academic personnel from the protections guaranteed to classified employees, and places them in a newly created third class of employees of the government, neither classified nor unclassified, neither "fish" nor "fowl".

OFFICE OF THE LEGISLATIVE SECRETARY

ACKNOWLEDGMENT

Received By: *[Signature]*

Time: 2:57 P.M.

Date: 6/1/95

If Substitute Bill No. 225 were enacted, academic personnel would not be afforded the opportunity of having attorneys fees paid, should they challenge unfair personnel actions and win their cases. Academic personnel would have to pay their own attorneys fees out of their pockets, even if they are subjected to harassment and intimidation by management and subsequently win their cases. Classified employees of the government of Guam, on the other hand, can challenge wrongful adverse actions, and if they are successful, have their attorneys fees paid.

Secondly, if this bill became law, academic personnel at the University would be immediately subject to invalid and unconstitutional personnel rules now being utilized at the University. The personnel rules utilized by the University of Guam have never been approved by the Civil Service Commission, by Executive Order of the Governor, or filed with the Legislative Secretary of the Guam Legislature as required by §4105 of Title 4, Guam Code Annotated.

One of the most sorry results of the passage of Substitute Bill No. 225 would be that the University's academic personnel would immediately be subjected to unconstitutional provisions of their invalid personnel rules. The personnel rules utilized by the University require academic personnel to **prove their innocence** when accused of wrongdoing, rather than the University proving their guilt. In other words, when the University takes an adverse action against an academic employee, the employee has the **burden of going forward** with the case to prove his or her innocence. If he or she does not go forward, the employee is presumed guilty of the wrongdoing charged.

Third, legislators and the public have been lead to believe that our academic institutions must be removed from the jurisdiction of the Civil Service Commission, or risk their accreditation. This is not the case. Accrediting institutions are interested in maintaining academic freedom at educational institutions, so that any and all ideas can be examined in an atmosphere free from intimidation. For this reason, academic personnel must be free to carry on their activities without risk of losing their jobs because of the ideas that they espouse. The educational institutions are interested in maintaining standards over hiring, promotion, tenure, and

other matters involving academic personnels' status. This is already guaranteed under current law. This guarantee is unrelated to the tribunal where adverse actions concerning the suspension, demotion, or dismissal "for cause" are appealed, as long as the tribunal is free from interference and can guarantee due process to the affected employee. Our Civil Service Commission only has jurisdiction over suspension, demotion, or dismissal "for cause" of academic personnel, and is a fair tribunal, and the members of the Commission can only be removed "for cause". This guarantees their independence and fairness in dealing with classified employees of the government, whether academic personnel or not.

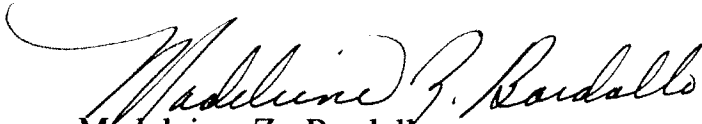
In line with the Civil Service Commission's appropriateness in hearing adverse action appeals of academic personnel is the fact that respected institutions in other states, such as California, operate under a system where academic personnel appeal adverse actions "for cause" to a state civil service commission. In California, the state university system provides that academic personnel take adverse action appeals to the California Personnel Board, which is similar to the Guam Civil Service Commission. The California Personnel Board is the board which hears adverse action appeals of all classified California state government employees. The California Personnel Board, like the Guam Civil Service Commission, is separate and is not part of the state university system.

Finally, no provision has been made in this bill to take into account the presence of ongoing litigation which has already cost the taxpayers of Guam many thousands of dollars. At present, there are pending cases involving academic personnel before the Guam Civil Service Commission. The bill should not apply to these pending cases, but only to cases commenced in the future. Otherwise, the bill would unfairly prejudice the rights of litigants who now have cases. Presumably, current litigants, including the University, will feel the need to go back to court to determine whether or not Substitute Bill No. 225 affects their cases, and if so, how. Substitute Bill No. 225 interferes with the ongoing court process.

In summary, Substitute Bill No. 225 contains laudable language concerning the autonomy of our two educational institutions, the University of Guam and the Guam Community College. The actual result of the passage of this

bill would be to demote academic personnel to a limbo status devoid of the usual protections of classified employees of the government.

Very truly yours,



Madeleine Z. Bordallo
Acting Governor of Guam

Attachment

230473

6

TWENTY-THIRD GUAM LEGISLATURE

1995 (FIRST) Regular Session

Date: 5/13/95

VOTING SHEET

Bill No. 225
 Resolution No. _____
 Question: _____

NAME	AYE	NO	NOT VOTING/ ABSTAINED	ABSENT/ OUT DURING ROLL CALL
ADA, Thomas C.	✓			
AGUON, John P.	✓			
BARRETT-ANDERSON, Elizabeth	✓			
BLAZ, Anthony C.	✓			
BROWN, Joanne S.	✓			
CAMACHO, Felix P.	✓			
CHARFAUROS, Mark C	✓			
CRISTOBAL, Hope A.	✓			
FORBES, MARK	✓			
LAMORENA, Alberto C., V	✓			
LEON GUERRERO, Carlotta	✓			
LEON GUERRERO, Lou	✓			
NELSON, Ted S.	✓			
ORSINI, Sonny L.	✓			
PANGELINAN, Vicente C	✓			
PARKINSON, Don	✓			
SAN AGUSTIN, Joe T.	✓			
SANTOS, Angel L. G.	✓			
SANTOS, Francis E.	✓			
UNPINGCO, Antonio R.	✓			
WONPAT-BORJA, Judith	✓			

TOTAL 21 0 _____

PL 23-26

Senator Judith Won Pat-Borja
Legislative Secretary & Chairperson, Committee on Education
Twenty-Third Guam Legislature

May 11, 1995

Honorable Don Parkinson
Speaker
Twenty-Third Guam Legislature
Agana, Guam

VIA: Chairman, Committee on Rules

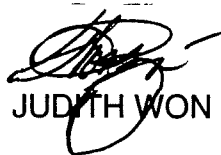
Dear Mr. Speaker:

The Committee on Education to which was referred Bill No. 225 "**An Act to Amend Titles 4 and 17, Guam Code Annotated Pertaining to the Academic Personnel, Autonomy of the Guam Community College, The University of Guam and other Related Matters**", wishes to report its findings and recommendations **TO PASS BILL NO. 225.**

The voting record is as follows:

To Do Confirm	<u>11</u>
Not To Confirm	<u>0</u>
Abstain	<u>0</u>
To Place in Inactive File	<u>0</u>

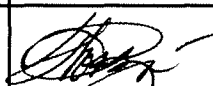

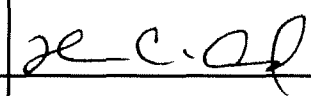
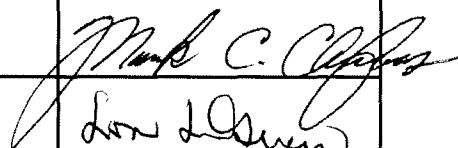
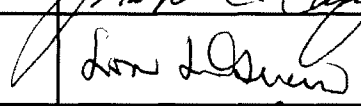
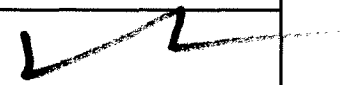
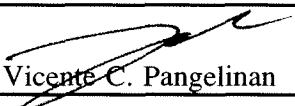
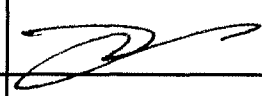
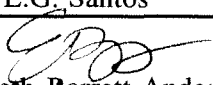


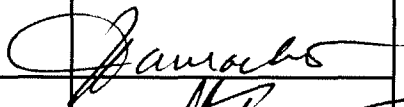
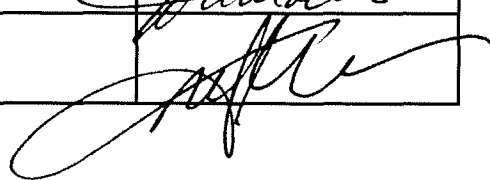
Attached are all pertinent documents for your review.



JUDITH WON PAT-BORJA

TWENTY-THIRD GUAM LEGISLATURE

COMMITTEE ON EDUCATION VOTE SHEET ON SUBSTITUTE BILL NO. 225

COMMITTEE MEMBER	To Pass	Not To Pass	Abstain	To Place in Inactive File	SIGNATURE
Judith Won Pat-Borja Chairperson	✓				
Hope Cristobal Vice-Chairperson	✓				
Tom C. Ada	✓				
John P. Aguon					
Mark C Charfauros	✓				
Lou Leon Guerrero	✓				
Ted S. Nelson	✓				
 Vicente C. Pangelinan	✓				
Angel L.G. Santos					
 Elizabeth Barrett-Anderson	✓				
Joanne M.S. Brown	✓				
Felix P. Camacho	✓				
Mark Forbes	✓				

TWENTY-THIRD GUAM LEGISLATURE
1995 (FIRST) Regular Session

Bill No. 225

As Substituted by the Author
Introduced by:

J. Won Pat-Borja *JB*
H. A. Cristobal *HC*
E. B. Anderson *EB*

AN ACT TO AMEND TITLES 4 AND 17 GUAM CODE
ANNOTATED PERTAINING TO THE ACADEMIC PERSONNEL,
AUTONOMY OF THE GUAM COMMUNITY COLLEGE, THE
UNIVERSITY OF GUAM AND THE OTHER RELATED
MATTERS.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

2 **Section 1.** §4102 of Title 4, Guam Code Annotated, is hereby
3 amended to read as follows:

4 “§4102. **Classified and Unclassified Services.** All
5 offices and employment in the Government of Guam, except for
6 employment as academic personnel of the Guam Community
7 College (GCC) and the University of Guam (UOG), as the term
8 ‘academic personnel’ is defined in enabling laws of GCC and
9 UOG, shall be divided into classified and unclassified services as
10 follows:”

11 **Section 2.** A new paragraph (c) is hereby added to §4102 of
12 Title 4, Guam Code Annotated, to read as follows:

13 “(c). Notwithstanding any law or rule to the contrary,
14 employment as academic personnel of the Guam Community
15 College and the University of Guam shall be governed by rules
16 adopted by the Board of Trustees and the Board of Regents,
17 respectively, in order to provide academic freedom and

1 autonomy to the institutions, as intended by P.L. 14-77 as to
2 GCC, and P.L. 19-40 as to UOG.”

3 **Section 3.** The opening §4105 of Title 4, Guam Code
4 Annotated, is hereby amended to read as follows:

5 “§4105. **Department Rules.** Rules subject to criteria
6 established by this chapter governing the selection, promotion,
7 performance, evaluation, demotion, suspension and other
8 disciplinary action of classified employees shall be adopted by the
9 Board of Directors of the Guam Airport Authority, Board of
10 Directors for the Guam Economic Development Authority, Board
11 of Directors for the Guam Housing Corporation, Board of
12 Commissioners for Guam Housing and Urban Renewal
13 Authority, the Judicial Council, the Board of Directors of the
14 Guam Telephone Authority, the Board of Directors of the Port
15 Authority of Guam, the Board of Directors of the Guam Power
16 Authority, the Territorial Board of Education, the Board of
17 Regents of the University of Guam, the Board of Trustees of the
18 Guam Community College, the Board of Trustees of the Guam
19 Memorial Hospital Authority and by the Public Utility Agency of
20 Guam with respect to personnel matters within their respective
21 branches, agencies or departments, and by the Director of
22 Administration as to all other executive branch employment.
23 Such rules shall, to the extent practicable, provide standard
24 conditions for entry into and the other matters concerning the
25 government service. The personnel rules adopted for the
26 University of Guam, Guam Community College, Guam Airport
27 Authority, Guam Telephone Authority, Port Authority of Guam,

1 Guam Power Authority, Department of Education, Guam
2 Memorial Hospital Authority, the Director of Administration and
3 by the Public Utility Agency of Guam shall require that all their
4 classified employee appeals be heard by the Civil Service
5 Commission. The personnel rules adopted for the Judiciary
6 Branch by the Judicial Council shall require that all their
7 classified employee appeals be heard by the Council. Personnel
8 rules governing any other Executive Branch entities may require
9 that their classified employee appeals be heard by the Civil
10 Service Commission. Rules concerning the Executive Branch
11 shall take effect upon their approval by the Civil Service
12 Commission, by Executive Order of the Governor and the filing
13 with the legislative Secretary. Rules concerning the Judicial
14 Council shall take effect upon adoption by the Judicial Council of
15 Guam.

16 **Section 4.** The opening paragraph of §4106 of Title 4, Guam
17 Code Annotated, is hereby amended to read as follows:

18 “§4106. **Personnel Rules.** The personnel rules
19 provided for in §4105 of this Chapter shall provide procedures
20 for their employment of persons on the basis of merit, and shall
21 include an orderly and systematic method of recruitment and the
22 establishment of qualified lists for employment purposes. They
23 shall provide for a probationary period of not less than three (3)
24 nor more than Twelve (12) months for all original appointments,
25 [~~except for original academic appointments at the University of~~
26 ~~Guam or the Guam Community College,~~] during which time the
27 employee may be dismissed at any time without right of appeal

1 and without right of being given reasons or charges in writing.
2 Specific procedures and policies shall be included, governing the
3 following:.”

4 **Section 5.** A new subsection (I) is hereby added to §4403 of
5 Title 4, Guam Code Annotated, to read as follows:

6 “(h). The jurisdiction of the Civil Service Commission shall
7 not extend to academic personnel of the Guam Community
8 College and the University of Guam, except upon mutual
9 consent by the governing board of the respective institutions and
10 the commission.”

11 **Section 6.** §6102 of Title 4, Guam Code Annotated, is hereby
12 amended to read as follows:

13 “§6102. **Purpose.** The purpose of this Chapter is to
14 provide a uniform and unified system of position classification
15 and compensation for the Executive and Judicial Branches of the
16 Government of Guam. The only exception is for academic
17 personnel of the Guam Community College and the University of
18 Guam which as institutions of higher learning education, must
19 adhere to accreditation standards established by the appropriate
20 accrediting bodies. The term ‘academic personnel’ refers to the
21 definitions in provided in Section 31106 and 16112 of Title 17,
22 Guam Code Annotated, governing academic personnel of Guam
23 Community College and the University of Guam.”

24 **Section 7.** §6103 of Title 4, Guam Code Annotated, is hereby
25 amended to read as follows:

26 “§6103. **Scope.** Unless otherwise specified, this
27 Chapter shall apply to all positions, officers, and employees,

1 classified and unclassified, as the case may be, inclusive of the
2 Executive and Judicial Branches, autonomous and semi-
3 autonomous agencies, public corporations, and other
4 instrumentality's of the Government of Guam. The provisions of
5 this Chapter do not apply to academic personnel of the Guam
6 Community College and the University of Guam. The
7 employment and terms and conditions of employment of
8 academic personnel shall be exclusively governed by provisions
9 of the enabling laws of Guam Community College and the
10 University of Guam pertaining to academic personnel, as set
11 forth in Title 17, Guam Code Annotated."

12 **Section 8.** §31106 of Title 17, Guam Code Annotated is hereby
13 amended to read as follows:

14 "§31106. **Personnel Rules. Academic Personnel** [~~and~~
15 ~~Administrative Officers~~]. Rules and regulations governing
16 selection, compensation, promotion, performance evaluation and
17 disciplinary action and other terms and conditions of
18 employment affecting academic personnel shall be adopted by
19 the Board [~~in accordance with §§4104 and 4105 of Title 4,~~
20 ~~Guam Code Annotated~~]. Such rules and regulations shall provide
21 for the employment of persons on the basis of merit, and shall
22 include an orderly and systematic method of recruitment and
23 establishment of a list of qualified applicants from employment
24 purposes. Academic personnel are defined as faculty and
25 administrators. For the purposes of this Section, an
26 [~~Administrative Officer~~] 'administrator' is defined as one who
27 holds any of the following positions: President or Vice-President,

1 Assistant or Associate to the President or Vice-President, Dean or
2 Director, Associate or Assistant Director, Associate or Assistant
3 Dean; [~~Associate or Assistant Director; Dean or Director;~~
4 ~~Assistant to the Provost or Vice President]~~ provided, however,
5 that nothing in this Chapter shall be construed as preventing the
6 Board from establishing other administrator [~~administrative~~
7 ~~officer~~] positions or abolishing any of the existing positions
8 herein and further provided, however, that nothing in this
9 section nor in any other section of this Chapter involving the
10 outlay of public funds shall become effective unless funds
11 therefore shall have been provided in the college's annual
12 budget. The term 'administrator' does not include positions
13 within the purview of the Civil Service Commission under
14 Chapter 6 of Title 4, Guam Code Annotated or other applicable
15 laws."

