



E-FILED
CNMI SUPERIOR COURT
E-filed: Sep 1 2010 2:46PM
Clerk Review: N/A
Filing ID: 32977422
Case Number: 06-0367-CV
N/A

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

NORTHERN MARIANA ISLANDS)
RETIREMENT FUND,)

Plaintiff,)

vs.)

COMMONWEALTH OF THE)
NORTHERN MARIANA ISLANDS)
GOVERNMENT, HON. BENIGNO R.)
FITIAL, in his official capacity as the)
Governor of the Commonwealth of the)
Northern Mariana Islands, DEPARTMENT)
OF FINANCE, and ELOY INOS, in his)
official capacity as the Secretary of the)
Department of Finance,)

Defendants.)

CIVIL ACTION NO. 06-0367

ORDER AFTER AUGUST 11, 2010
REVIEW HEARING

This matter came before this Court on August 11, 2010 in Courtroom 205A pursuant to this Court's Order, *Northern Mariana Islands Retirement Fund v. CNMI*, Civ. Action No. 06-0367 (NMI Super. June 22, 2010) (Order after May 3, 2010 Review Hearing) ("Order"). In its Order, the Court ordered an update regarding progress made on a pension obligation bond legislative initiative and legislation to address the Court's judgment, and stated it would revisit the adequacy of the employer contribution amount. The Order additionally provided that the employer contribution remain at 20%, however, it would be increased to 30% at the beginning of the fiscal year, which would start October

1, 2010, unless something really significant happened.

Plaintiff Northern Mariana Islands Retirement Fund was represented by Viola Alepuyo, Esq. and Defendants (collectively “Government”) were represented by Assistant Attorney General Meaghan Hassel-Shearer, Esq. Four members of the Commonwealth Retirees Association (“CRA”) were in attendance in the gallery, including CRA Board Chairman, Mr. Juan Sablan, and CRA Board Secretary, Oscar C. Camacho.

The Plaintiff called Mr. Richard S. Villagomez (“Mr. Villagomez”), the Acting Administrator of the Fund, to testify regarding the legislative initiatives 16-13 as well as the various proposed legislative amendments. Exhibits 1-13 and 15-16 were stipulated into evidence by agreement between the Plaintiff and the Government. Exhibit 14 was subsequently admitted into evidence once foundation was established. The following is a brief description of the Exhibits:

<u>Exhibit #</u>	<u>Name</u>	<u>Description</u>
1	HLI 16-13	To amend NMI Constitution, art. III, §20 to prohibit the Legislature from increasing retirement benefits until all government obligations to the Fund have been satisfied and no laws will be created that create an unfunded liability
2	HLI 17-1	To amend NMI Constitution, art. X, §3 to allow the CNMI Government to issue a Pension Obligation Bond (POB) with the bond proceeds to the NMIRF
3	SB 17-34, SD1	To amend 1 CMC §8358 to allow the NMIRF Board to provide a non-compounding annual retirement bonus in lieu of COLA
4	SB 17-35	To amend 1 CMC §8357 to transfer, from NMIRF to DOF, the function of paying the Special Annuity benefits for former Governors and Lt. Governors

<u>Exhibit #</u>	<u>Name</u>	<u>Description (Con't)</u>
5	SB 17-36, SD1	To repeal and reenact 1 CMC § 8313(g) to defined "child" as child recognized by member in their retirement application to exclude children adopted after retirement from eligiblity for survivor benefits
6	HB 17-13	To transfer the administrative function of the GHLI from the NMIRF to Department of Commerce
7	HB 17-14	To transfer the administrative function of the WCC from the NMIRF to DOF
8	HB 17-74	To allow the NMIRF to assess interest on over or under payment of benefits
9	HB 17-77	To amend the life insurance statute to provide retirees with the same coverage provided to active employees, in order allow negotiation of the best life insurance policy possible for GHLIP
10	HB 17-98	To stop the accrual of retirement or disability benefits beyond \$75,000 for any member
11	HB 17-99	To provide for the annual appropriation of an actuarially determined amount necessary for the NMIRF (Line Item Appropriation)
12	HB 17-100	To allow the BOT to reorganize pursuant Chapter 9 of the Federal Bankruptcy Code, by filing in Superior Court, in order to avoid the debilitating financial effect of unfunded liabilities
13	June 14, 2008 Letter	CNMI Government's assumption of liability for of NMC's deficient ERC of \$3,400,000 as of May 23, 2008
14	Govt Pmnt Schedule	Schedule of CNMI Collection Behavior on Court Ordered ERC from PP # 10-13 of FY 2010
15	PL 16-2	Sets NMC ERC at 11% with the CNMI Govt liable for the difference from the Actuarially Determined Rate
16	PL 15-126	Sets PSS ER at 18% with the CNMI Govt being liable for the difference from the Actuarially Determined Rate

Mr. Villagomez testified that House Legislative Initiatives 16-13 and 17-1 have both passed the House of Representatives (“House”) and the Senate (“Senate”) and were timely transmitted to the Commonwealth Election Commission who will place them on the ballot for the November 2, 2010 election. He further testified that Senate Bills 17-34, SD1; 17-35; and 17-36, SD1 have been passed by the Senate and are currently in various committees in the House. In addition, Mr. Villagomez explained that House Bill 17-77 has recently passed the House and should be transmitted to the Senate for action.

