BEFORE THE
GUAM CIVIL SERVICE COMMISSION

BOARD OF COMMISSIONERS

GL# 34-17-490

IN THE MATTER OF:

KENNETH ORCUTT, DEBORAH RIVERA, R. HAPPY RONS, SHANNON TAITANO, LAURA MOONEY, ROBERT WEINBERG, KATHY FOKAS, MONTY MAY, MARIANNE WOLOSCHUK, DAVID HIGHSMITH, DONNA LAWRENCE, DAVID RIVERA, and BENJAMIN ABRAMS,

Employees,

vs.

ATTORNEY GENERAL'S OFFICE,

Management.

ADVERSE ACTION APPEAL
CASE NO.: 14-AA06D

DECISION AND JUDGMENT

Office of the People
Senator Régine Biscoe Lee
Legislative Secretary
Date/Time: 5/3/17 @ 2:16pm
Initials:

2017 MAY -3 PM 2:38

This matter came before the Civil Service Commission (Commission) at its regularly scheduled meeting on February 9, 2017. Employees Happy Rons, Shannon Taitano, Kathy Fokas, Robert Weinberg, and Marianne Woloschuk were present. Deputy Attorney General Karl Espaldon was present for Management. Employees and Management waived oral argument. The Commission proceeded directly to deliberation and decision making.

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Speaker Benjamin J.F. Cruz

Time: 2:20 | | AM/PM File No. 34-385
Received By

I.

PROCEDURAL HISTORY

The pertinent procedural history of this case is as follows. On March 20, 2014, Employees filed a Notice of Appeal with the Civil Service Commission from Management's purported "demotions" as part of its implementation of the Competitive Wage Act of 2014 (CWA). On August 20, 2014, Employees individually and separately filed Motions to Determine Questions of Law Pursuant to CSC AA R#9. On August 21, 2014, Management filed a Motion to Dismiss Employee's Adverse Action appeals. On August 27, 2014, Employees individually and separately filed Employee's Opposition to Management's Motion to Dismiss. On August 28, 2014, Management filed its Opposition to Employee's Motions to Determine Questions of Law Pursuant to CSC AA R # 9. On November 13, 2014, Management filed a Motion to Leave to file Supplemental Points and Authorities. On November 17, 2014, Employees filed its Opposition to Management's Proposed Supplemental Points and Authorities in Support of Motion to Dismiss.

The Commission conducted numerous status calls through 2015 and 2016. Each time the parties represented that they were working in good faith and close to reaching a settlement. Eventually, the Commission set the motion to dismiss for hearing. On February 9, 2017, the Commission considered Management's August 21, 2014 Motion to Dismiss.

II.

DISCUSSION

In its August 21, 2014 Motion to Dismiss, Management avers that "[t]this case does not involve any disciplinary adverse action taken by management against any employee of the Office of the Attorney General[,]" and consequently "does not fall within the Civil Service Commission's adverse action appeal jurisdiction." Employees argue that Management's

implementation of the CWA and their resultant reclassifications to a lower step in the same class on the attorney pay schedule constitutes a demotion, which is within the Commission's adverse action appeal jurisdiction.

After consideration of the matter, the Commission agrees with Management's assertion that Employees were not subject to an adverse action as a result of Management's implementation of the CWA. The Commission disagrees with Employee's contentions that such implementation resulted in their demotions.

Under Section 11.302(B) of the Department of Administration's Personnel Rules and Regulations, the definition of Demotion is as follows:

> The involuntary reduction in status of an employee for disciplinary reasons from a position which he occupies in a specific class, to a position in another class, where the maximum rate of pay is less than the maximum rate of pay for the class which he had held, or a reduction to a lower salary step in the same class.

The Commission finds that Management's placement of Employee's into a particular pay grade and step under the CWA pay plan for government attorneys did not involve any disciplinary action. The Commission notes further that none of the Employees suffered any loss of pay; indeed, it appears that the Employees actually received a pay increase as a result of the implementation of the CWA. Hence, Employees did not suffer from an adverse action within the meaning of 4 GCA § 4403. The complaint of the Employees is not that they received a decrease of pay, rather that they would have received a *greater increase* had they maintained their previous step.

Furthermore, it appears that Management followed the directives given to them by the Department of Administration, who is not a party to this appeal. The AG's Office itself made no independent decision, disciplinary or otherwise, as to what steps the Employees would be placed

into. Employees' issue is not with the Management of the AG's Office, but with the directive of the Department of Administration in implementing the CWA.

To be clear, we do not find that we lack jurisdiction because no "Final Notice of Adverse Action" was issued in this case. If a classified employee is effectively suspended, demoted, or terminated from their position, even in the absence of the issuance of a formal adverse action, we have jurisdiction to hear their appeal. The salient issue in this case is that the purported "demotion" appealed did not actually result in a decrease in pay. If the pay had been reduced we might have reached a different outcome, but here the Employees actually received raises.

It is a technical matter, but it has caused confusion in past cases when we have stated that we do not have jurisdiction over a particular matter. It might be more accurate to state that we clearly have jurisdiction over demotion appeals of the classified employees in this case under 4 GCA § 4403(b); however, upon review of the evidence presented, even when viewed in the light most favorable to the Employees, it does not appear to us that a "demotion" has occurred. After all, the Employees received raises.

III.

CONCLUSION

By a vote of 4-1, the Commission approves Management's August 21, 2014 Motion to Dismiss. Employee's appeal is hereby dismissed.

Furthermore, given the foregoing determination and dismissal of this action, Employees' August 20, 2014 Motions to Determine Questions of Law Pursuant to CSC AA R #9 and

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Management's November 13, 2014 Motion for Leave to File Supplemental Points and Authorities are hereby rendered moot.

SO ADJUDGED THIS 2 day of May 2017.

EDITH PANGELINAN
Chairperson

LOURDES HONGYEE
Vice-Chairperson

PRISCILLA T. TUNCAP
Commissioner

JOHN SMITH
Commissioner

CATHERINE GAYLE
Commissioner

MICHAEL G. TOPASNA
Commissioner

ORIGINAL