16 **Section 9.** Subsection (a) of §31113 of Title 17, Guam Code
17 Annotated, is hereby amended to read as follows:

18 “(a). With the exception of [~~the President and the Private~~
19 ~~Executive Secretary who shall be in the unclassified service,]~~
20 academic personnel and unclassified employees under §§4102
21 and 21031 of Title 4, Guam Code Annotated, all other employees
22 of the College shall be classified employees.

23 The employment of classified employees shall be governed
24 by Title 4, Guam Code Annotated and other applicable laws.

25 The President shall serve the College on a contractual basis,
26 and notwithstanding any other provision of law, shall be entitled
27 to all benefits of the Government of Guam given to employees

1 including being a member of the Retirement Fund. The term of
2 the contract on employment between the President and the
3 Board shall not be for longer than six (6) years, which term may
4 be renewed at any number of times.”

5 **Section 10.** §16112 of Title 17, Guam Code Annotated, is
6 hereby amended to read as follows:

7 “§16112. **Personnel Rules. Academic Personnel** [~~and~~
8 ~~Administrative Officers~~]. Rules and regulations governing
9 selection, compensation, promotion, performance evaluation and
10 disciplinary action and other terms and conditions of
11 employment affecting academic personnel shall be adopted by
12 the Board of Regents [~~in accordance with §§4104 and 4105 of~~
13 ~~Title 4, Guam Code Annotated~~]. Such rules and regulations shall
14 provide for the employment and retention of persons on the basis
15 of merit, and shall include an orderly and systematic method of
16 recruitment and establishment of a list of qualified applicants for
17 employment purposes. Academic personnel are defined a faculty
18 and administrators. For the purposes of this Section, an
19 [~~Administrative Officer~~] ‘administrator’ is defined as one who
20 holds any of the following positions: President or Vice-President,
21 Assistant or Associate to the President or Vice-President, Dean,
22 Associate or Assistant Dean or Director, Associate or Assistant
23 Director, [~~Associate or Assistant Dean; Associate or Assistant~~
24 ~~Director; Dean or Director; Assistant to the Provost or Vice-~~
25 ~~President~~] provided, however, that nothing in this Chapter shall
26 be construed as preventing the Board of Regents from
27 establishing other administrator [~~administrative officer~~] positions

1 or abolishing any of the existing positions herein. Further
2 provided, however, that nothing in this section nor in any other
3 section of this Chapter involving the outlay of public funds shall
4 become effective unless funds therefor shall have been provided
5 in the University's annual budget. The term 'administrator' does
6 not include positions within the purview of the Civil Service
7 Commission under Chapter 6 of Title 4, Guam Code Annotated
8 or other applicable laws.

9 Faculty [~~Academic personnel~~] shall have the right to form,
10 join, assist and participate in the management of employee
11 organizations of their choice and to act as organization
12 representative or to refrain from any such activity, without
13 interference, restraint, coercion or discrimination and without
14 fear of penalty or reprisal; provided that, employees shall not
15 participate in the management of an organization or act as an
16 organization representative, where such activity would result in
17 a conflict of interest or otherwise be incompatible with law or
18 with the employee's official duties.

19 Within ninety (90) days of the effective date of this Act, the
20 Board of Regents, in cooperative consultation with the
21 recognized bargaining agent, shall develop and adopt reasonable
22 rules for the settlement of collective bargaining disputes,
23 including access to impartial mediation and arbitration.

24 **Section 11.** §16113 of Title 17, Guam Code Annotated, is
25 hereby amended to read as follows:

26 "§16113. Classified Employees. [~~Non-academic~~
27 ~~personnel~~] Notwithstanding any law, rules or regulation to the

1 contrary, all non-academic personnel, with the exception of
2 unclassified employees under §§4102 and 21031 of Title 4,
3 Guam Code Annotated, shall be classified. [~~and~~] Matters relating
4 to employment of [~~non-academic~~] classified personnel shall be
5 governed by and in accordance with Title 4, Guam Code
6 Annotated and other [~~personnel laws~~] applicable [~~in Guam~~]
7 laws.”

8 **Section 12.** Subsection (c) of §31113 of Title 17, Guam Code
9 Annotated, is hereby repealed in its entirety.

10 **Section 13.** §4406 of Title 4, Guam Code Annotated, is hereby
11 amended to read as follows:

12 **“§4406. Adverse Action Procedures and Appeals.** An
13 employee in the classified service who is dismissed, demoted or
14 suspended shall be given immediate notice of the action, together with
15 a specific statement of the charges upon which such action is based in
16 the manner required by Article 2 of this Chapter. Copies thereof shall
17 be filed with the Civil Service Commission and, if applicable, with the
18 government entity charged with hearing his appeal under the
19 personnel rules governing his appointment not later than the working
20 day next following the action. In no event may an employee in the
21 classified service be given the notice and statement of the charges
22 required by this Section after the sixtieth (60) day after management
23 knew or should have known the facts or events which form the alleged
24 basis for such action. Any action brought by management in violation
25 of this Section is barred and any decision based on such action is void.

26 While an employee’s appeal is pending, he may be suspended by
27 the department, instrumentality or agency. The Civil Service

- 1 Commission or appropriate entity may order the employee reinstated
- 2 to active duty during pendency of the appeal.

**Twenty-Third Guam Legislature
Committee on Education**

Committee Report on Bill No. 225

“An Act to Amend Titles 4 and 17 Guam Code Annotated Pertaining to The Academic Personnel, Autonomy of the Guam Community College, The University of Guam, The Civil Service Commission, The Unified Pay System and The Other Related Matters.”

**Prepared by: Committee on Education
Senator Judith Won Pat-Borja, Chairperson**

**Publicly Heard:
April 25, 1995, 2:30PM
Public Hearing Room
Temporary Legislature Building
155 Hesler Street Agana, Guam**

I. Introduction

The Committee on Education of the Twenty-Third Guam Legislature conducted a public hearing on **Bill No. 225** on April 25, 1995, 2:30PM at the Public Hearing Room, Temporary Legislature Building, 155 Hesler Street, Agana, Guam.

The record of Committee Members in attendance is as follows:

Committee on Education

Judith Won Pat-Borja	Chairperson
Joanne Brown	Member
Elizabeth Barrett-Anderson	Member
Lou Leon Guerrero	Member

Bill No. 225 was referred to the Committee on Education as the primary Legislative Committee.

II. Testimony & Input on Bill No. 225

Persons appearing to testify before the Committee:

Jesus U. Torres	Board of Regents, UOG
Atty. Jerry Hogan	Board of Regents, UOG
Howard Hemsing	Student Senator, UOG
Dr. Richard Matheny	Faculty Member, UOG
Atty. Sandra Lynch	Legal Counsel, UOG
Eloy Hara	Director, Civil Service Commission
Luis S.N. Reyes	Assoc. Superintendent-Personnel, DOE
John T. Cruz	President, GCC
Dr. John Salas	President, UOG
Dr. Richard Tennessen	Chairman, Board of Trustees, GCC

A. Written Testimony

Howard Hemsing (UOG), Eloy Hara (CSC), Roland Taimanglo (Represented by Luis S.N. Reyes, DOE), John T. Cruz and Dr. Richard Tennesen (GCC), and Dr. John Salas (UOG) each submitted written testimony on **Bill No. 225** (See Appendage).

Mr. Hemsing's testimony focused on supporting the passage of **Bill No. 225** to ensure that the University is granted accreditation status. From a student's perspective, Mr. Hemsing stated that the "accreditation" meant equal recognition in other universities across America. Mr. Hemsing concluded by stating, "If we lose accreditation because the government doesn't support UOG's autonomy, then we will lose students and eventually the University itself."

Mr. Hara expressed his support of the language and intent of **Bill No. 225**. Having worked jointly with GCC and UOG in drafting the legislation, Mr. Hara felt this bill was needed to grant higher institutions the autonomy necessary for achieving full accreditation status. Mr. Hara stated that he was victimized by lack of accreditation and would hate to see others go through a similar experience. He further emphasized that the greater cause was the protection of employee rights and if higher institutions had a system in place to protect these rights, then the CSC will concede to these institutions.

Mr. Taimanglo's testimony supported the idea that the University and GCC are in a better position to address Rules and Regulations relative to Academic Personnel. He further stated that the Department of Education already has its own Personnel Rules and Regulations addressing selection, promotion, performance, evaluation, demotion, suspension and other disciplinary action of classified employees, inclusive of probationary periods and dismissals under probationary status. On behalf of DOE, Mr. Taimanglo concluded that they had no additions or any objections under this Bill as it relates to classified employment.

John Cruz and Dr. Tennesen's testimony supported the passage of **Bill No. 225** stating that this bill clarifies and delineates the authority of the boards of higher education for Guam and that this authority is essential to the accreditation of the College. In passing this bill, the conflict about the status of employees at the College and the University will finally be put to rest. Furthermore, by adopting this measure, the Legislature will be reaffirming its commitment to preserving the accredited status of our institutions of higher education.

Dr. Salas' testimony was presented as UOG's Resolution No. 95-10, Relative to Pending Autonomy Legislation. The Board of Regents supported and strongly recommended the passage of **Bill No. 225** by the Twenty-Third Guam Legislature to ensure continued accreditation by the Western Association of Schools and Colleges (WASC) and compliance with WASC accreditation standards and prevention of future legal challenges to its autonomy.

B. Oral Testimony

Oral testimonies on Bill No. 225 were presented by Jesus Torres (UOG), Atty. Jerry Hogan (UOG), Howard Hemsing (UOG), Richard Matheny (UOG), Atty. Susan Lynch (UOG), Eloy Hara (CSC), Dr. Tennesen (GCC), and Dr. John Salas (UOG).

In addition to his written testimony, Mr. Torres emphasized the standards of accreditation that must be upheld, particularly Standard #3: "The governing Board is ultimately responsible for the quality and integrity of the institution ... and protects the institution from external pressures pertaining to academic freedom and institutional autonomy. In closing, Mr. Torres commented that a priceless gift to students is that they've earned their degree from an accredited institution.

Atty. Hogan's testimony supported the passage of **Bill No. 225** specifically as it relates to "expressly excluding academic personnel from Title 4, §4106 '60-day rule'." The final decision regarding academic personnel matters should rest with the Board and this is consistent with **Bill No. 225**. This measure is needed to ensure autonomy of the University of Guam.

Howard Hemsing's oral testimony was consistent with his written version as submitted.

Dr. Richard Matheny from the University spoke in opposition to the passage of **Bill No. 225** and claimed that a healthy democratic process must have academic freedom but with due process. Dr. Matheny proceeded to share with the Committee his own personal experience regarding his termination from employment at UOG by President Salas and how he was denied a pre-determination hearing. He further commented that "total autonomy" of an institution is non-existent especially when 80% is paid by the people of Guam. Dr. Matheny also alluded to the California Educational System and how the Codes of Education are used when academic personnel issues are being managed. The State Personnel (Codes of ED) is equivalent to Guam's Civil Service Commission.

Atty. Lynch commenced her testimony by reacting to Dr. Matheny's side comment about Regent. Sgro in an attempt to clarify that Atty. Sgro was exonerated in February 1995. She also pointed out that the California State Personnel System using the Codes On Education is a separate system from the Civil Government System. Atty. Lynch stated that she was a 1982 graduate from West Virginia University, a non-accredited institution, and having experienced the negative consequences would like to see UOG acquire full accreditation and challenges to its full autonomy end. Lynch expressed that education and academic freedom require high standards. If these standards are to be compromised by allowing the Civil Service Commission to impose their standards of time and grade, then the University should give itself up. Under tenureship the University requires of its academic personnel, in addition to teaching, research, service to the community, and getting along well with their peers. The University has an adjudication process in place to deal with adverse actions. If the employee is dissatisfied with the outcome of the process, that's why we have the court system.

Mr. Hara's testimony was consistent with his written version.

Dr. Tennesen prefaced the reading of his written testimony by reminding the Committee that PL 22-137 was enacted because of GCC's probationary status due to government interference. He is in full support of **Bill No. 225** and its intent to restore authority to the Board. Dr. Tennesen asked Chairperson Won Pat-Borja if the Board can submit additional testimony pertaining to technical amendments to **Bill No. 225**. Chairperson WPB encouraged the additional submission.

Dr. John Salas reiterated the Board Resolution supporting passage of Bill No. 225. He added depth to the discussion of the accreditation issue by stating that accreditation is a symbol of credibility and quality. The University continues to grow in program and is of world-class status. Dr. Salas further stated that an accreditation visit is more than rating standards. He then offered to submit technical amendments for the Committee's consideration. Dr. Salas ended his testimony by asking the Committee, "Does GovGuam choose to let UOG make its determination of rights and processes of its faculty?"

Dr. Matheny, upon being granted his request to speak, commented that Regent Sgro was given "qualified immunity" and that he would still face slander charges.

Several questions for clarification were raised by Committee members regarding documents from WASC stating that without full autonomy the higher institutions will lose their accreditation. Mr. Cruz from GCC cited June 1994 when GCC was placed on probation because the Board had no control over the Unified Pay System (Hay Plan). PL 22-137 was then enacted to restore the accreditation status

by removing academic personnel from the civil system. Dr. Tennesen furthered the discussion by adding that in his seven years experience on the GCC Board, not many appeals have been made but he recalled (2) incidents when the Board actually ruled against the President. He reassured the Committee that this process was working for the college. Dr. Salas informed the Committee that the accreditation report is expected in his office the first week of May and the University will have until June 1 to react. The University was also encouraged by the accreditation team back in 1987 to revise their charter allowing the institution to govern its own operations -- the University's ability to sustain itself in a highly political environment. At present, Dr. Salas reported that the University has 4100 full-time students, approximately 8000 with part-time students, and that the University has until June to show adequacy of service to WASC. Once again, Dr. Salas emphasized that accreditation is credibility especially in this region.

Senators Won Pat-Borja, Brown, Barrett, and Leon Guerrero applauded the joint efforts of GCC, UOG, and CSC in drafting a joint legislation and providing suggestions for technical amendments. They also reiterated that they would prefer to stay out of administrative acts and allow the management at these institutions to do their jobs.

Concern over due process for personnel was also addressed in length. Senator Brown simply wanted to ensure that an outlet for employees to express their grievances was available. Senator Barrett stated that the issue was a balance of due process and accreditation. She asked Atty. Lynch to elaborate on the current adjudication system at the University. Atty. Lynch reported that the Union and the Board had just finalized their contract which allows for an adjudication committee and internal safeguards -- grievance process, informal hearing, binding arbitration (using Hawaii's AA's standards), and then the court. The employee also has the option of going straight to the Board but is then excised from final arbitration. An internal review is also conducted by peers who understand academia. As reported by President Cruz, GCC has a similar procedure to UOG without the arbitration clause. Dr. Matheny interjected, with permission from the Chairperson, that minimum due process is not enough and that the 60-day rule as with other public employees is more appropriate.

Senator Barrett then questioned the issue of "mutual consent" among the three -- GCC, CSC, and UOG, regarding appealing to CSC. Mr. Hara explained that CSC was availing themselves in the event the University could not afford arbitration.

