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3 **For Publication**

4 **IN THE SUPERIOR COURT**
5 **OF THE**
6 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

6	NORTHERN MARIANAS COLLEGE,)	CIVIL ACTION NO. 03-0092-D
7	Petitioner,)	
8	v.)	ORDER DENYING MOTION TO DISMISS
9	CIVIL SERVICE COMMISSION and)	
10	JACK ANGELLO,)	
11	Respondents.)	

12 THIS MATTER came on for hearing on Respondent Jack Angello's motion to dismiss for lack of
13 subject matter jurisdiction on April 22, 2003. Counsel for both sides were present and were heard. After
14 carefully considering the pleadings and the arguments heard during the hearing, the Court is prepared to
15 rule.

16 **FACTUAL BACKGROUND**

17 Respondent and movant herein Dr. Jack Angello was formerly an employee of Petitioner, Northern
18 Marianas College ("NMC"). On September 24, 2002, he received written notice of his immediate
19 termination, with salary and benefits to be paid through November 23, 2002. Dr. Angello appealed this
20 decision to the NMC Employee Appeals Committee on October 9, 2002. There is some dispute between
21 the parties about the timing, but eventually that committee affirmed the termination. On December 20, 2002,
22 Dr. Angello appealed the decision of the Employee Appeals Committee to the Civil Service Commission
23 ("the Commission").

24 NMC responded on January 10, 2003 by filing, with the Commission, a motion to dismiss Dr.
25 Angello's appeal on the grounds that the Commission lacked jurisdiction over personnel decisions at NMC.
26 On February 5, 2003, the Commission denied NMC's motion to dismiss, holding that "[there] is no
27 provision in the law which exempts the employees of the Northern Marianas College from the civil service
28 system." *In re Angello and Northern Marianas College*, Case No. CSC 02-

1 010, (Office of the Civil Service Commission Feb. 5, 2003). On March 4, 2003, NMC filed suit in this
2 Court, seeking declaratory and injunctive relief.

3 **LEGAL CONCLUSIONS**

4 As a rule, an action by an agency may not be reviewed by a court of the Commonwealth until that
5 action is made final. *See* 1 CMC § 9112(d). In addition, a party must “exhaust all intra-agency appeals
6 expressly mandated either by statute or by the agency's regulations,” before a court has jurisdiction to hear
7 a challenge to an administrative decision. *Rivera v. Guerrero*, 4 N.M.I. 79, 84 n.37 (1993). It is often
8 difficult to distinguish between the requirements of finality and exhaustion of remedies because they are so
9 closely related. Indeed, they could easily be summarized in one question: has the highest agency appellate
10 body, before which the matter in question must be brought, reached a final decision on the matter?

11 Nonetheless, in the interest of clarity, the Court elects to treat finality and exhaustion as separate, but
12 related, requirements. Hence, for the Court's purposes, “finality” will concern whether a complete and final
13 decision had been made, at some particular level of the agency’s adjudicatory framework. “Exhaustion of
14 remedies” will concern whether that particular level of the adjudicatory framework is the last one to which
15 an aggrieved party is required to appeal, either by statute or regulation - in essence, whether the aggrieved
16 party has taken the administrative appeal of last resort. As a rule, a decision must be both final and an
17 “exhaustion of remedies” before a court can review it. However, there are numerous exceptions to this rule.
18 These exceptions are frequently described as applying to one or the other of the two requirements, but
19 given the interrelated nature of finality and exhaustion of remedies, the Court elects to treat all such
20 exceptions as applicable to both.

21 **A. The Commission's Decision Was Not “Final”**

22 Dr. Angello argues that the agency action involved here was not final because the Commission has
23 yet to decide the merits of his appeal. NMC counters that the decision was final as to the issue of
24 jurisdiction. NMC is probably correct. The Commissioners seem unlikely to revisit their decision - the
25 language of the Commission was categorical and the vote was unanimous. Nonetheless, under the
26 jurisprudence of the Commonwealth, it is clear that the finality requirement
27 is not satisfied until a final decision has been made on all contested matters. *See Bitoy v. Rodeo*, Civ. No.
28 93-1073 (N.M.I Super. Ct. May 5, 1994) (Decision and Order Granting Complainants’ Motion to Dismiss

1 at 3-4). The *Bitoy* court termed this the “administrative conclusion” of the case. *Id.* at 4.

2 *Bitoy* concerned an order issued by the Director of Commerce and Labor- on appeal from a
3 hearing officer's decision. Among other things, the Director's order required the hearing officer to
4 recalculate “compensable daily work hours.” *Id.* at 2. Before the hearing officer had performed these new
5 calculations, the respondents in the administrative action brought suit challenging the order to recalculate.
6 *Id.* They argued that the decision to recalculate was final and that actual recalculation was merely a
7 “ministerial task” that would not interfere with the work of a reviewing court. *Id.* at 4. The *Bitoy* court
8 disagreed, concluding that the case would not reach its administrative conclusion until, among other things,
9 the computations had been completed. *See id.* at 4-5. This Court must reach the same conclusion in the
10 instant matter. Dr. Angello’s appeal to the Commission of his termination is still pending - the matter clearly
11 has not reached its administrative conclusion. There is, as yet, no final action here.

