

95 MAR 1 AM : 20

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

| | | | |
|----|---------------------------------|---|-------------------------------|
| 6 | JOSEPH S. INOS, |) | Civil Action No. 94-1289 |
| 7 | Mayor of Rota in his official |) | |
| 8 | capacity, for himself and on |) | |
| 8 | behalf of the PEOPLE OF ROTA, |) | |
| 9 | Plaintiff, |) | |
| 10 | v. |) | DECISION AND ORDER ON |
| 11 | FROILAN C. TENORIO, |) | PLAINTIFF'S MOTION FOR |
| 12 | Governor of the Northern |) | PRELIMINARY INJUNCTION |
| 12 | Mariana Islands; MARIA D. |) | |
| 13 | CABRERA, Secretary of the Dept. |) | |
| 13 | of Finance; RAYNALDO M. CING, |) | |
| 14 | Secretary of the Dept. of Labor |) | |
| 14 | and Immigration; PEDRO Q. |) | |
| 15 | DELA CRUZ, Secretary of |) | |
| 15 | Commerce; ISAMU J. ABRAHAM, |) | |
| 16 | Secretary of Health Services, |) | |
| 16 | Defendants. |) | |

This matter came before the Court on February 22, 1995, on Plaintiff Joseph S. Inos' (Mayor) Motion for a Preliminary Injunction and Defendant Froilan C. Tenorio's^{1/} (Governor) Motion to Dismiss. The Mayor contends that the Governor and his Secretaries have committed unconstitutional and unlawful acts by "removing constitutional and statutory powers from the Office

FOR PUBLICATION

^{1/} The Motions also pertain to the Mayor's complaint against the various department secretaries listed in the above caption. For the sake of simplicity, their names have only been included in the body of this opinion where necessary.

1 of the Mayor and delegating them to officers and agents of his
2 executive branch or delegating them to the newly created 'Office
3 of the Governor's Representative for Rota . . ." *Plaintiff's First*
4 *Amended Complaint for Declaratory and Injunctive Relief* at 2 (Dec.
5 28, 1994). The Court heard testimony from the Mayor himself
6 regarding his Complaint and the alleged irreparable harm he has
7 been made to endure. Next, the Court heard the Governor's Motion
8 to Dismiss five of the nine counts contained in the Mayor's
9 Complaint. Finally, the Court entertained the Mayor's Motion for
10 Preliminary Injunction. The Court now render its decision on the
11 Mayor's Motion for Preliminary Injunction. A determination of the
12 Governor's Motion to Dismiss shall be forthcoming.

13
14 **I. FACTS**

15 In May of 1994, in the wake of growing concern from both the
16 local and international media, and the United States Congress
17 about alleged labor violations including rape and forced
18 prostitution, the Governor sent a task force to the Island of Rota
19 to investigate the allegations. On June 10, 1994, the House of
20 Representatives requested the Governor "to open a satellite Office
21 of the Governor on the Island of Rota . . . [that would] function
22 as the eyes and ears of the Governor . . . in order to enhance the
23 confidence of local and outside investors to develop new
24 industries and services." *See* House Resolution No. 9-52 (June 10,
25 1994). Through House Resolution 9-52, the House of
26 Representatives went on to suggest that an Office of the Governor
27 on the Island of Rota would "ensure that the needs of the people
28 of Rota are addressed in a timely manner . . . [because] the Mayor

1 has engineered an agenda inconsistent to the needs and wishes of
2 the residents of Rota." Id.

3 On August 24, 1994, the Governor signed Directive No. 124,
4 notifying the mayors of Rota and Tinian that, pursuant to Section
5 17(a) of Article III of the Constitution of the Northern Mariana
6 Islands, he was reserving "the statutory authority to carry out
7 the enforcement of labor laws in the Commonwealth under Sections
8 4441 et seq. of the Nonresident Workers Act to the Director of
9 Labor." See Plaintiff's Exh. 1. The Directive No. 124 intended to
10 establish centralized investigations of alleged labor violations
11 in order to achieve uniform application of C.N.M.I. labor laws.
12 Id.