Chairperson WPB then cited some technicalities on p. 6, Section 9. Mr. Cruz responded that the President and Private Secretary are unclassified and will remain so. Other clarifications included "Provost" now called President and

Assistant and Associate Deans are preserved positions as in Draft #1129 (similar bill to #225).

Chairperson WPB then concluded the hearing by reiterating that her committee does not want to interfere with institutions. She also encouraged them to note all standards, not just #3, and to focus on the welfare of the students and personal interests. Senator Brown then asked that both GCC and UOG submit in written format the appeals process for other members in the legislative body to review.

III. Committee Findings

The Committee finds that the majority of testimonies given is supportive of the language and legislative intent of **Bill No. 225**. Technical amendments are pending submission by GCC and UOG. GCC's appeals process in written format has been submitted. UOG's accreditation report and appeals process are pending submission by the President's Office.

IV. Committee Recommendations

The Committee on Education, to which Bill No. 225 was referred, has completed its review and deliberation on the bill, and does hereby recommend to the Twenty-Third Guam Legislature "To DO Pass" said measure: "An Act to Amend Titles 4 and 17 Guam Code Annotated Pertaining to The Academic Personnel, Autonomy of The Guam Community College, The University of Guam, The Civil Service Commission, The Unified Pay System and The Other Related Matters.



UNIVERSITY OF GUAM
UNIBETSEDÁT GUAHAN

BOARD OF REGENTS

UOG Station, Mangilao, Guam 96923
Telephone: (671) 734-2177 Fax: (671) 734-2296

Resolution No. 95-10
Relative to Pending Autonomy Legislation

WHEREAS, the University of Guam was established as a corporate body and a public territorial institution of higher education pursuant to the laws of the Territory of Guam; and

WHEREAS, it was the intent of Public Laws 14-77 and 19-40, establishing and continuing the University of Guam, to provide the University with academic freedom and autonomy; and

WHEREAS, under the current charter of the University, Public Law 19-40 (the "Charter"), the University's governance and control are vested in its Board of Regents; and

WHEREAS, the University is Accredited by the Western Association of Schools and Colleges ("WASC"); and

WHEREAS, continued accreditation by WASC requires the University, among other things, to have an autonomous and independent system of governance; and

WHEREAS, the university has experienced a number of recent legal challenges to its autonomy; and

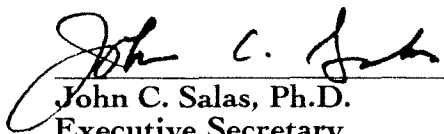
WHEREAS, legislative clarification of the University's autonomy would ensure compliance with WASC accreditation standards and prevent future legal challenges to its autonomy; and

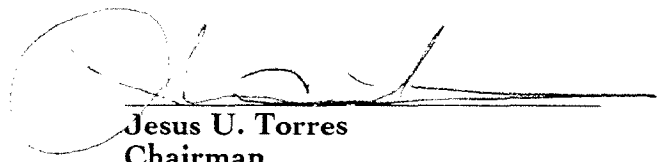
WHEREAS, Bill No. 225, which is currently pending before the Twenty-Third Guam Legislature, is intended to amend the University's Charter to clarify the status of the University's employees and the autonomy of the University's Board of Regents over its general governance.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Regents supports and strongly recommends the passage of Bill No. 225 by the Twenty-Third Guam Legislature as expediently as possible.

Adopted this 24th day of April 1995.

ATTESTED:


John C. Salas, Ph.D.
Executive Secretary


Jesus U. Torres
Chairman



BOARD OF REGENTS

University of Guam

UOG STATION * MANGILAO, GUAM 96923

TESTIMONY BEFORE COMMITTEE ON EDUCATION
GUAM LEGISLATURE PUBLIC HEARING ROOM
TUESDAY, APRIL 25, 1995

MADAM CHAIRPERSON AND MEMBERS OF THE COMMITTEE ON EDUCATION:

Thank you for the opportunity to appear before your Committee on Education. On behalf of the Board of Regents and the University Community I am here to support Bill No. 225, which is An Act to Amend Titles 14 and 17, Guam Code Annotated pertaining to the Academic Personnel, Autonomy of the Guam Community College, The University of Guam, the Civil Service Commission, the Unified Pay System and other related matters.

At the last visit of the Accreditation Team of the Western Association of Schools and Colleges (WASC) there were concerns concerning adherence to Standard Three of the Accreditation Standards. The Handbook of Accreditation lists nine standards:

- | | | | |
|----------------|--|-------------------------|--------------------------|
| Standard One: | Institutional Documentation | Integrity | Supporting |
| Standard Two: | Institutional Effectiveness | Purposes, Planning, and | Supporting Documentation |
| Standard Four: | Education Documentation | Programs | Supporting |
| | Policy on Credit for Prior Experiential Learning | | |
| | Policy on Contracts with Unaccredited Organizations | | |
| | Policy on Study Abroad | | |
| | Policy on Transfer and Award of Academic Credit | | |
| Standard Five: | Faculty and Staff Supporting Documentation | | |
| | Policy on Collective Bargaining | | |
| Standard Six: | Library, Computing, and Other Information and Learning Resources | | |

Standard Seven: Student Services and the Co-Curricular
Learning Environment
Supporting Documentation
Policy on Collegiate Athletics
Policy on International Students

Stand Eight: Physical Resources
Supporting Documentation

Standard Nine: Financial Resources
Supporting Documentation

Standard 3.A reads:

"The governing board is ultimately responsible for the quality and integrity of the institution. It selects a chief executive officer, approves the purposes of the institution, and concerns itself with the provision of adequate funds. It establishes broad institutional policies, and delegates to the faculty and administration responsibility to administer and implement these policies. The board protects the institution from external pressures antithetical to academic freedom, to institutional autonomy, or to integrity. It differentiates among roles and responsibilities of various persons or bodies, and provides stability and continuity to the institution through an organized system of institutional planning and evaluation."

You may recall that several years ago the University of Guam was given a warning, placed on probation and on show cause status and then removed from show cause. We do not want this to happen to our only institution. We want to keep our University accredited. There is no better gift. In fact, a priceless gift to our students knowing that they attend and earn a degree from a fully accredited institution.

Respectfully submitted,



J. U. TORRES
Chairman, Board of Regents

Testimony of UOG SGA Senator Howard Hemsing

Good afternoon Chairperson Judy Won Pat-Borja, Senators, ladies and gentlemen. My name is Howard Hemsing, I am a UOG SGA Senator elected by the students to represent the students. The issue of autonomy is one of great importance to me and the students at UOG. Without autonomy we risk our accreditation. It has been pointed out by the Western Association of Schools and Colleges that the University needs to be autonomous and needs to be free from outside political interference.

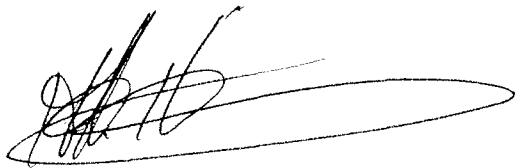
Why is accreditation important? Accreditation is that seal of approval and guarantee that our students can go on to other colleges and universities to pursue higher educational degrees. Without accreditation, the people of Guam would leave the island to pursue their educational careers, rather than staying on Guam to pursue their college degrees. The people of Guam are the eventual losers if accreditation is not granted to the University of Guam.

The University needs to be given the authority to make decisions on their own rather than having the Civil Service Commission or other bodies making decisions for us. In 1985 the University of Guam was placed on a "show cause" status by WASC. Show cause is a status that essentially means, that if the University does not take action to correct the problems found by WASC, we would lose accreditation. The reason that we were placed on a show cause status was that the University lacked the autonomy that is essential in post-secondary institutions of higher learning. Action was taken at that time to rectify the problem and in 1987 we were placed on probation with the granting of accreditation several months later. Now, 1995, again WASC stated that we are risking

our accreditation by our lack of autonomy. If we don't take action to correct this problem once and for all, we will lose accreditation, students will not want to go to the University, and the University of Guam as we know it, will no longer exist.

We have given the University of Guam the responsibility to prepare our people for the future, but yet outside parties, like the Civil Service Commission, makes the final decisions on matters of the University. This has got to stop. We can no longer play politics with the future of the island of Guam, we can no longer mix politics with the matters of the University. As a student and representative of the student population of UOG, I am appealing to the Committee on Education as well as the Legislature to take appropriate action to make the University once and for all autonomous.

Si yu'os maase and thank you very much.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom, enclosed within a large, thin oval outline.



DEFINITIONS

- 1) Adverse Action means the suspension or dismissal of an employee.
- 2) Suspension means either the temporary removal of an employee from his or her position with loss of pay as a disciplinary measure, suspension without pay due to absence without approved leave, or removal with pay preliminary to investigation of charges pending possible dismissal.
- 3) Dismissal means the termination of an employee from his or her position for cause.
- 4) Day means business days.

AUTHORIZED CAUSES OF ADVERSE ACTIONS

Each of the following shall constitute cause for adverse action against an employee

- 1) Fraud in securing appointment
- 2) Incompetence
- 3) Inefficiency
- 4) Inexcusable neglect of duty
- 5) Insubordination
- 6) Dishonesty
- 7) Intoxication on duty
- 8) Intemperance
- 9) Addiction to the use of illegal drugs

- 10) Absence without approved leave
- 11) Conviction of a felony or of a misdemeanor involving moral turpitude
- 12) Discourteous treatment of the public or other employees
- 13) Unlawful political activity
- 14) Willful disobedience of superiors
- 15) Misuse of government property in violation of law/rule/regulation
- 16) Other failure of good behavior either during or outside of duty hours which is to such a nature that it causes discredit to the University
- 17) Illegal job action
- 18) Violation of any provision of these rules and regulations
- 19) Engaging in any act violative of the University's non-discrimination and affirmative action policies including acts of sexual harassment

PROHIBITIONS

The President may not take adverse action under these rules against a University employee, except for cause.

ADVERSE ACTION PROCEDURES

Employees Covered By the Following Procedures

All employees, faculty and administrative officers of the University of Guam except the following:

- 1) Employees whose employment is part-time.
- 2) Employees covered by Government of Guam Civil Service Rules and Regulations.

Adverse Actions Covered

- 1) Dismissal
- 2) Suspension

Notice of Proposed Adverse Action

An employee against whom adverse action is sought is entitled to immediate written notice stating any and all causes, with the bases of specific charges expressed in detail, for the proposed action.

Employee's Answer

An employee is entitled to twenty (20) business days for answering charges in a notice of proposed adverse action and for furnishing affidavits in support of his or her answer.

If the employee fails to answer within twenty (20) business days of receipt of the adverse action notice, the charges will be deemed admitted and the employee shall forfeit the right to answer.

If the employee answers, the President shall consider his or her answer in reaching a decision.

The employee may answer orally or in writing or both. The right to answer personally includes the right to answer orally in person by being given a reasonable opportunity to make any representations which the employee believes might sway the final decision in the case, but does not include the right to a trial or formal hearing with examination of witnesses.

When the employee requests an opportunity to answer personally, the President shall meet with the employee to hear his or her answer.

Duty Status During Notice Period

Absent extraordinary circumstances, an employee against whom adverse action is proposed is entitled to be retained in an active duty status during the notice period.

When circumstances are such that the retention of the employee in an active duty in his or her position may result in damage to University property or may be detrimental to the interests or operations of the University or injurious to the employee, fellow workers, or the general public, the President may temporarily assign the employee to duties in which these conditions will not exist or place him or her on suspension.

Suspension During Notice Period

When, because of the circumstances described above, an employee cannot be kept in an active duty status during the notice period, the President may suspend him or her. This suspension is a separate adverse action. An employee whose suspension under this paragraph is proposed is entitled to appeal to the Adjudication Committee.

Notice of Adverse Action

The employee is entitled to notice of the University's decision at the earliest practicable date but no later than twenty (20) business days following receipt of employee's answer.

The University shall deliver the notice of decision to the employee at or before the time the action will be made effective. The notice shall be in writing, be dated, inform the employee of the specific statement of the charges upon which such action is based, inform the employee of his or her right to appeal, and inform him/her of the time limit within which an appeal may be submitted.



This section sets forth procedures to provide a simple, orderly method through which an employee may seek prompt reconsideration of an adverse action against him/her.

DEFINITIONS

- 1) Appeal means a request by an employee for reconsideration of an adverse action against him/her.
- 2) Appellate Decision means a decision made by the Board of Regents which completes action on the appeal.
- 3) Original Adverse Action means an adverse action by the University against an employee as previously defined.
- 4) Day means business day.
- 5) Adjudication Committee means the constituted body to hear and adjudicate first level administrative appeals and grievances.

The Adjudication Committee shall consist of three (3) members, all of whom shall be selected from among the faculty and administrators of the University. One member and an alternate shall be elected by the faculty, one member and an alternate shall be appointed by the President.

All members and alternates thus elected shall serve two-year terms.

The third member shall be selected by the other two members on a case by case basis and shall serve for the duration of that specific appeal only.

THE APPEAL

Right to Appeal

1) Any full-time faculty member or administrator is entitled to appeal an adverse action.

2) A regular contract employee occupying a permanent position with the University is entitled to appeal adverse actions imposed during the term of his or her contract. Non-renewal of contract is not considered an adverse action and is not subject to appeal.

Form of Appeal

An appeal shall be in writing; shall set forth clearly the basis of the appeal; shall state all issues to be considered relevant to the appeal and shall specify the statutes, rules and regulations, if any, upon which the employee relies.

Time Limit for Presenting Appeal

An employee may submit an appeal to the Adjudication Committee at any time after receipt of the notice of original action but not later than twenty (20) business days after the date the employee receives the notice of adverse action.

If notice of appeal is not submitted on or before the expiration of the twenty-day time period, the employee shall forfeit all appellate rights.

The two permanent members of the Adjudication Committee may extend the time limit not to exceed an additional twenty (20) business days when the employee shows that he or she was prevented by circumstances beyond his or her control from presenting the appeal within the time limit, or for other reasons considered sufficient by the Adjudication Committee.

Presentation of Appeal

- 1) In presenting an appeal, an employee, shall:
 - a) Be assured freedom from restraint, interference, coercion, discrimination, or reprisal.
 - b) Have the right to be accompanied, represented, and advised by one representative of his or her own choosing.

2) If the employee designates another person as his or her representative, the representative shall be assured freedom from restraint, interference, coercion, discrimination, or reprisal.

General Procedures

1) Upon receipt of an appeal, the Adjudication Committee shall immediately give written notice of the appeal to the President, shall provide the President with a copy of the appeal, and shall select the third member of the Adjudication Committee.

2) The President shall, within twenty (20) business days after receipt of the notice of appeal, forward to the Adjudication Committee the administration's statement of defenses.

If a statement of defense is not submitted on or before the expiration of the twenty-day period, the administration shall forfeit defense rights, the appeal shall be deemed admitted and all appellate rights shall be forfeited.

The Adjudication Committee shall then prescribe whatever remedies deemed by it to be proper.

Upon application by the President, the Adjudication Committee may extend the time limit not to exceed an additional twenty (20) business days for reasons considered sufficient by the Adjudication Committee.

3) The administration's statement of defenses shall contain objections to any or all issues raised by the appeal, objections to the form of the appeal, the administration's view of the facts, a rebuttal to any matter raised in the appeal, a description of testimonial and/or documentary evidence upon which the administration will rely in its defense of the appeal.

A statement of defense shall be deemed a specific denial of all aspects of the appeal not expressly admitted. All objections as to the form of the appeal shall be deemed waived unless taken as provided herein.

4) The Adjudication Committee shall thereafter conduct a hearing as herein provided.

The Adjudication Committee shall keep minutes of its procedures and maintain records of the hearings. The record of hearing shall contain a summary of all testimony presented and copies of all documents submitted to the Committee.

One copy each of the record of hearing and the Committee's written decision in the case shall be sent to the employee and the President within thirty (30) business days of the hearing.

5) The employee or the administration may appeal the decision of the Adjudication Committee to the Board of Regents by notice addressed to the Board within twenty (20) business days after receipt to the Adjudication Committee's decision. The notice shall contain a copy of the written decision of the Adjudication Committee, a copy of the record of the hearing, a brief statement outlining the reasons in the view of the appellant as to why the Committee's decision should not be implemented, and the specific remedial action desired of the Board.