12 **B. NMC Has Not Exhausted Its Administrative Remedies**

13 As noted previously, the exhaustion of remedies requirement is closely related to the finality
14 requirement. To exhaust remedies, a party must take the issue in question through all administrative appeals
15 required by statute or regulation, before turning to the judicial system. *See* 1 CMC § 9112(d). In the instant
16 case, it is undisputed in the parties' pleadings that a final decision by the Commission is not subject to any
17 administrative appeal. Furthermore, it is undisputed that NMC presented the question of jurisdiction to the
18 Commission and that the Commission issued a ruling affirming its jurisdiction. However, as explained
19 above, the decision of the Commission in this case is not final, because the entire matter has not reached
20 its administrative conclusion. This raises the question of whether a party may be said to have exhausted
21 administrative remedies in the absence of a final ruling from the agency. The Court thinks not. As a matter
22 of law, simply raising the question is not enough, exhaustion of remedies requires that the question be finally
23 decided by the agency. Given that the decision of the Commission is not final and that the administrative
24 remedies of NMC are therefore not exhausted, the action before this Court would normally have to be
25 dismissed. However, there are numerous exceptions to the finality and exhaustion requirements and one
26 of these exceptions applies here.

27 **C. The “Purely Legal Question” Exception Applies**

28 One of the common exceptions to finality and exhaustion of remedies requirements is for “purely

1 legal questions.” Where the question is purely legal and does not involve the agency’s expertise or depend
2 on any factual finding by the agency, a reviewing court may hear the issue without waiting for a conclusion
3 to the administrative process. *See Borden Inc. v. FTC*, 495 F.2d 785, 786-87 (7th Cir. 1974).¹ This
4 argument has particular force where, as here, the complainant alleges that the agency is acting outside its
5 authority.² The question currently before this Court appears to qualify; it is a question solely of statutory
6 interpretation, does not require any agency fact- finding, is outside the agency’s area of expertise,³ and
7 contains an allegation of an *ultra vires* act. Therefore, it appears that the Court could apply the purely legal
8 question exception in the instant matter. Nonetheless, application of exceptions to finality and exhaustion
9 is discretionary and the Court must carefully evaluate the policies underlying the requirements before
10 deciding that an exception should apply in this case.

11 There are four primary purposes of the requirements of finality and exhaustion: (1) they carry out the
12 purpose of the legislature in creating the agency “by discouraging the frequent and deliberate flouting of
13 administrative processes”; (2) they protect the autonomy of the agency to exercise its own
14 expertise and to “correct its own errors”; (3) they allow the development of a factual record; and (4) they
15 “promote[] judicial economy by avoiding needless repetition of administrative and judicial fact-finding . .
16 . . .” *Andrade v. Lauer*, 729 F.2d 1475, 1484 (D.C. Cir. 1984).

17 None of these four concerns seem unduly implicated by the Court’s assertion of jurisdiction
18 in the instant case. Hearing this case now will not lead to “frequent and deliberate” flouting the procedures

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20 ¹ It should be noted, however, that the issue must normally be raised with the agency first and the agency
21 must issue some decision. Where the matter has not been initially decided by the agency, the standards for granting
22 an exception to the requirements of finality and exhaustion of remedies are much stricter. *See General Atomics v. U.S.*
23 *Nuclear Regulatory Comm.*, 75 F.3d 536, 541 (9th Cir. 1995). While the Civil Service Commission has not made a
“final” decision, as the term is used in Commonwealth jurisprudence, it is clear that the question of the Commission’s
jurisdiction over NMC’s personnel decisions has been properly submitted and that the Commission has strongly
affirmed its jurisdiction.

24 ² Our own Commonwealth courts have similarly found an exception where an agency is alleged to have
25 acted “ultra vires,” (outside its designated authority). *Sablan v. Bd. of Elections*, Civ. No. 93-1274 (N.M.I. Super. Ct.
Jan. 3, 1994) (Decision and Order on Plaintiff’s Motion for Preliminary Injunction at 4).

26 ³ While the Commission is undoubtedly expert in deciding how Civil Service laws should be applied, they
27 have no more expertise than the Court in deciding *to whom* those laws should apply. It remains the job of the
28 judiciary, not administrative agencies, to decide “what the law is.” *Marbury v. Madison*, 5 U.S. 137, 177, 2 L. Ed. 60,
73, 1 Cranch 137 (1803).

1 of the Civil Service Commission. The question of the Commission's jurisdiction over hiring decisions at
2 NMC is likely to occur only once because a judicial decision will settle the matter. In addition, other
3 government agencies are unlikely to make similar claims, because NMC's claim is based on statutory
4 provisions that apply only to NMC. Similarly, the Court does not believe that hearing this case unduly
5 infringes on the Commission's "autonomy" because, in deciding to hear Dr. Angello's appeal, the
6 Commission has already applied whatever "expertise" it might have, to the question of jurisdiction over
7 NMC. Finally, because this question is purely legal, there is no need to build a factual record on the
8 administrative level and no danger of wastefully repetitive fact- finding. Therefore, the Court sees no danger
9 in hearing this case now and it will do so.

10 **CONCLUSION**

11 For the reasons stated above, Dr. Angello's motion to dismiss is DENIED.

12
13 SO ORDERED this 28th day of May 2003.

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16 /s/
17 JUAN T. LIZAMA, Associate Judge