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For Publication

**IN THE SUPERIOR COURT  
OF THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**JOSE C. MAFNAS,**  
  
Plaintiff,  
  
v.  
**ROBERT SCHRACK, Acting Secretary of**  
**Finance**  
  
Defendant.

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) **CIVIL ACTION NO. 03-0280**  
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)  
) **MEMORANDUM DECISION**  
) **GRANTING DEFENDANT’S MOTION**  
) **TO DISMISS**  
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)

THIS MATTER came on for hearing on Defendant’s motion to dismiss for lack of subject matter jurisdiction on June 6, 2003. Counsel for both sides were present and were heard. After carefully considering the pleadings and the arguments heard during the hearing, the Court issued an order granting defendants motion to dismiss on June 6, 2003. Pursuant to that order, the Court now issues the following reasons for the decision.

**FACTUAL BACKGROUND**

1. On May 13, 2003, Defendant, Acting Secretary of Finance Robert Schrack, met with Jose C. Mafnas, Plaintiff. At that meeting, Mr. Schrack informed Mr. Mafnas that Mr. Mafnas was being transferred from the position of “Director of Customs Services” to the position of “Director of Administrative Services” effective May 14, 2003. (Both positions are with the Department of Finance.)
2. On May 14, 2003, Mr. Mafnas sent a letter to Mr. Schrack. Mr. Mafnas stated that he would assume the position of Director of Administrative Services, but only under duress.
3. On May 19, 2003, Mr. Mafnas sent another letter to Mr. Schrack. In this letter, Mr. Mafnas listed five specific reasons why he would be declining the position of Director of Administrative Services.

- 1 Instead, Mr. Mafnas stated an intention to return to work as Director of Customs Services.
- 2 4. Mr. Schrack replied by letter on the same day, informing Mr. Mafnas that he could not return to
- 3 the Director of Customs Services position. Mr. Schrack stated that he would treat Mr. Mafnas’
- 4 letter of May 19, 2003 as a formal grievance, pursuant to *Personnel Service System Rules and*
- 5 *Regulations*, 5 Com. Reg. 2,289 (Aug. 31, 1993) *adopted at* 5 Com. Reg. 2,502 (Nov. 15,
- 6 1983) (“PSSRR”) § III.G10. Under subsection A of that regulation, Mr. Schrack was required
- 7 to respond to the grievance within 14 days (June 2, 2003).
- 8 5. On May 30, 2003, Mr. Mafnas filed a complaint with this Court.
- 9 6. After unsuccessfully attempting to obtain a meeting with Mr. Mafnas, Mr. Schrack issued a written
- 10 notification of decision and a decision on the grievance on June 2, 2003. Mr. Schrack essentially
- 11 rejected all of grounds cited by Mr. Mafnas in refusing the transfer at issue.
- 12 7. Under PSSRR § III.G10(B), Mr. Mafnas has 15 days from the date of the written notification of
- 13 a decision (June 2) to file an appeal with the Civil Service Commission (“Commission”). The
- 14 Commission must then review the case within a reasonable time. PSSRR § III.G10(C).
- 15 8. To the best of the Court’s knowledge, Mr. Mafnas had not yet filed an appeal with the Civil
- 16 Service Commission at the time it issued a ruling on Mr. Schrack’s motion to dismiss. In any event,
- 17 the Commission has not issued any decision on Mr. Mafnas’ grievance.

#### 18 LEGAL CONSIDERATIONS

19 As a rule, an agency action may not be reviewed by a court of the Commonwealth until that action

20 has been made final and the party affected has exhausted “all intra-agency appeals expressly mandated

21 either by statute or by the agency’s regulations.” *Rivera v. Guerrero*, 4 N.M.I. 79, 84 n.37 (1993). In

22 the case of civil service employees, the applicable regulations clearly require that all decisions on grievances

23 be presented to the Commission and ruled on before being appealed to the courts. PSSRR § III.G10(F).