If the notice of appeal is not submitted to the Board within the twenty-day time period, the employee and/or the administration shall forfeit all appellate rights.

Hearing Procedures Before the Adjudication Committee

1) The Adjudication Committee shall determine the time and place of hearing but in no case beyond the thirty (30) business days from the receipt of the administration's statement of defenses. Notice of the hearing shall be delivered to the employee and the President at least five (5) business days in advance of the hearing.

2) Each party shall have the following rights: the right to counsel; to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though the matter may not have been covered in the direct examination; to impeach any witness and to rebut the evidence against him or her. It shall be the right of the employee to decide if the hearing shall be open or closed to the public.

3) The employee shall first present his or her case by calling witnesses and offering evidence. The administration shall then present its defense and any rebuttal to the employee's case. The employee may then rebut the administration's defense. Summation by each side shall follow in the same order.

The hearing need not be conducted according to technical rules of evidence. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence. Irrelevant and unduly repetitious evidence shall be excluded.

4) The burden of going forward is upon the employee.

5) Within thirty (30) business days after the hearing is completed the Adjudication Committee shall deliver its decision to both parties. The decision shall be based on the preponderance of the evidence; shall be in writing; and shall contain findings of fact, a determination of the issues and defenses presented, and remedial action to be taken, if any. The Adjudication committee may sustain, modify or revoke the adverse action taken against the employee.

Correction of Adverse Action

If the adverse action is revoked or modified, such corrective action shall be taken by the administration within twenty (20) business days after receipt of the Adjudication Committee decision. If the administration, through the President, requests appellate review by the Board of Regents, implementation of the Adjudication Committee's decision shall be stayed pending the Board's decision.

Termination of Appeal

The Adjudication Committee shall terminate an employee's appeal:

1) At the employee's request.

2) For failure to prosecute if the employee does not furnish required information and duly proceed with the advancement of the appeal within the time limits specified above. The Adjudication Committee may reopen a closed appeal under this paragraph only upon a showing by the employee within twenty (20) business days of closure that circumstances beyond his or her control prevented prosecution of an appeal.

Death of Employee

When an appeal is properly filed before the death of the employee, the Adjudication Committee shall process it to completion.

Appellate Review Procedure Before the Board of Regents

1) The Board shall conduct an appellate review hearing during an executive session of its next regular meeting subsequent to receipt of appellant's request for appellate review properly delivered to the Board.

2) Appellate review shall consist only of a review of the written record and consideration of appellate argument by both sides. The scope of appellate review shall include a review of the record to determine if the evidence presented to the Adjudication Committee is sufficient to sustain its findings of fact, and a review of compliance with the procedural requirements.

3) The employee shall decide whether the appellate hearing will be closed or open to the public.

4) Appellate argument shall be heard in the following order: appellant opening argument; appellee argument and rebuttal; appellant closing rebuttal.

Appellate Decision

The Board of Regents shall issue a written decision within forty-five (45) business days after the appellant review hearing is completed and shall cause copies thereof to be delivered to both parties and to the Adjudication Committee.

The Board may sustain, modify or reverse the decision of the Adjudication Committee. The decision of the Board is final there is no further right of administrative appeal. If the Board revokes the adverse action taken, the employee's personnel records shall be cleared of all reference to the adverse action and all documents relating thereto shall be submitted to the Board for disposal.



GCC

GUAM COMMUNITY COLLEGE

Kolehon Kumuniddat Guáhan

Accredited by the
Western Association of
Schools and Colleges

BOARD OF TRUSTEES

April 24, 1995

Dr. Richard G. Tennesen
Chairman

Jose T. Munoz
Vice-Chairman

Atanacio T. Diaz
Secretary

Marcus P. Magallanes
Treasurer

Dr. Lorraine C. Yamashita
Member

Esther L. Cruz
Member

Frank L. Leon Guerrero
Student Member

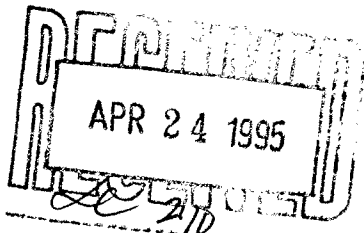
John T. Cruz
Executive Officer

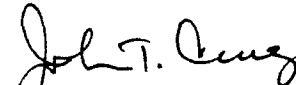
Bill 225, An Act to amend Title 14 and 17 Guam Code Annotated pertaining to the academic personnel autonomy of the Guam Community College, the University of Guam, the Civil Service Commission, the Unified Pay System and the other related matters.

The Guam Community College supports the passage of Bill 225.

In July of last year, Public Law 22-137 was enacted, restoring the authority of the Board of Trustees over academic personnel of the College. This authority is essential to the accreditation of the College. Bill 225 would further clarify and delineate that authority of the boards of higher education for Guam, ensuring that each Board will have the power necessary for effective management of our College and University. The amendments to current law contained in Bill 225 are recommended by the Civil Service Commission to ensure that the powers of the Boards and of the Commission are clearly and appropriately allocated among affected classes of employees at the College and University.

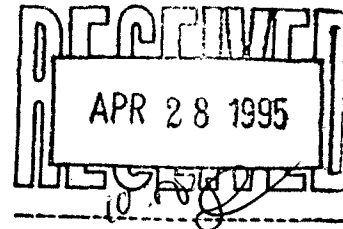
It is our hope that the passage of Bill 225 will put to rest, finally, the conflict about the status of employees at the College and University. We urge the Legislature to reaffirm its commitment to preserving the accredited status of our institutions of higher education by adopting this measure and encourage this committee to recommend its passage to them.



for 
RICHARD G. TENNESSEN, Ed.D.
Chairman

**GUAM COMMUNITY COLLEGE
Business & Finance Division
Personnel Services**

April 26, 1995



Memorandum

To: President

From: Personnel Administrator

Subject: Adverse Action/Due Process Procedure

The Agreement between the GCC Board of Trustees and the Guam Federation of Teachers for Faculty provides due process for disciplinary actions that include suspension without pay, demotion, and dismissal as contained in Article XIII. Due process for other GCC employees are stipulated in the Personnel Rules and Regulations.

The minimum "root requirements" of due process under the U.S. Constitution mandate that employees receive notice of the allegations against them and an opportunity for a hearing before being deprived of any significant property interest. This is also locally mandated.

In initiating adverse action, employees at Guam Community College must be informed of the charges against them. Such notice shall include an explanation of the basis for the charge. It also sets the time and place for a prior hearing and allows an employee a reasonable period to formulate a response to the charges. Employees are informed of the procedural and appeals processes and of their possible consequences. Since proper notice is required, notice to the employee is in writing.

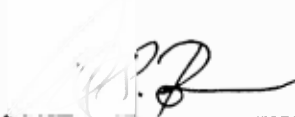
GCC provides its employees with an opportunity for a hearing before depriving them of a job-related interest. Such hearing (prior and subsequent) is provided at two stages: first the employee's right to respond to the proposed charges, and second the right to appeal to the Board of Trustees. The purpose of these hearings are to determine whether there are reasonable grounds to believe that the charges are true and that they support the proposed employment action and whether management's final action was appropriate. It functions as checks against mistaken decisions.

Due process for faculty as contained the Agreement is as follows:

1. Notice of Proposed Adverse Action;
2. Employee's Right to Respond;

3. Final Notice of Adverse Action;
4. Right to Appeal to the Board of Trustees.

The Adverse Action Procedure is consistent with local statutes.



ANTHONY P. BENAVENTE



**ACCREDITING
COMMISSION
for COMMUNITY and
JUNIOR COLLEGES**

P.O. BOX 70
APTOS, CA 95001
TELEPHONE: (408) 688-7575
FAX: (408) 688-1841

DELIVERY ADDRESS:
3060 VALENCIA AVENUE
APTOS, CA 95003

Chairperson
CARMEN MALDONADO DECKER
Professor
Cypress College

Vice Chairperson
CONSTANCE M. CARROLL
President
San Diego Mesa College

Executive Director
JOHN C. PETERSEN
Aptos Office

Associate Director
JUDITH WATKINS
Aptos Office

Administrative Assistant
SUE LUNDQUIST
Aptos Office

**RECEIVED
PRESIDENT'S OFFICE**

DATE: 8-10-94
TIME: _____
INITIAL: Amy

August 2, 1994

John T. Cruz
President
Guam Community College
P.O. Box 23069
Guam Main Facility
Guam, M.I. 96921

FAX: 671 / 734-1003

Dear President Cruz:

I am pleased to inform you that the Accrediting Commission has acted to remove the probationary status that was imposed at the June 13-14, 1994 meeting. Removal of probation is effective today.

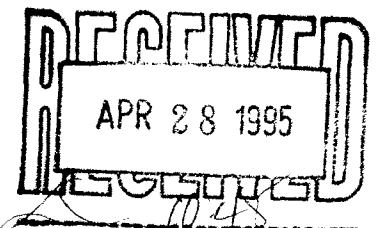
Guam Community College, its leaders and supporters are to be congratulated on the expeditious manner in which a threat to the integrity of the College was removed. The rapid action by the Government of Guam to restore the authority of higher education boards demonstrates admirable support and good will, much appreciated by the Western Association of Schools and Colleges.

The self study completed by the College in preparation for the Spring 1994 evaluation visit was a quality effort. Guam Community College is clearly moving forward.

Sincerely,


John C. Petersen

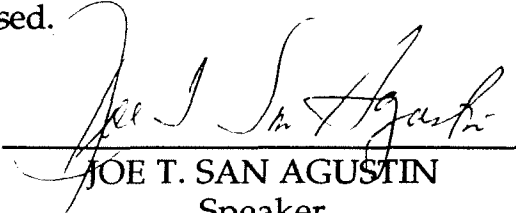
Copy: GCC Board of Trustees



TWENTY-SECOND GUAM LEGISLATURE
1994 (SECOND) Regular Session


CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 853 (LS), "AN ACT TO AMEND §6103 OF TITLE 4, GUAM CODE ANNOTATED, TO MAINTAIN THE ACCREDITATION OF THE GUAM COMMUNITY COLLEGE AND THE UNIVERSITY OF GUAM BY GIVING THEIR RESPECTIVE BOARDS FULL AUTHORITY OVER THEIR RESPECTIVE ACADEMIC STAFFS AND ADMINISTRATIVE OFFICERS; TO AMEND §3106 OF TITLE 17, GUAM CODE ANNOTATED, TO EXTEND THE TIME FOR FILING DECLARATIONS FOR CANDIDACY TO THE ELECTED SCHOOL BOARD; TO ADD SUBSECTION (d) TO §3104 OF TITLE 17, GUAM CODE ANNOTATED, TO REQUIRE THAT PERSONS RUNNING FOR ELECTED SCHOOL BOARD POSITIONS BE U. S. CITIZENS AND RESIDENTS OF GUAM; AND TO APPROPRIATE FUNDS TO OPEN THE OFFICE OF PUBLIC AUDITOR," was on the 6th day of July, 1994, duly and regularly passed.



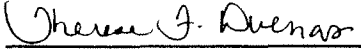
JOE T. SAN AGUSTIN
Speaker

Attested:



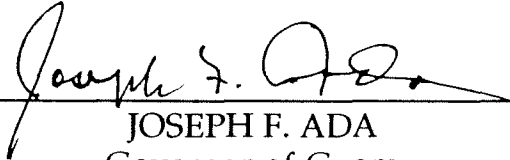
PILAR C. LUJAN
Senator and Legislative Secretary

This Act was received by the Governor this 11th day of July
1994, at 4:20 o'clock P.M.



Theresa J. Duenas
Assistant Staff Officer
Governor's Office

APPROVED:



JOSEPH F. ADA
Governor of Guam

TWENTY-SECOND GUAM LEGISLATURE
1994 (SECOND) Regular Session

Bill No. 853 (LS)

As substituted by the author, and
as further substituted by the
Committee on Education.

Introduced by:

M. Z. Bordallo
C. T. C. Gutierrez
T. C. Ada
H. D. Dierking
D. Parkinson
J. P. Aguon
E. P. Arriola
P. C. Lujan
T. S. Nelson
V. C. Pangelinan
E. D. Reyes
J. T. San Agustin
F. E. Santos
D. L. G. Shimizu
J. G. Bamba
A. C. Blaz
D. F. Brooks
F. P. Camacho
M. D. A. Manibusan
T. V. C. Tanaka
A. R. Unpingco

AN ACT TO AMEND §6103 OF TITLE 4, GUAM CODE ANNOTATED, TO MAINTAIN THE ACCREDITATION OF THE GUAM COMMUNITY COLLEGE AND THE UNIVERSITY OF GUAM BY GIVING THEIR RESPECTIVE BOARDS FULL AUTHORITY OVER THEIR RESPECTIVE ACADEMIC STAFFS AND ADMINISTRATIVE OFFICERS; TO AMEND §3106 OF TITLE 17, GUAM CODE ANNOTATED, TO EXTEND THE TIME FOR FILING DECLARATIONS FOR CANDIDACY TO

THE ELECTED SCHOOL BOARD; TO ADD SUBSECTION (d) TO §3104 OF TITLE 17, GUAM CODE ANNOTATED, TO REQUIRE THAT PERSONS RUNNING FOR ELECTED SCHOOL BOARD POSITIONS BE U. S. CITIZENS AND RESIDENTS OF GUAM; AND TO APPROPRIATE FUNDS TO OPEN THE OFFICE OF PUBLIC AUDITOR.

1 **BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:**

2 **Section 1.** §6103 of Title 4, Guam Code Annotated is hereby amended
3 as follows:

4 "§6103. **Scope.** Unless otherwise specified, this Chapter shall
5 apply to all positions, officers and employees, classified and
6 unclassified, inclusive of the Executive and Judicial Branches,
7 autonomous and semi-autonomous agencies, public corporations,
8 and other public instrumentalities of the government of Guam;
9 **provided,** that the provisions of this Chapter do not apply to
10 academic and administrative positions of the Guam Community
11 College or of the University of Guam, and the Board of Trustees of
12 the Guam Community College and the Board of Regents of the
13 University of Guam, respectively, shall have the exclusive authority
14 to hire and dismiss, and to set the selection, qualification,
15 classification, compensation, tenure, and promotion criteria for the
16 academic personnel and administrative officers of their respective
17 institutions. For the purpose of this section, an "administrative
18 officer" is defined as one who holds any of the following
19 positions: President or vice president; associate or assistant dean;
20 associate or assistant director; dean or director; associate to the
21 president or vice president."

1 **Section 2. Prospective effect only.** The amendment made to the Civil
2 Service law as set out in Section 1 of this Act is only prospective in effect, and
3 shall not affect any Civil Service Commission or court proceedings arising
4 before the effective date of this Act.

5 **Section 3.** Subsection (d) is hereby added to §3104, Title 17, Guam Code
6 Annotated, to read as follows:

7 "(d) Each candidate for the Board shall be a bona fide resident
8 and a registered voter of Guam."

9 **Section 4.** §3106 of Title 17, Guam Code Annotated, is hereby amended
10 to read as follows:

11 "**§3106. Nomination for election to the Board.** Nomination of
12 candidates for election to the Board shall be made by petition on
13 forms prescribed by the Election Commission and initiated by the
14 candidate. In order for a person's name to be placed on the ballot for
15 election to the Board, such petition must be signed by not less than
16 one hundred fifty (150) persons registered to vote in Guam and must
17 be filed with the Election Commission not more than seventy (70)
18 days nor less than fifty-five (55) days prior to the election for such
19 members. No defect in any nominating petition presented to the
20 Election Commission shall prevent the filing of another petition
21 which is presented within the allowed filing period. Such petitions
22 shall be maintained on file with the Commission for not less than ten
23 (10) years."

24 **Section 5. Appropriation.** Fifty Thousand Dollars (\$50,000) are
25 appropriated from the General Fund for the establishment of the Office of
26 Public Auditor.