The Court expressed concern with SB 17-36, SD1, the bill seeking to amend the definition of “child” in order to curtail adoption abuses within the Fund and HB 17-77, the bill amending the life insurance coverage for retirees. The Court reasoned that grandparents may be adopting their grandchildren for health insurance purposes and not for survivor benefits and few, if any, insurance companies will offer life insurance to retirees because it will be too costly. He encouraged the Legislature, Fund and/or Government to conduct a public hearing to be announced at least 3 or 4 times to give retirees an opportunity to voice their concerns before final action on these bills.

Mr. Villagomez then explained that the Government has paid the court-ordered employer contribution and tax payments to date, however the time for receipt of payments is unpredictable, ranging from 18 to 42 days past the due date required pursuant to 1 CMC §8362. Because of this, Fund management are unable to plan adequately for the required draw down from investments. Unpredictable timing of payments also causes the Fund’s money managers to often draw down at the last minute, which may cause losses to the Fund’s investments. In response to the Court’s questions, Mr. Villagomez agreed the Government’s unpredictable payments are probably the result of the Government shortage of funds.

Mr. Villagomez testified that Exhibit 14 was a letter from Governor Fitial to then President of Northern Marianas College (“NMC”), Dr. Fernandez, which confirmed the Government’s assumption of the liability of NMC to the Fund for delinquent employer contributions for Fiscal Year (“FY”) 2006 and 2007, and through May 2008. The letter notes that pursuant to Public Law (“PL”) 16-2, the employer contribution rate was reduced to 11%, beginning with FY 2008, with the difference between 11% and the Actuarially Determined Employer Contribution being a liability of the Government. Through May, 2008, the liability of NMC, which the Government assumed amounted to \$3,400,000.

In addition, Mr. Villagomez discussed how PL 15-126 set the employer contribution rate at 18% for the Public School System (“PSS”), with the difference between the 18% and the actuarially determined rate being an obligation of the Government.

The Government called the Secretary of the Department of Finance, Mr. Robert Schrack, who testified that the Government is currently running at an estimated \$24 million deficit for the year.

As well, he explained that pursuant to PL 15-126 Section 2(a) the Secretary of Finance must remit contributions to the Retirement Fund quarterly. He stated that if it was found that the Department of Finance (“DOF”) was required to remit contributions within five working days of the end of each pay period that it would be difficult due to the Government’s shortage of cash. Furthermore, he stated that by imposing specific payment times outside of the requirements of PL 15-126 Section(2) would mean that at times the Government would be unable to make payroll, and would have to further juggle emergencies that arose such as payments to Mobil, or equipment to the hospital. The Court acknowledged the difficulties that would arise from ensuring payments to the retirees before current government employees.

The Fund and Government stipulated to raise the employer contribution rate for all employers whose employee contribution are paid from the General Fund from 20% to 30% for FY 2011. In addition, because of PLs 16-2 and 15-126, the parties requested the Court to also raise the employer contribution for NMC and PSS to 30%.

The Court, having heard the testimony of all the witnesses, accepted the parties' stipulations. Accordingly, it is therefore:

ORDERED, the Secretary of the Department of Finance shall remit retirement contributions at an employer contribution rate of 30% beginning in FY 2011, which starts October 1, 2010; it is further

ORDERED, the Northern Marianas College shall pay an employer contribution rate of 30% beginning of FY 2011, which starts October 1, 2010; it is further

ORDERED, the Public School System shall pay an employer contribution rate of 30% beginning of FY 2011, which starts October 1, 2010; and by stipulation of the parties, it is further

ORDERED, that if NMC and PSS believe that they are not bound by this Order that they file an appropriate motion with this Court to Show Cause why they are not bound; and by stipulation of the parties, it is further

ORDERED, the damages of the NMI Retirement Fund are hereby increased to \$285,759,553.56, which includes \$3.4 million the Government has assumed relating to Northern Mariana College's deficient employer contribution up to May 2008; it is further

ORDERED, that the parties, at the next court review hearing, will update the Court on additional damages, which should include NMC, PSS and the Marianas Visitor's Authority's ("MVA") deficient employer contributions assumed by the Government; it is further

ORDERED, that a review hearing is set for November 10, 2010 at 9 o'clock a.m. in Courtroom 205A. At that time, the Court will expect an update after the election with regard to the results of the voting on the legislative initiatives and also, an update on all legislation to address payment of the judgment or that otherwise affects the Fund ; it is further

ORDERED, that the Government and the Fund shall continue to work together toward carrying out the five-point plan and toward passage of the POB initiative and all other legislation that could improve the financial position of the Fund; and it is further

ORDERED, that all previous orders made by the Court remain in effect, including that the Government, NMC, PSS and MVA shall continue to remit employer contributions in the amount of twenty percent (20%) through September 30, 2010, as well timely remit the hotel occupancy and container taxes as they become due to the Retirement Fund.

SO ORDERED this _____ day of August, 2010.

Kenneth L. Govendo
Associate Judge

This document constitutes a ruling of the court and should be treated as such.

/s/ **Judge Kenneth L Govendo**