24 There is no dispute that Mr. Mafnas has not met this requirement. This does not end the inquiry, however,

25 because there are numerous exceptions to the exhaustion requirement.

26 One such exception, the purely legal question exception, was cited by Mr. Mafnas in arguing that

27 Mr. Schrack’s motion to dismiss should be denied. “Where the question is purely legal and does not

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1 involve the agency’s expertise or depend on any factual finding by the agency, a reviewing court may hear  
2 the issue without waiting for a conclusion to the administrative process.” *N. Marianas College v. Civil*  
3 *Serv. Comm’n*, Civ. No. 03-0092 (N.M.I. Super. Ct. May 28, 2003) (Order Denying Motion to Dismiss  
4 at 4) (citing *Borden Inc. v. FTC*, 495 F2d 785, 786-87 (7th Cir. 1974)). In that case, Northern  
5 Marianas College (NMC) challenged the decision of the Commission to assert jurisdiction over the appeal  
6 of the termination of Dr. Jack Angello, a former instructor at NMC. *Id.* at 1. NMC argued that the  
7 Commission lacked jurisdiction over NMC employment decisions. *Id.* The Commission had disagreed  
8 and issued an interim decision asserting jurisdiction over employment matters at NMC. *Id.*

9 In deciding that it could, and would, hear the case, the *Northern Marianas College* court noted  
10 that the “it [was] a question solely of statutory interpretation, [did] not require any agency fact-finding, [and  
11 was] outside the agency’s area of expertise.” *Id.* at 4. None of these criteria apply in the instant matter.  
12 There are serious factual disputes between Mr. Schrack and Mr. Mafnas as to the responsibilities entailed  
13 by the Director of Administrative Services and whether Mr. Mafnas is qualified to undertake those  
14 responsibilities. Therefore, the instant matter is not merely a question of law and does require agency fact-  
15 finding. In addition, in the instant matter there appears to be some dispute over the application of  
16 regulations in the PSSRR. This is clearly within the Commission’s area of expertise.

17 More importantly, the Commission has not had any chance to consider any of the legal issues raised  
18 before this Court, whether statutory or regulatory.<sup>1</sup> As a general rule, an administrative agency should have  
19 first crack at novel issues of law concerning it, in order to preserve the agency’s autonomy and allow it to  
20 “correct its own errors,” *Andrade v. Lauer*, 729 F.2d 1475, 1484 (D.C. Cir. 1984). The Court sees no  
21 reason to stray from that rule in this instance. Even if the Court could find an exception that would allow

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25 <sup>1</sup> In raising this point, Mr. Schrack cites the case of *General Atomics v. U.S. Nuclear Regulatory Comm’n.*, 75  
26 F.3d 536 (9th Cir. 1996). The *Northern Marianas College* court used this case to support the proposition that questions  
27 of law should normally be decided by the agency before being presented to a court. See *N. Marianas College v. Civil*  
28 *Serv. Comm’n*, Civ. No. 03-0092 (N.M.I. Super. Ct. May 28, 2003) (Order Denying Motion to Dismiss at 4 n.1) This  
principle is an important one and the *General Atomics* case certainly supports it. However, the Court notes that the  
three-part test set forth in *General Atomics* is applicable only where the jurisdiction of the agency is in question, as it  
was in *Northern Marianas College*. In the instant matter, the jurisdiction of the Commission is unquestioned, so the  
*General Atomics* test is not directly applicable.

1 it to assert jurisdiction over this case, it would not do so.<sup>2</sup>

2 SIGNED this 18th day of June 2003.

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/s/ \_\_\_\_\_

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JUAN T. LIZAMA, Associate Judge

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<sup>2</sup> Of course, the Commission must act on any appeal promptly, as required by PSSRR § III.G10(C). The Court notes that unreasonable delay in considering a petition is grounds upon which a court may waive the requirements of finality and exhaustion of remedies. *Air Line Pilots Ass'n. Int'l v. Civil Aeronautics Bd.*, 750 F.2d 81, 85 (D.C. Cir. 1984).

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