GOVERNMENT OF GUAM

CIVIL SERVICE COMMISSION KUMISION I SETBISION SIBIT

Century Plaza, 2nd Floor, Upper Tamuning
P.O. Box 3156, Agana, Guam 96910

Tel: (671) 649-4272, 649-7955/57 • Fax: (671) 649-1272



25 APRIL 1995

CSC NO. 95-537

SENATOR JUDITH WON PAT-BORJA

Chairperson

Committee on Education

Twenty Third Guam Legislature

RE: BILL NO. 225

Dear Senator Won Pat-Borja and Members of the Committee:

Thank you for giving us the opportunity to comment on Bill No. 225, an act to amend Titles 4 and 17 of the Guam Code Annotated regarding the autonomy of Guam Community College and the University of Guam.

The proposed legislation is patterned after the draft bill negotiated and developed jointly by the Guam Community College, the University of Guam, and the Civil Service Commission. A copy of the joint draft bill is attached for your information and reference.

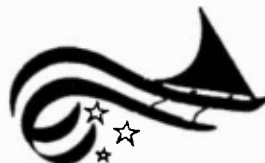
In conclusion, the Civil Service Commission supports the intent and language of Bill No. 225.

Sincerely,


ELOY P. HARA
Executive Director

Attachment(s)

cc: Legislative Review Committee (LRC)
CSC Board of Commissioners
Administrative Counsel
Personnel Mgmt Administrator



Commonwealth Now!

CSC/GCC/UOG PROPOSAL

TWENTY-SECOND GUAM LEGISLATURE
1994 (Second) Regular Session

Bill No. _____

Sponsor(s) _____

AN ACT AMENDING TITLES 4 AND 17 OF THE GUAM CODE ANNOTATED PERTAINING TO ACADEMIC PERSONNEL, AUTONOMY OF THE GUAM COMMUNITY COLLEGE AND THE UNIVERSITY OF GUAM, THE CIVIL SERVICE COMMISSION, THE UNIFIED PAY SYSTEM, AND OTHER RELATED MATTERS.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

SECTION 1. The opening sentence of 4 GCA §4102 is amended to read:

"§4102. Classified and Unclassified Services. All offices and employment in the Government of Guam, except for employment as academic personnel of the Guam Community College (GCC) and the University of Guam (UOG), as the term 'academic personnel' is defined in enabling laws of GCC and UOG, shall be divided into classified and unclassified services as follows:".

SECTION 2. A new paragraph (c) is added to 4 GCA §4102 to read:

"(c). Notwithstanding any law or rule to the contrary, employment as academic personnel of the Guam Community College and the University of Guam shall be governed by rules adopted by the Board of Trustees and the Board of

Regents, respectively, in order to provide academic freedom and autonomy to the institutions, as intended by Public Law 14-77 as to GCC, and Public Law 19-40 as to UOG."

SECTION 3. The opening paragraph of 4 GCA §4105 is amended to read:

"§4105. Departmental Rules. Rules subject to criteria established by this chapter governing the selection, promotion, performance, evaluation, demotion, suspension and other disciplinary action of classified employees shall be adopted by the Board of Directors for the Guam Airport Authority, Board of Directors for Guam Economic Development Authority, Board of Directors for Guam Housing Corporation, Board of Commissioners for Guam Housing and Urban Renewal Authority, Judicial Council, the Board of Directors of the Guam Telephone Authority, the Board of Directors of the Port Authority of Guam, the Board of directors of the Guam Power Authority, the Board of Education, the Board of Regents of the University of Guam, the Guam Community College Board of Trustees, the Board of Trustees of the Guam Memorial Hospital Authority and by the Public Utility Agency of Guam with respect to personnel matters within their respective branches, agencies or departments, and by the Director of Administration as to all other executive branch

employment. Such rules shall, to the extent practicable, provide standard conditions for entry into and the other matters concerning the government service. The personnel rules adopted for University of Guam, Guam Community College, Guam Airport Authority, Guam Telephone Authority, Port Authority of Guam, Guam Power Authority, Department of Education, Guam Memorial Hospital Authority, the Director of Administration and by the Public Utility Agency of Guam shall require that all their classified employee appeals be heard by the Civil Service Commission. The personnel rules adopted for the Judiciary Branch by the Judicial Council shall require that all their classified employee appeals be heard by the Council. Personnel rules governing any other Executive Branch entities may require that their classified employee appeals be heard by the Civil Service Commission. Rules concerning the Executive Branch shall take effect upon their approval by the Civil Service Commission, by Executive Order of the Governor and the filing with the Legislative Secretary. Rules concerning the Judicial Council shall take effect upon adoption by the Judicial Council of Guam."

SECTION 4. The opening paragraph of 4 GCA §4106 is amended to read:

"§4106. Personnel Rules. The personnel rules provided

for in §4105 of this Chapter shall provide procedures for the employment of persons on the basis of merit, and shall include an orderly and systematic method of recruitment and the establishment of qualified lists for employment purposes. They shall provide for a probationary period of not less than three (3) nor more than twelve (12) months for all original appointments, ~~{except for original academic appointments at the University of Guam or the Guam Community College,}~~ during which time the employee may be dismissed at any time without right of appeal and without right of being given reasons or charges in writing. Specific procedures and policies shall be included, governing the following:".

SECTION 5. A new subsection (i) is added to 4 GCA §4403 to read:

"(i). The jurisdiction of the Civil Service Commission shall not extend to academic personnel of the Guam Community College and the University of Guam, except upon mutual consent by the governing board of the respective institutions and the Commission."

SECTION 6. 4 GCA §6102 is amended to read:

"§6102. Purpose. The purpose of this Chapter is to provide a uniform and unified system of position classification and compensation for the Executive and

Judicial Branches of the Government of Guam. The only exception is for academic personnel of the Guam Community College and the University of Guam which, as institutions of higher education, must adhere to accreditation standards established by the appropriate accrediting bodies. The term 'academic personnel' refers to the definition provided in Sections 31106 and 16112 of Title 17 of the Guam Code Annotated governing academic personnel of Guam Community College and the University of Guam.

SECTION 7. 4 GCA §6103 is amended to read:

§6103. Scope. Unless otherwise specified, this Chapter shall apply to all positions, officers, and employees, classified and unclassified, as the case may be, inclusive of the Executive and Judicial Branches, autonomous and semi-autonomous agencies, public corporations, and other instrumentalities of the Government of Guam. The provisions of this Chapter do not apply to academic personnel of the Guam Community College and the University of Guam. The employment and terms and conditions of employment of academic personnel shall be exclusively governed by provisions of the enabling laws of Guam Community College and the University of Guam pertaining to academic personnel, as set forth in Title 17 of the Guam Code Annotated.

SECTION 8. 17 GCA §31106 is amended to read:

"§31106. Personnel Rules: "Academic Personnel ~~{and Administrative Officers}~~. Rules and regulations governing selection, compensation, promotion, performance evaluation and disciplinary action and other terms and conditions of employment affecting academic personnel shall be adopted by the Board. ~~{in accordance with Title 4 Guam Code Annotated §§4104 and 4105}~~ Such rules and regulations shall provide for the employment of persons on the basis of merit, and shall include an orderly and systematic method of recruitment and the establishment of a list of qualified applicants from employment purposes. Academic personnel are defined as faculty and administrators. For the purposes of this Section, an ~~{administrative officer}~~ 'administrator' is defined as one who holds any of the following positions: President or Vice-President, Assistant or Associate to the President or Vice President, Dean or Director, Associate or Assistant Director, ~~[Associate or Assistant Dean, Associate or Assistant Director, Dean or Director, Assistant to the Provost or Vice President,]~~ provided, however, that nothing in this Chapter shall be construed as preventing the Board from establishing other administrator ~~{administrative officer}~~ positions or abolishing any of the existing positions indicated herein and further provided, however, that nothing in this

section nor in any other section of this Chapter involving the outlay of public funds shall become effective unless funds therefore shall have been provided in the College's annual budget. The term 'administrator' does not include positions within the purview of the Civil Service Commission under Chapter 6 of Title 4 of the Guam Code Annotated or other applicable laws.

SECTION 9. Subsection (a) of 17 GCA §31113 is amended to read:

"(a). With the exception of ~~{the President and the Private Executive Secretary who shall be in the unclassified service,}~~ academic personnel and unclassified employees under 4 GCA §§4102 and 21031, all other employees of the College shall be classified employees.

The employment of classified employees shall be governed by Title 4 of the Guam Code Annotated and other applicable laws.

The President shall serve the College on a contractual basis, and notwithstanding any other provision of law, shall be entitled to all benefits of the Government of Guam given to employees including being

a member of the Retirement Fund. The term of the contract of employment between the President and the Board shall not be for longer than six (6) years, which term may be renewable any number of times."

SECTION 10. 17 GCA §16112 is amended to read:

"§16112. Personnel Rules: Academic Personnel ~~{and Administrative Officers}~~. Rules and regulations governing selection, compensation, promotion, performance evaluation, and disciplinary action and other terms and conditions of employment affecting academic personnel ~~{and administrative officers}~~ shall be adopted by the Board ~~{in accordance with Title 4 Guam Code Annotated §§4104 and 4105}~~. Such rules and regulations shall provide for the employment of persons on the basis of merit, and shall include an orderly and systematic method of recruitment, and the establishment of a list of qualified applicants for employment purposes. Academic personnel are defined as faculty and administrators. For the purposes of this Section, an 'administrator' ~~{'administrative officer'}~~ is defined as one who holds any of the following positions: President or Vice President, Assistant or Associate to the President or Vice-President, Dean or Director, Associate or Assistant Dean, Associate or Assistant Director; ~~{Associate or Assistant Dean; Associate or Assistant Director; Dean or~~

~~Director, Assistant to the President or Vice President,]~~
provided, however, that nothing in this Chapter shall be construed as preventing the Board from establishing other administrator ~~{administrative officer}~~ positions or abolishing any of the existing positions indicated herein and further provided, however, that nothing in this Section nor in any other section of this Chapter involving the outlay of public funds shall become effective unless funds therefore shall have been provided in the University's annual budget. The term 'administrator' does not include positions within the purview of the Civil Service Commission under Chapter 6 of Title 4 of the Guam Code Annotated or other applicable laws.

Faculty ~~[Academic personnel]~~ shall have the right to form, join, assist and participate in the management of employee organizations of their choice and to act as organization representative or to refrain from any such activity, without interference, restraint, coercion or discrimination and without fear of penalty or reprisal; provided that, employees shall not participate in the management of an organization or act as an organization representative, where such activity would result in a conflict of interest or otherwise be incompatible with law or with the employee's official duties.

Within ninety (90) days of the effective date of

this Act, the Board, in cooperative consultation with the recognized bargaining agent, shall develop and adopt reasonable rules for the settlement of collective bargaining disputes, including access to impartial mediation and arbitration.

SECTION 11. The opening paragraph of 17 GCA §16113 is amended to read:

"§16113. Classified Employees. [~~Non-academic Personnel.~~] Notwithstanding any law, rule, or regulation to the contrary, all non-academic personnel, with the exception of unclassified employees under 4 GCA §§4102 and 21031, shall be classified. [~~and~~] Matters relating to employment of [~~non-academic~~] classified personnel shall be governed by and in accordance with Title 4 of the Guam Code Annotated and other [~~personnel laws~~] applicable [~~in Guam~~] laws."

SECTION 12. Section 31113(c) is repealed.

Committee on Education

Public Hearing
Tuesday, April 25, 1995

AGENDA

2:30 pm

Bill No. 100. An Act to Add a New Chapter 47 to Title 17, Guam Code Annotated, Relative to Establishing and Designating "Safe School Zones" throughout Guam's Schools, through Prohibiting the Possession or Use of Firearms and Weapons within such Specified Areas Immediately Surrounding the Schools, Further Insuring the Safety of School Children and Personnel; and Imposing an Expulsion Policy of No Less Than One (1) Year for a Student who is determined to have brought a Weapon to School, in Compliance with the Federal "Gun Free School Act of 1994", and Insuring that other Alternative Educational Services is Provided to such Student in an Alternative setting; this Provision shall hereby be designated as the "**Safe School Zone Act of 1995**".

Bill No. 225. An Act to Amend Titles 14 and 17, Guam Code Annotated pertaining to the Academic Personnel, Autonomy of the Guam Community College, The University of Guam, the Civil Service Commission, the Unified Pay System and other related matters.

MISCELLANEOUS

Discussion on the various Student Financial Aid programs at the University of Guam.



COMMITTEE ON RULES

Twenty-Third Guam Legislature
155 Hesler St., Agana, Guam 96910

May 11, 1995

MEMORANDUM

TO: Chairman, Committee on Education

FROM: Chairman, Committee on Rules

SUBJECT: Referral - Bill No. 225

The above Bill is referred to your Committee as the principal committee. Please note that the referral is subject to ratification by the Committee on Rules at its next meeting. It is recommended you schedule a public hearing at your earliest convenience.



SONNY LUJAN ORSINI

Attachment

Twenty-Third Guam Legislature Committee on Education

Public Hearing on: Tuesday at 2:30 p.m.

Date: April 25, 1995

BILL NO. 225: AN ACT TO AMEND TITLES 14 AND 17, GUAM CODE ANNOTATED PERTAINING TO THE ACADEMIC PERSONNEL AUTONOMY OF THE GUAM COMMUNITY COLLEGE, THE UNIVERSITY OF GUAM, THE CIVIL SERVICE COMMISSION, THE UNIFIED PAY SYSTEM AND OTHER RELATED MATTERS.

Sign Up Sheet

NAME	REPRESENTING:	ORAL	WRITTEN	BOTH	FOR	AGAINST
J. V. Tavares	R of Regents				X	
Jerry E. Hogan	R of Regents	X			X	
ARWARD HEMESING	N.O.G. SGT.	X		X		
Richard R. Matheny	N.O.G.	X				X
SANDRA LYNUCH	UOG	X				X
Eloy HERRA	OSCE	X	X		X	
LUIS SU PEREZ	DDE-GRSS		X			(NO POSITION)
John T. Cruz	Gce	X	X		X	
John Salas	UDG	X	X		X	
Richard T. Ansesen	Gce		X		X	

**GUAM FEDERATION OF TEACHERS
UOG FACULTY UNION**

MEMORANDUM

June 6, 1995

The Honorable Hope A. Cristobal
Senator, Twenty-Third Guam Legislature
155 Hessler Street, Agana, Guam.

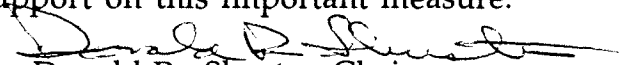
Dear Madam Senator:

The Executive Board of the Guam Federation of Teachers/University of Guam Faculty Union is in complete agreement with Bill 225 (the UOG/GCC Autonomy Bill). We urge all the Guam Senators who voted for the original bill to also vote to override the Acting Governor's veto.

The bill as originally passed provides the University of Guam autonomy in the development and adoption of personnel rules and regulations for University faculty members, a standard practice among accredited institutions of higher learning in the United States. These rules and regulations are negotiated between the UOG Board of Regents and the GFT/UOG faculty Union and thus represent a joint agreement between the University Administration and the Faculty of the University. The faculty itself is involved in all hiring, promotion, tenure, and layoff procedures under the UOG personnel rules and regulations and our collective bargaining agreement. Also, these rules and regulations contain an adverse action procedure that assures due process. Appropriate grievance procedures in our agreement protect the rights of any faculty member who feel that he/she has been unfairly treated.

A most important aspect of Bill 225 is that it insulates the processes of faculty hiring, firing, and promotion from political pressures, thus preserving the tradition of academic freedom so highly valued in academia. It is this aspect of the bill that addresses the concerns of the Western Association of Schools and Colleges (WASC), the body that determines the accreditation status of the University of Guam.

As the duly elected representatives of the approximately 225 faculty members of the University of Guam, we earnestly request your vote to override the veto and enact Bill 225. Our sincerest **Dangkulu Na Si Yu'os Ma'ase** for your support on this important measure.


Dr. Donald R. Shuster, Chair
GFT/UOG Faculty Union

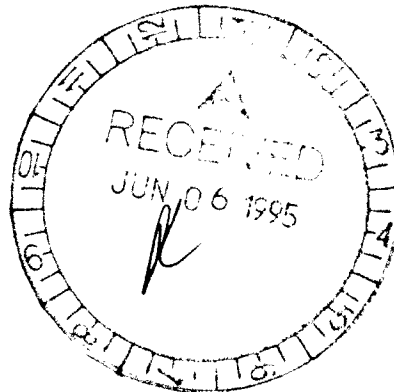
Facsimile Cover Sheet

To: Senator Ben Pangelinan
Company: Guam Legislature
Phone: 556
Fax: 472-3665

From: Deane Neubauer
Company:
Phone: 808-956-8092
Fax:

Date: 06/05/95
Pages including this
cover page: 11

Comments:



ARTICLE 19DISCIPLINARY ACTION PROCEDUREScope of Disciplinary Action

- 19.1 Sanctions imposed in a disciplinary action shall be limited to dismissal, demotion, or suspension without pay.
- 19.2 Disciplinary action shall not include denial of appointment, separation during a temporary appointment, rejection during probation, denial of tenure, denial of promotion, reappointment, reassignment, transfer, layoff, reprimand, temporary suspension with pay, or any other personnel action or recommendation or decision except those in provision 19.1 of this Article. Recommendations or decisions in the appointment, reappointment, probation, tenure, promotion, reassignment, transfer, layoff, reprimand, or temporary suspension processes are not disciplinary actions and are not subject to the disciplinary action procedures of this Agreement.

Notice of Pending Dismissal, Demotion or Suspension without Pay

- 19.3 The President shall initiate the disciplinary action process by written notice of pending disciplinary action served in person or served by certified mail return receipt requested to the affected faculty unit employee. The faculty unit employee shall be informed in this notice that the sanction specified in the notice shall be imposed unless, following review of the matter, the President notifies the faculty unit employee otherwise.
- 19.4 The notice of pending disciplinary action shall include:
- a. the cause(s) for disciplinary action;
 - b. the pending sanction;
 - c. the proposed effective date of the pending sanction;
 - d. the appropriate administrator designated by the President to review the matter;
 - e. the right of the faculty unit employee to appeal pending disciplinary action and to have the matter heard; and
 - f. a copy of this Article.

Acceptance of Disciplinary Action

- 19.5 The faculty unit employee may accept the pending disciplinary action at any time by filing a letter of acceptance of the disciplinary action with the President. An acceptance of disciplinary action shall result in the imposition of the pending sanction, but is not an admission by the faculty unit employee to the allegations of misconduct. Failure of a faculty unit employee to appeal a pending disciplinary action pursuant to this Article shall result in imposition of the pending sanction.

Review of Pending Disciplinary Action

- 19.6 Within seven (7) days of receipt of the notice of pending disciplinary action and at a time and place mutually acceptable to the affected faculty unit employee and the appropriate administrator, the faculty unit employee and a CFA representative, if any, may meet with the appropriate administrator designated by the President and his/her representative (if any) to review the notice, the reason(s), and the evidence. The faculty unit employee may respond orally or in writing. Such a written response (if any) shall be directed to the appropriate administrator within seven (7) days of the meeting or within fourteen (14) days of the notice of pending disciplinary action in the cases when no meeting takes place. A copy of such written response may be provided to the President. The appropriate administrator designated by the President shall not have been directly involved in the initiation of the pending disciplinary action.
- 19.7 Based upon the review and the response, if any, of the affected faculty unit employee, the appropriate administrator shall issue a report to the President within five (5) days of the response of the affected faculty unit employee or within fifteen (15) days of the notice of pending disciplinary action in cases when no response is submitted. The President shall consider the report of the appropriate administrator.
- 19.8 Within five (5) days of receipt of the report, the President shall notify the affected faculty unit employee of his/her decision to rescind, modify, or affirm the pending disciplinary action. The effective date of such disciplinary action shall be included in this notification. Such an effective date shall be at least twelve (12) days from the date of this notification except as provided in provisions 19.11a and 19.11b. This notice shall be the notice issued by the

Disciplinary Action Appeal Process

- 19.9 A faculty unit employee may appeal a pending disciplinary action by selecting one of the two following appeal options:
- a. Within ten (10) days of receipt of the notification pursuant to provision 19.8 above, a faculty unit employee may file a written notice of appeal with the President in accordance with the Disciplinary Action Arbitration Procedure, provisions 19.12 - 19.20 below. Such a notice of appeal shall include the name and title of the CFA representative. Such notice shall be accompanied by a detailed statement of the disputed facts and defenses to the allegation of misconduct.
 - b. Within ten (10) days of receipt of the notification pursuant to provision 19.8 above, a faculty unit employee may file a written notice of appeal with the President indicating an intent to request a hearing of the matter by the State Personnel Board as provided in Section 89539 of the Education Code. Such notice shall be accompanied by a detailed statement of the disputed facts and defenses to the allegation of misconduct. A request for a hearing by the State Personnel Board must be filed with the State Personnel Board within twenty (20) days of receipt of the notification pursuant to provision 19.8 above.
- 19.10 Filing the notice of one (1) of the two (2) disciplinary action appeal options pursuant to provision 19.9 above shall constitute a final and binding decision by the affected faculty unit employee.

Imposition of Sanction

- 19.11 a. If, pursuant to provision 19.9a, the affected faculty unit employee notifies the President of an appeal involving the sanction of suspension without pay for thirty (30) days or less, the CFA and the CSU may agree that the sanction shall be held in abeyance pending a final arbitration award and its implementation.
- b. If, pursuant to provision 19.9a, the affected faculty unit employee notifies the President of an appeal involving the sanction of suspension without pay for more than thirty (30) days, demotion, or

dismissal, the CSU shall hold the sanction in abeyance pending a final arbitration award and its implementation.

Disciplinary Action Arbitration Procedure

- 19.12 No later than ten (10) days after the decision to submit the pending disciplinary action to disciplinary action arbitration, CFA and the Office of the Chancellor shall agree on a mutually acceptable arbitrator or shall jointly request the American Arbitration Association to supply a list of arbitrators pursuant to its rule.
- 19.13 Upon receipt of the names of proposed arbitrators, the parties shall alternately strike names from the list until one (1) person is ultimately designated as the arbitrator. The decision as to which party strikes first shall be determined by lot.
- 19.14 It shall be the function of the arbitrator to determine whether cause for disciplinary action existed and to affirm, modify, or deny the sanction or pending sanction.
- 19.15 Within ten (10) days from the date the hearing is closed, the arbitrator shall issue to the parties a written award stating the decision on the issue(s) submitted. Copies of the award shall be provided to the parties. The award shall be final and binding on the parties.
- 19.16 The arbitrator shall provide a complete written decision setting forth his/her findings, reasons, and conclusions on the issue(s) submitted no later than thirty (30) days after the award is issued. Copies of the complete decision shall be provided to the parties.
- 19.17 The Voluntary Labor Arbitration Rules of the American Arbitration Association shall apply except when the specific language of this Agreement is in conflict, in which case the specific language of the Agreement shall apply.
- 19.18 The arbitrator's award shall be based solely upon the evidence and arguments appropriately presented by the parties in the hearing and upon any post-hearing briefs by the parties.
- 19.19 The arbitrator shall have no power to alter, add to, detract from, or amend the provisions of this Agreement. The arbitrator shall be without power to make an award which requires the commission of an act prohibited by law, or an omission of an act required by

law, or which is violative of the specific terms and conditions of this Agreement.

- 19.20 The award of the arbitrator may include back pay provided, however, that any back pay award shall be less the difference of any unemployment compensation received.
- 19.21 Each party shall bear the expenses of preparing and presenting its own case. The affected faculty unit employee, the CFA representative, if any, and witnesses who are CSU employees called before the arbitrator shall be provided with release time for the official hearing. The cost for the services of the arbitrator shall be borne by the CSU.

Pre-Sanction Suspension

- 19.22 When the President determines it is in the best interests of the campus, he/she may suspend with pay a faculty unit employee who has been served with a Notice of Pending Dismissal, Demotion, Suspension Without Pay pursuant to provision 19.3 of this Article. Such a suspension may continue until imposition of sanction or a final award pursuant to this Article or pursuant to Education Code 89539.
- 19.23 The affected faculty unit employee shall be notified in writing of such a suspension with pay. The President may terminate such a suspension at any time. The affected faculty unit employee shall be notified in writing of such a termination.

Pre-Sanction Reassignment

- 19.24 When the President determines it is in the best interests of the campus, he/she may reassign a faculty unit employee who has been served with a Notice of Dismissal, Demotion, Suspension Without Pay pursuant to provision 19.3 of this Article. Such a reassignment shall be without a change in salary. Such a reassignment may continue until imposition of sanction or a final award pursuant to this Article or pursuant to Education Code 89539. The affected faculty unit employee shall receive written notification of reassignment and a written notification of termination of reassignment, when appropriate. Such a reassignment shall not be considered a punitive reassignment.

- b. Upon request of the grievant during the postponement period(s), the President shall arrange an informal conference between the appropriate administrator and the grievant.
- c. The grievant may at any time terminate the postponement period by giving written notice to the President that the grievant wishes to proceed with the Step 1 meeting provided for below. If the postponement period, or any extension thereof, expires without the filing of a request for a further postponement the grievance shall proceed to formal step 1.
- d. The grievant shall have the right to representation by CFA during attempts at informal resolution of the grievance.
- e. An effort at informal resolution shall be mandatory for all faculty status matters as defined in Article 10.2. At the completion of a mandatory twenty-five (25) day period, or agreed-upon extensions thereof, unresolved faculty status matters shall be processed as provided for in provision 10.8.

- 10.6 Within fourteen (14) days after the Level I filing, the President shall hold a meeting with the grievant and the grievant's representative, if any, at a mutually acceptable time and location. The President shall respond in writing to the grievant no later than fourteen (14) days after the Level I meeting. Such response shall include a statement of reasons for any denial of the grievance.
- 10.7 If a grievance pertaining to a faculty status matter is not resolved to the grievant's satisfaction through informal efforts, the grievant may, no later than twenty-eight (28) days after receipt of the negative decision, request peer review or request of the CFA that the faculty status grievance be submitted to arbitration.

Faculty Status - Peer Review/Arbitration

- 10.8 If the dispute presented pursuant to provision 10.4 above is not resolved and is a faculty status matter as defined in provision 10.2, the employee may elect either peer review of his/her complaint as described in provision 10.9 - 10.14 below, or arbitration as described in provision 10.18 - 10.19 below.
- a. If the employee desires to elect arbitration he/she may request of the CFA that the faculty status matter be submitted to arbitration. Such a request

conclusion of the informal resolution period. No later than twenty-one (21) days after conclusion of the formal resolution period, the CFA may by written notice to the Office of the Chancellor submit the grievance to arbitration. In the event CFA does not submit a demand for arbitration, the employee may request peer review no later than seven (7) days from receipt of the CFA decision denying arbitration.

- b. If the employee initially desires to elect peer review he/she may request peer review no later than twenty-eight (28) days from receipt of the negative decision. This election of options shall be final and binding.

Peer Review

- 10.9 The President shall establish a panel consisting of all full-time tenured employees who have served on committees that made recommendations on matters of appointment, reappointment, promotion or tenure and who have attained the rank of full professor or equivalent. No employee may be eligible for this panel if he/she has been directly involved with or a party to matters related to a complaint submitted by the employee to peer review.
- 10.10 The membership of the Peer Panel to review a specific faculty status matter shall be selected by lot from the panel established pursuant to provision 10.9 and consist of three (3) members and one (1) alternate.
- 10.11 The Peer Panel shall begin to review the faculty status matter within twenty-one (21) days of its selection by lot. The panel's review shall be limited to a consideration of the complainant's Personnel Action File; all written recommendations, rebuttals, and responses related to the faculty status matter; any written statement by the affected employee as to why his/her original review was inappropriate; and the Employer's written response to any allegations made by the affected employee. Except for presentations of the complainant and the administrator, if the administrator chooses, the peer review will be made from the documents set forth in this section.
- 10.12 The proceeding set forth in 10.11 above shall not be open to the public and shall not be a hearing.
- 10.13 No later than forty (40) days after its selection, the Peer Panel shall submit to the President and the complainant a written report of its findings and recommendations. All written materials considered by the Peer Panel shall be forwarded to the President. When the panel has complied with this section, it shall be discharged of its duties.

- 10.14 The President shall consider the Peer Panel's recommendations and all forwarded materials and, no later than fourteen (14) days after receipt of the Peer Panel's report, notify the affected employee and the Peer Panel of his/her final decision, including the reasons therefor. Notification to the employee of the President's decision concludes the peer review procedure and such decision shall not be reviewable in any forum.

Level II Appeal

- 10.15 In the event the grievance is not settled to the grievant's satisfaction at Level I, the grievant may file a Level II grievance with the Office of the Chancellor no later than twenty-one (21) days after the Level I response. The grievant shall attach a copy of the previous grievance response together with any documents presented at that level.
- 10.16 A designated individual in the Office of the Chancellor and the representative of the grievant shall schedule a conference at the Office of the Chancellor for the purpose of reviewing the matter within fourteen (14) days of the Level II filing. The designated individual in the Office of the Chancellor shall respond no later than fourteen (14) days after the conference.
- 10.17 If the grievance has not been settled at Level II, or in the case of a faculty status matter not resolved at the informal level, then within forty-two (42) days after receipt of the decision at the previous level or the expiration of the time limits for making such decision, the CFA, upon the request of the grievant, may request arbitration by giving notice to that effect, by certified mail, return receipt requested, directed to the Office of the Vice Chancellor for Faculty and Staff Relations. Representation at arbitration shall be by CFA only.

10.18 Arbitration

Unless the specific language of the Agreement is in conflict, the arbitration procedure shall be conducted in accordance with the rules of the AAA, subject to the provisions below:

- a. The parties shall meet within thirty (30) days of the execution of this Agreement to select a panel of ten (10) members to serve as arbitrators for contract grievances arising under this Agreement. Within thirty (30) days of the execution of this Agreement, the Office of General Counsel and CFA shall meet to select a panel of ten (10) members to

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Jun 21 1975 13:55 NO.020 P.12
1. Within ten (10) days from the date the hearing is closed, the arbitrator shall issue to the parties a written award stating his/her decision on the issue(s) submitted. Copies of the award shall be provided to the parties. The award shall be final and binding on the CFA, the CSU, and the employee(s) affected thereby.
 2. At the request of either party, the arbitrator shall provide a complete written rationale for his/her award including findings, reasons, and conclusions on the issue(s) submitted no later than thirty (30) days after the award is issued. Copies of this rationale for the award shall be provided to the parties.
 3. The written rationale for the award shall be considered part of the award for the purpose of appeal and the statutory period for appeal shall be considered to commence upon receipt of the rationale from the arbitrator.
- j. If an arbitrability question exists, the arbitrator shall determine the arbitrability question prior to hearing the formal presentations of the parties on the merits of the grievance.
 - k. An arbitrator's award may or may not be retroactive as the equities of each case may demand, but in no case shall an award be retroactive to a date earlier than thirty (30) days prior to the date the grievance was initially filed in accordance with this Article or the date on which the act or omission occurred.

10.19 General Provisions

- a. Wherever a time limit is provided by this Article, the participants at that level may extend the period by mutual consent in writing. However, the time limit for filing the initial grievance at Level I may only be extended by the Office of the Chancellor. It is understood that the purpose of the procedure is to resolve grievances promptly and that extensions shall be sought only for good cause.
- b. When meetings, conferences, or arbitration hearings are held under this Article, employees who are entitled to attend or who are called as witnesses by a party, shall be excused for that purpose from other duties without penalty, provided that arrangements are made for coverage of the employee's duties.

serve as arbitrators in faculty status grievances arising under this Agreement. If no agreement is reached on either panel prior to or within sixty (60) days after the execution of this Agreement, the parties shall designate the arbitrators for that category of grievances in accordance with the AAA Voluntary Labor Arbitration Rules until agreement on a panel is reached. The panel members shall be designated to serve in alphabetical rotation, provided the next panel member reached has an available hearing date within sixty (60) days of notification. The parties may add or delete panel members by mutual notification.

- b. Either party to the Agreement may preemptorily challenge one member on each panel at any time during the term of this Agreement and such panel member shall be removed from the panel and replaced with a new mutually acceptable replacement.
- c. The arbitrator's award shall be based solely upon the evidence and arguments appropriately presented by the parties in the hearing and upon any post-hearing briefs.
- d. The arbitrator shall have no authority to add to, subtract from, modify, or amend the provisions of this Agreement.
- e. The authority of an arbitrator with respect to granting appointment, reappointment, promotion, or tenure shall be as follows:

In cases involving appointment, reappointment, promotion, or tenure, the arbitrator shall recognize the importance of the decision not only to the individual in terms of his/her livelihood, but also the importance of the decision to the institution involved.

The arbitrator shall not find that an error in procedure will overturn an appointment, reappointment, promotion, or tenure decision on the basis that proper procedure has not been followed unless:

- 1. there is clear and convincing evidence of a procedural error; and
- 2. that such error was prejudicial to the decision with respect to the grievant.

The normal remedy for such a procedural error will be to remand the case to the decision level where the error occurred for reevaluation, with the arbitrator having authority in his/her judgment to retain jurisdiction.

An arbitrator shall not grant appointment, reappointment, promotion or tenure except in extreme cases where it is found that:

1. the final campus decision was not based on reasoned judgment;
2. but for that, it can be stated with certainty that appointment, reappointment, promotion, or tenure would have been granted; and
3. no other alternative except that remedy has been demonstrated by the evidence as a practicable remedy available to resolve the issue.

The arbitrator shall make specific findings in his/her decision as to the foregoing.

In the event the CSU seeks to vacate an arbitration award in the manner prescribed by the California Code of Civil Procedure, the court may, among the other matters it considers, determine whether or not the arbitrator has exceeded his/her authority with respect to the foregoing.

- f. A final decision or award of the arbitrator shall be made within thirty (30) calendar days after the close of the hearing. Such decision or award shall be binding upon the CFA, the CSU, and the employee(s) affected thereby.
- g. The cost of the arbitration, excluding advocate, unilateral withdrawal, postponement, or cancellation fees, shall be borne equally by the parties. Expenses for witnesses, however, shall be borne by the party who calls them.
- h. The standard of review for the arbitrator in other than faculty status cases is whether the CSU violated, misapplied, or misinterpreted a specific term(s) of this Agreement.
- i. The CFA and the CSU may mutually agree to invoke the "Streamlined Labor Arbitration Rules" of the AAA for the hearing of a case. Said election shall be made at the time of appeal pursuant to provision 10.17.

Kolehon Kumunikaŕion
Accredited by the
Western Association of
Schools and Colleges

FAX NO. (671) 734-1003

Office of the President

John T. Cruz
President

FAX NUMBER: 472-3500 1
ATTENTION: Mr. Don Ploke
Senator WonPat-Borj 's Office
FROM: John T. Cruz

Number of pages being sent (including this page) 9

Please find the following documents:

- a) Letter to Mr. John C. Petersen, dated 1/20/94, from Senator Madeleine Bordallo
- b) Letter to Senator Bordallo from Mr. Petersen, dated 1/25/94
- c) Letter to Mr. John T. Cruz from Mr. Petersen, dated 6/16/94
- d) A Message from Senator Bordallo to the Students of GCC dated 7/6/94
- e) Letter to Mr. Frank L. Leon Guerrero from Senator Bordallo dated 7/7/94.



COMMONWEALTH NOW!



COMMITTEE ON EDUCATION

TWENTY-SECOND GUAM LEGISLATURE

KUMITEN IDUKASION

MINA'BENTE DOS NA LIHESLATURA

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January 20, 1994

Parata

Maddalaine F. Bordallo

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Sen. Mariya D.A. Manibuan
Sen. Thomas V.C. Tanaka

Speaker Joe T. San Agustin
Ex. Office

Mr. John C. Peterson
Executive Director
Accrediting Commission for Community
and Junior Colleges
P. O. Box 70
Aptos, California 95001

Dear Mr. Peterson:

The Guam Legislature in its effort to provide a uniform and unified system of position classification and salary administration of government employees passed the "Uniform Position Classification and Salary Administration Act of 1991", which became Public Law No. 21-59, attached. Recently, concerns have re-surfaced by members of the Board of Trustees and several administrative officials of Guam Community College about the impact Public Law No. 21-59 will have on the future accreditation of the post-secondary education institution. Because of these concerns and the need to insure that the accreditation of the College is in no way jeopardized, I would like to inquire into your position on the impact, if any, of such legislation on the future accreditation of the College.

Due to the impending scheduled visit of Guam Community College by the Accrediting Commission for Community and Junior Colleges in March, 1994, I would like to request a timely response from your office in this matter.

Your kind attention and cooperation in assisting the Committee on Education, Twenty Second Guam Legislature, in promptly addressing this matter would be greatly appreciated.

Sincerely,


MADELEINE Z. BORDALLO

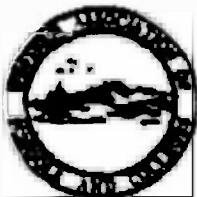
Attachment

**CC: Dr. Richard G. Tammessen
Chairman
Board of Trustees
Guam Community College

Members
Committee on Education
22nd Guam Legislature**

**John T. Cruz
President
Guam Community College**

**All Other Senators
22nd Guam Legislature**



**ACCREDITING
COMMISSION
for COMMUNITY and
JUNIOR COLLEGES**

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Aptos Office

Administrative Assistant
SUE LINDQUIST
Aptos Office

January 25, 1994

Madeline Z. Bordallo
Senator
Guam Legislature
c/o Frank Aguon, Jr.

FAX 671-472-3585

Dear Senator Bordallo:

Thank you for the opportunity which you presented for me to comment on the implications of personnel management law for Guam Community College. The request was timely, inasmuch as the Commission will send an evaluation team to Guam in mid-March, 1994 to review the status of the college. This will be the first comprehensive evaluation of Guam Community College since the adoption of the so-called "Hay Plan." The team and the Commission will examine governance and control issues as part of the evaluation.

Let me suggest which elements of the law could be problematic for the college.

1. To be eligible for accreditation by the Western Association of Schools and Colleges, an institution must have an independent policy making board. It appears to me that under Public Law 21-59 the College Board lacks the necessary authority to govern the assignment, classification, and compensation of key officers of the institution. The Board must have the authority to establish the organizational structure of the college. That necessarily requires that the Board be able to delete or add administrative positions and to assign its staff accordingly.
2. I know of only one institution where staffing is controlled by an external Civil Service Commission. In that case, only the classified (clerical, technical and maintenance) staff is under civil service, and the system works badly because of weak employee accountability to college administration. In this one case administrative and academic employees are under control of the College Board.

Madeline Z. Bordallo
January 25, 1994
Page Two

Reliance on a government Civil Service Commission for staffing decisions necessarily means that the College Board and administration find it difficult to exert strong leadership with staff who are not accountable to them. The inevitable result is crippled leadership, politicization of personnel management, and an institution that will be less than it would be with a strong leadership structure.

3. A postsecondary institution of education is a complex organization, serving many societal needs. The institution must be able to adapt and respond to changing conditions. That is why colleges and universities have independent boards which select, assign, evaluate and compensate their own staff, rather than operating under legislatures and government ministries.

I shall look forward to the report of the evaluation team that will visit Guam Community College in March. I expect that the team will assess the effectiveness of the present arrangement to see if it meets the requirements of accreditation. At this point I cannot predict the team report - the team has the independent authority to report as they see compliance with standards of good practice. However, I would not be surprised if the team were to express concern about the College Board's limited authority in critical issues of personnel management.

I hope that this will be helpful to you. I appreciate your concern for the well being of Guam Community College.

Sincerely yours,



John C. Petersen

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**ACCREDITING
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for COMMUNITY and
JUNIOR COLLEGES**

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Aptos Office

Administrative Assistant
SUE LUNDQUIST
Aptos Office

June 16, 1994

John T. Cruz
President
Guam Community College
P.O. Box 23069 GMF
Guam, M.I. 96921

Dear President Cruz:

The Accrediting Commission for Community and Junior Colleges, Western Association of Schools and Colleges, at its meeting of June 13-14, 1994, reviewed the institutional self study report and the report of the evaluation team which visited Guam Community College on March 15-17, 1994. The team report and the institutional self study submitted by the College reflect notable progress and improvement. The Commission commends Guam Community College for its strengthened faculty, curricular improvements, progress in facility development and planning, and its strong Board.

Regretfully, in light of undeniable progress in some areas, the Commission must express its dismay and deep concern over a threat to the integrity of the institution. Public Law 21-59, which placed all administrative staff and faculty of Guam Community College under the control of the Guam Civil Service Commission, removes from the Board of Trustees the authority to determine the qualifications and classification of its administrative and academic staff. If left unchanged, this situation will subvert the ability of the Board of Trustees to manage the affairs of the College as required by the Standards for Accreditation. Because the Board of Trustees now lacks the required authority over the most crucial of decisions, the selection and classification of academic employees, the Commission has acted to impose probation, effective immediately.

The College is placed on probation until it demonstrates to the Commission that authority for appointment, assignment and classification of administrative and academic staff is properly vested in the chief executive officer and governing board, and that government will not interfere with the operation of the College by circumventing such duly constituted authority. Upon presentation of a report demonstrating that these conditions have been met, the Commission will remove probationary status and reaffirm accreditation. The Commission will review the situation in six months, and if no progress is achieved, a show cause order will be considered. *Clearly, if appropriate authority is not restored to the Board of Trustees, the accredited status of Guam Community College will be in jeopardy.

John T. C.
June 16, 1994
Page Two

The Commission's policy on probation states:

When an institution fails to respond to conditions imposed upon it by the Commission, including a warning, or when it deviates significantly from the Commission's eligibility criteria, standards, or policies but not to such an extent as to warrant a show cause order or the termination of accreditation, it may be placed on probation for a specified period of time. While on probation, the institution will be subject to special scrutiny by the Commission, including a requirement to submit periodic prescribed reports and special visits by representatives of the Commission. If the institution has not taken steps satisfactory to the Commission to remove the causes for its probation at the end of the specified time, the Commission will issue a show cause order. The accredited status of the institution continues during the probation period.

It is the sincere hope of the Commission that the Government of Guam will act promptly to restore necessary authority over academic and administrative staff to the appropriate authority, the Board of Trustees.

Sincerely yours,



John C. Petersen

sl

cc: ✓ Governing Board Chairperson
Maria Diaz, Accreditation Liaison Officer
Michael Rota, Team Chairperson
Evaluation Team Members
ACCJC Members

7-6-94

COMMITTEE ON EDUCATION TWENTY-SECOND GUAM LEGISLATURE

A MESSAGE FROM SENATOR M. Z. BORDALLO

TO THE STUDENTS OF GUAM COMMUNITY COLLEGE:

As Chairperson of the Committee on Education and as the primary sponsor of Bill No. 853, I am pleased to inform you that the Guam Legislature extensively deliberated on the measure during its legislative session held on Tuesday, July 05, 1994, and has placed the bill in the 3rd Reading of the session agenda for voting. The provision would address the accreditation concern of Guam Community College and restore the autonomy of the College to the Board of Trustees. The passage of Bill No. 853 into law would insure that the Guam Community College retains its full accreditation status. I anticipate the Guam Legislature will be voting on Bill No. 853 during its legislative session on Thursday or Friday of this week.

Once again, as Chairperson of the Committee on Education and on behalf of my colleagues in the Guam Legislature, I would like to assure the students of Guam Community College and the People of the Territory of Guam that the Legislature will in no way jeopardize the College's accreditation, and will continue to work towards insuring that the College retains its credibility as a local educational institution.



COMMITTEE ON EDUCATION

TWENTY-SECOND GUAM LEGISLATURE

KUMITEN IDUKASION

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July 07, 1994

Senadora

Madeline Z. Bordallo
CHAIRPERSON

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- Sen. Thomas V.C. Tynaha

Speaker Joe T. San Agustin
Ex. Office

Mr. Frank L. Leon Guerrero
President, Council on Post Secondary Student Affairs
Guam Community College
P. O. Box 23069
GMF, Barrigada, Guam 96921

Dear Mr. Leon Guerrero:

I would like to commend the students of Guam Community College for their active involvement and participation in the legislative process over the past few days, specifically during which time Bill No. 853 was discussed and passed by the Twenty-Second Guam Legislature. I believe that your presence and vigilant lobbying efforts certainly aided in our endeavor to address recent concerns of the College and to restore Guam Community College's full accreditation status.

I have attached a copy of the voting sheet on Bill No. 853 for your information. I thought that the Council on Post Secondary Student Affairs, on behalf of the students of Guam Community College, may want to personally thank the senators who supported the measure.

On behalf of the Committee on Education and the Twenty-Second Guam Legislature I want to reassure the students of Guam Community College that we will continue in our efforts to insure that the College provides quality vocational/technical education and training for our People, as a fully accredited educational institution.

Sincerely,

Madeline Z. Bordallo
MADELEINE Z. BORDALLO

THE 1995 ACCREDITATION TEAM'S INITIAL REPORT STATES "THE TEAM'S POSITION IS THAT THIS INSTITUTION HAS HAD A LONG HISTORY OF PAST POLITICAL INTERFERENCE SUFFICIENT TO ENDANGER ACCREDITATION. THE RECURRENCE OF POLITICAL INTERFERENCE IS OF GRAVE CONCERN." (P.9)

AUTONOMY HAS BEEN AN ISSUE WITH ACCREDITATION TEAMS SINCE 1976. NEARLY TWENTY YEARS HAVE PASSED, AND THE PROBLEM HAS NOT BEEN RESOLVED. THE UNIVERSITY HAS BEEN PLACED ON PROBATION AND/OR "SHOW CAUSE" IN THE PAST DUE TO THE SAME ISSUE. THERE ARE CLEAR INDICATIONS THAT UNLESS POLITICAL INTERFERENCE IS RESOLVED - WHICH IS WHAT BILL 225 WILL ACCOMPLISH - THE UNIVERSITY WILL LOSE ITS ACCREDITATION.

THE MAJOR ARGUMENT FOR VETOING BILL 225 IS THE LACK OF PROTECTION FOR THE RIGHTS OF ACADEMIC PERSONNEL. THIS ARGUMENT IS WEAK. IN THE ACCREDITATION TEAM'S REPORT, IT WAS STATED THAT "THE FACULTY POLICIES AND PROCEDURES CURRENTLY IN PLACE ARE ADEQUATE TO PROTECT THE RIGHTS OF FACULTY..." (P.17) IN ADDITION, THE UOG/GFT FACULTY UNION HAS RECENTLY COMPLETED NEGOTIATIONS FOR A NEW 3-YEAR CONTRACT COVERING THE CONDITIONS OF THE EMPLOYMENT OF FACULTY. THE CONTRACT ADDRESSES FUNDAMENTAL FACULTY RIGHTS AND RESPONSIBILITIES INCLUDING ACADEMIC FREEDOM AS WELL AS THE DETAILS OF FACULTY PERSONNEL PROCESS.

THE UOG/GFT FACULTY UNION CONTRACT STRONGLY SUPPORTS BILL 225?

IMPACT IF ACCREDITATION IS LOST:

1. Federal funding for research, academic, and student financial assistance programs will be denied.
2. Value and credibility as an institution of higher learning will be compromised.
3. Non-recognition from other institutions. (i.e. students will not be able to transfer credits or pursue higher educational studies)
4. More than 10,000 individuals associated with the University will be negatively affected by non-accreditation; 6,000 alumni will have degrees with diminished value and 4,000 students currently enrolled will be working towards degrees that will be useless. On the other hand only 400 individuals at UOG and GCC (faculty & administrators) are the focus of why autonomy should not be granted (and why subsequently, accreditation should be put at risk).
5. The inevitable consequence of non-accreditation of the University of Guam will be a rapid decline in the student population and revenues for the University, ultimately resulting in the discontinuation of higher educational services to Guam and the region.
6. Discontinuance of the University of Guam will ultimately result in the unemployment of approximately 520 staff (classified and unclassified).
7. Debt service for construction bonds will be jeopardized.
8. Those students earning professional degrees in nursing will be unable to obtain licensing and/or certification to practice because they will have graduated from an unaccredited university.
9. Those students earning professional degrees in education will be unable to obtain licensing and/or certification to teach because they will have graduated from an unaccredited university.
10. Faculty members will eventually leave the university and seek teaching careers where there is academic freedom protected by institutional autonomy.

Date: Sat, 3 Jun 1995 06:02 -1000

From: Deane Neubauer <deane@uhunix.uhcc.Hawaii.Edu>

To: "John D. Morvant" <jmorvant@uog.edu>

Cc: "David M. Gillespie" <gillespi@uog.edu>

Subject: Re: Bill 225 Vetoed

John,

This catches us at an awkward time given our own processes. The final report has gone from me to the staff who will prepare it for the Commission's review. No team can speak for the commission. We only make recommendations to the commission. The final report draft contains some language that might be useful to your purposes and a copy of that has been Fed Exed to the UOG.

I gave both a taped radio broadcast and my video taped exit interview. I have looked at each and know that I said these things when I was there:

1) WASC does not lay claim to legislative prerogative. If the state wants a Civil Service Commission it can have one.

2) We are concerned with a) political interference and B) the academic program of the university.

3) We need to ensure that the university retains clear control over academic personnel to the extent that this reflects academic matters.

This becomes a form of render unto Caesar that which is Caesar's. IN the veto message (and you may not quote this or anything like it until I send a fax to David with Steve's review) a confusion seems to be made on p. 4 when discussing the california universities about "academic adverse action" and what "california universities" do with respect to them. There is a misleading element here. ONE, the University of California has no interaction at all with the California Personnel Board.

The California State University has at one point in its procedures dealing with disciplinary action. At one point in the process faculty can elect to go either to the PErsonnel board or arbitration. This is, apparently, what your folks have been talking about all the time, but they have not been clear in making distinctions between the two apparently, what your folks have been talking about all the time, but

they have not been clear in making distinctions between the two california university systems, AND they have not been clear (in my mind) in their intention to restrict access in your case to the Civil Service Commission only for disciplinary matters.

WASC's concern from the beginning, and I refer you to a letter from David to Steve Weiner in June 1994 (June 16th to be precise). I quote David: "A loss, if not appealed again, would mean that the CSC would hear and rule on any appeal of employment actions disagreeable to faculty members. Thus, applicants not hired, faculty turned down for promotion, faculty whose contracts were not renewed and faculty dismissed for any reason could (and probably would) pursue this avenue of appeal. The CSC has clearly signaled its intent to assume authority in these matters, and from the past record, would probably overrule the University Administration and Board on most cases." Again, WASC's concerns are that the CSC not move in the direction of dealing with these matters. That is what I meant in my public utterances about autonomy and the "conflation of authority between the CSC and the BOR."

Now, again, I said these things when I was there. They can be said again. Our intention is not to say or imply that the CSC cannot be a route of appeal for university faculty on disciplinary matters. No matter how distasteful that might be to the university administration that IS the parallel with the California State University system. I as chair will continue to support the position outlined in David's letter because I think that is absolutely correct. I cannot speak for the commission on this matter, but I can reiterate that this the burden of the language in the final report which will go to the commission.

I am sorry that when I wrote the final report, I did not distinguish academic matters from purely disciplinary matters in that manner, but I will certainly make this distinction when I report to the commission.

I reiterate that I hope to have a fax to David by your Thursday outlining this position.

ALOHA, Deane

APR 20 1995

TWENTY-THIRD GUAM LEGISLATURE
1995 (FIRST) Regular Session

Bill No. 225(LS)

Introduced by:

J. Won Pat-Borja
H. Cristobal
E. Barrett-Anderson

AN ACT TO AMEND TITLES 14 AND 17 GUAM CODE ANNOTATED PERTAINING TO THE ACADEMIC PERSONNEL, AUTONOMY OF THE GUAM COMMUNITY COLLEGE, THE UNIVERSITY OF GUAM, THE CIVIL SERVICE COMMISSION, THE UNIFIED PAY SYSTEM AND THE OTHER RELATED MATTERS.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

2 Section 1. §4102 of Title 4, Guam Code Annotated, is hereby
3 amended to read as follows:

4 “§4102. **Classified and Unclassified Services.** All
5 offices and employment in the Government of Guam, except for
6 employment as academic personnel of the Guam Community
7 College (GCC) and the University of Guam (UOG), as the term
8 ‘academic personnel’ is defined in enabling laws of GCC and
9 UOG, shall be divided into classified and unclassified services as
10 follows:”

11 Section 2. A new paragraph (c) is hereby added to §4102 of
12 Title 4, Guam Code Annotated, to read as follows:

13 “(c). Notwithstanding any law or rule to the contrary,
14 employment as academic personnel of the Guam Community
15 College and the University of Guam shall be governed by rules
16 adopted by the Board of Trustees and the Board of Regents,
17 respectively, in order to provide academic freedom and

1 autonomy to the institutions, as intended by P.L. 14-77 as to
2 GCC, and P.L. 19-40 as to UOG.”

3 **Section 3.** §4105 of Title 4, Guam Code Annotated, is hereby
4 amended to read as follows:

5 “§4105. **Department Rules.** Rules subject to criteria
6 established by this chapter governing the selection, promotion,
7 performance, evaluation, demotion, suspension and other
8 disciplinary action of classified employees shall be adopted by the
9 Board of Directors of the Guam Airport Authority, Board of
10 Directors for the Guam Economic Development Authority, Board
11 of Directors for the Guam Housing Corporation, Board of
12 Commissioners for Guam Housing and Urban Renewal
13 Authority, the Judicial Council, the Board of Directors of the
14 Guam Telephone Authority, the Board of Directors of the Port
15 Authority of Guam, the Board of Directors of the Guam Power
16 Authority, the Territorial Board of Education, the Board of
17 Regents of the University of Guam, the Board of Trustees of the
18 Guam Community College, the Board of Trustees of the Guam
19 Memorial Hospital Authority and by the Public Utility Agency of
20 Guam with respect to personnel matters within their respective
21 branches, agencies or departments, and by the Director of
22 Administration as to all other executive branch employment.
23 Such rules shall, to the extent practicable, provide standard
24 conditions for entry into and the other matters concerning the
25 government service. The personnel rules adopted for the
26 University of Guam, Guam Community College, Guam Airport
27 Authority, Guam Telephone Authority, Port Authority of Guam,

1 Guam Power Authority, Department of Education, Guam
2 Memorial Hospital Authority, the Director of Administration and
3 by the Public Utility Agency of Guam shall require that all their
4 classified employee appeals be heard by the Civil Service
5 Commission. The personnel rules adopted for the Judiciary
6 Branch by the Judicial Council shall require that all their
7 classified employee appeals be heard by the Council. Personnel
8 rules governing any other Executive Branch entities may require
9 that their classified employee appeals be heard by the Civil
10 Service Commission. Rules concerning the Executive Branch
11 shall take effect upon their approval by the Civil Service
12 Commission, by Executive Order of the Governor and the filing
13 with the legislative Secretary. Rules concerning the Judicial
14 Council shall take effect upon adoption by the Judicial Council of
15 Guam.

16 **Section 4.** §4106 of Title 4, Guam Code Annotated, is hereby
17 amended to read as follows:

18 “§4106. **Personnel Rules.** The personnel rules
19 provided for in §4105 of this Chapter shall provide procedures
20 for their employment of persons on the basis of merit, and shall
21 include an orderly and systematic method of recruitment and the
22 establishment of qualified lists for employment purposes. They
23 shall provide for a probationary period of not less than three (3)
24 nor more than Twelve (12) months for all original appointments,
25 [~~except for original academic appointments at the University of~~
26 ~~Guam or the Guam Community College,~~] during which time the
27 employee may be dismissed at any time without right of appeal

1 and without right of being given reasons or charges in writing.
2 Specific procedures and policies shall be included, governing the
3 following:.”

4 **Section 5.** A new subsection (I) is hereby added to §4403 of
5 Title 4, Guam Code Annotated, to read as follows:

6 “(I). The jurisdiction of the Civil Service Commission shall
7 not extend to academic personnel of the Guam Community
8 College and the University of Guam, except upon mutual
9 consent by the governing board of the respective institutions and
10 the commission.”

11 **Section 6.** §6102 of Title 4, Guam Code Annotated, is hereby
12 amended to read as follows:

13 “§6102. **Purpose.** The purpose of this Chapter is to
14 provide a uniform and unified system of position classification
15 and compensation for the Executive and Judicial Branches of the
16 Government of Guam. The only exception is for academic
17 personnel of the Guam Community College and the University of
18 Guam which as institutions of higher learning education, must
19 adhere to accreditation standards established by the appropriate
20 accrediting bodies. The term ‘academic personnel’ refers to the
21 definitions in provided in Section 31106 and 16112 of Title 17,
22 Guam Code Annotated, governing academic personnel of Guam
23 Community College and the University of Guam.”

24 **Section 7.** §6103 of Title 4, Guam Code Annotated, is hereby
25 amended to read as follows:

26 “§6103. **Scope.** Unless otherwise specified, this
27 Chapter shall apply to all positions, officers, and employees,

1 classified and unclassified, as the case may be, inclusive of the
2 Executive and Judicial Branches, autonomous and semi-
3 autonomous agencies, public corporations, and other
4 instrumentality's of the Government of Guam. The provisions of
5 this Chapter do not apply to academic personnel of the Guam
6 Community College and the University of Guam. The
7 employment and terms and conditions of employment of
8 academic personnel shall be exclusively governed by provisions
9 of the enabling laws of Guam Community College and the
10 University of Guam pertaining to academic personnel, as set
11 forth in Title 17, Guam Code Annotated."

12 **Section 8.** §31106 of Title 17, Guam Code Annotated is hereby
13 amended to read as follows:

14 "§31106. **Personnel Rules. Academic Personnel** [~~and~~
15 ~~Administrative Officers~~]. Rules and regulations governing
16 selection, compensation, promotion, performance evaluation and
17 disciplinary action and other terms and conditions of
18 employment affecting academic personnel shall be adopted by
19 the Board [~~in accordance with §§4104 and 4105 of Title 4,~~
20 ~~Guam Code Annotated~~]. Such rules and regulations shall provide
21 for the employment of persons on the basis of merit, and shall
22 include an orderly and systematic method of recruitment and
23 establishment of a list of qualified applicants from employment
24 purposes. Academic personnel are defined as faculty and
25 administrators. For the purposes of this Section, an
26 [~~Administrative Officer~~] 'administrator' is defined as one who
27 holds any of the following positions: President or Vice-President,

1 Assistant or Associate to the President or Vice-President, Dean or
2 Director, Associate or Assistant Director, [~~Associate or Assistant~~
3 ~~Dean; Associate or Assistant Director; Dean or Director; Assistant~~
4 ~~to the Provost or Vice President]~~ provided, however, that nothing
5 in this Chapter shall be construed as preventing the Board from
6 establishing other administrator [~~administrative officer]~~ positions
7 or abolishing any of the existing positions herein and further
8 provided, however, that nothing in this section nor in any other
9 section of this Chapter involving the outlay of public funds shall
10 become effective unless funds therefore shall have been provided
11 in the college's annual budget. The term 'administrator' does not
12 include positions within the purview of the Civil Service
13 Commission under Chapter 6 of Title 4, Guam Code Annotated
14 or other applicable laws."

15 **Section 9.** Subsection (a) of §31113 of Title 17, Guam Code
16 Annotated, is hereby amended to read as follows:

17 " (a). With the exception of [~~the President and the Private~~
18 ~~Executive Secretary who shall be in the unclassified service,]~~
19 academic personnel and unclassified employees under §§4102
20 and 21031 of Title 4, Guam Code Annotated, all other employees
21 of the College shall be classified employees.

22 The employment of classified employees shall be governed
23 by Title 4, Guam Code Annotated and other applicable laws.

24 The President shall serve the College on a contractual basis,
25 and notwithstanding any other provision of law, shall be entitled
26 to all benefits of the Government of Guam given to employees
27 including being a member of the Retirement Fund. The term of

1 the contract on employment between the President and the
2 Board shall not be for longer than six (6) years, which term may
3 be renewed at any number of times.”

4 **Section 10.** §16112 of Title 17, Guam Code Annotated, is
5 hereby amended to read as follows:

6 “§16112. **Personnel Rules. Academic Personnel** [~~and~~
7 ~~Administrative Officers~~]. Rules and regulations governing
8 selection, compensation, promotion, performance evaluation and
9 disciplinary action and other terms and conditions of
10 employment affecting academic personnel shall be adopted by
11 the Board [~~in accordance with §§4104 and 4105 of Title 4,~~
12 ~~Guam Code Annotated~~]. Such rules and regulations shall provide
13 for the employment of persons on the basis of merit, and shall
14 include an orderly and systematic method of recruitment and
15 establishment of a list of qualified applicants from employment
16 purposes. Academic personnel are defined a faculty and
17 administrators. For the purposes of this Section, an
18 [~~Administrative Officer~~] ‘administrator’ is defined as one who
19 holds any of the following positions: President or Vice-President,
20 Assistant or Associate to the President or Vice-President, Dean or
21 Director, Associate or Assistant Director, [~~Associate or Assistant~~
22 ~~Dean; Associate or Assistant Director; Dean or Director; Assistant~~
23 ~~to the Provost or Vice-President~~] provided, however, that nothing
24 in this Chapter shall be construed as preventing the Board from
25 establishing other administrator [~~administrative officer~~] positions
26 or abolishing any of the existing positions herein and further
27 provided, however, that nothing in this section nor in any other

1 section of this Chapter involving the outlay of public funds shall
2 become effective unless funds therefore shall have been provided
3 in the college's annual budget. The term 'administrator' does not
4 include positions within the purview of the Civil Service
5 Commission under Chapter 6 of Title 4, Guam Code Annotated
6 or other applicable laws.

7 Faculty [~~Academic personnel~~] shall have the right to form,
8 join, assist and participate in the management of employee
9 organizations of their choice and to act as organization
10 representative or to refrain from any such activity, without
11 interference, restraint, coercion or discrimination and without
12 fear of penalty or reprisal; provided that, employees shall not
13 participate in the management of an organization or act as an
14 organization representative, where such activity would result in
15 a conflict of interest or otherwise be incompatible with law or
16 with the employee's official duties.

17 Within ninety (90) days of the effective date of this Act, the
18 Board, in cooperative consultation with the recognized
19 bargaining agent, shall develop and adopt reasonable rules for
20 the settlement of collective bargaining disputes, including access
21 to impartial mediation and arbitration.

22 **Section 11.** §16113 of Title 17, Guam Code Annotated, is
23 hereby amended to read as follows:

24 "§16113. Classified Employees. [~~Non-academic~~
25 ~~personnel~~] Notwithstanding any law, rules or regulation to the
26 contrary, all non-academic personnel, with the exception of
27 unclassified employees under §§4102 and 21031 of Title 4,

1 Guam Code Annotated, shall be classified. [~~and~~] Matters relating
2 to employment of [~~non-academic~~] classified personnel shall be
3 governed by and in accordance with Title 4, Guam Code
4 Annotated and other [~~personnel laws~~] applicable [~~in Guam~~]
5 laws.”

6 **Section 12.** Subsection (c) of §31113 of Title 17, Guam Code
7 Annotated, is hereby repealed in its entirety.

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