13 On October 12, 1994, the Governor issued a memorandum
14 establishing the Office of the Governor's Representative for Rota
15 (Governor's Representative) "to efficiently take care of matters
16 requiring [the Governor's] attention and ensure effective
17 coordination . . ." On October 18, 1994, the Governor issued
18 Directive No. 137 purporting to limit the Mayor's power "to hire
19 and/or appoint personnel for the Executive Branch Department
20 offices in Tinian and Rota . . . to their authority under Article
21 VI, Section 3(g) to appoint the resident department heads." The
22 Governor also relieved the resident department heads of their
23 statutorily created duty "to hire employees for positions that are
24 stationed on the islands that the resident department head
25 represents." See 1 CMC § 5106.

26 In addition, Directive No. 137 firmly establishes secretaries
27 of the various executive departments as the ultimate authority on
28 matters of employment and regulation within those departments, and

1 subjects the supervisory role of resident department heads to the
2 ultimate approval of the secretaries. On November 28, 1994,
3 apparently pursuant to Directive No. 137, the Governor's
4 Representative informed all Rota resident department heads that
5 "since the Mayor is not the appointing authority for anyone but
6 the resident department heads, he has no authority to approve or
7 disapprove annual or administrative leave for anyone else." See
8 Plaintiff's First Amended Complaint at 9-10. Accordingly, the
9 Governor, through the Governor's Representative, has taken over
10 the grant or denial of administrative or annual leave for most of
11 the employees in Rota's resident departments.

12 The Mayor contends that these recent actions taken by the
13 Governor, the secretaries of the various executive departments,
14 and the Governor's Representative have usurped his constitutional
15 and statutory authority to administer public services and
16 government programs on the Island of Rota. In addition to his
17 request for a declaratory judgment prohibiting the Governor from
18 carrying out his plans to recentralize control over his executive
19 departments, the Mayor requests this Court to enjoin the Governor
20 from any further implementation of the directives at issue and
21 return the local government of Rota to the status quo before this
22 Court has had an opportunity decide this matter on the merits.

23 In support of his request for preliminary injunction, the
24 Mayor testified to several circumstances which he claims have
25 created and will continue to create irreparable injury to himself
26 and the people of Rota. The Mayor claims that the Governor's
27 interference with the Mayor's powers to appoint or dismiss
28 resident department heads, to make investigations (of labor

1 matters), to grant administrative leave to resident department
2 employees, and to promulgate regulations on local matters have all
3 combined to frustrate the Mayor's ability to effectively
4 administer public services on Rota. The Mayor contends that
5 government employees on Rota have been left in a state of
6 confusion concerning whether they ought to follow the authority of
7 the Mayor or the Governor.

8 In response, the Governor has based the legitimacy of his
9 actions on his belief that Article III, Section 17(a) of the
10 C.N.M.I. Constitution leaves him with residual power to regain
11 that power which Section 17(a) requires him to delegate to the
12 Mayor. Further, the Governor contends that a preliminary
13 injunction should not issue in this matter because: (1) the Mayor
14 already has an adequate remedy at law available to him; and, (2)
15 the Mayor has failed to show the threat of irreparable injury.

16 17 **II. ISSUE**

18 Whether the Court should issue a preliminary injunction
19 enjoining the Governor, his Secretaries, and the Governor's
20 Representative from any further implementation of the directives
21 at issue and return the local government of Rota to the status quo
22 before this Court has had an opportunity to decide this matter on
23 the merits.

1 **III. STANDARD FOR INJUNCTIVE RELIEF**

2
3 The Court must take the following four factors into
4 consideration in weighing an application for a preliminary
5 injunction?':

6 (1) the significance of the threat of irreparable harm
7 to plaintiff if the injunction is not granted; (2) the
8 probability that plaintiff will succeed on the merits;
9 (3) the state of the balance between the harm the
10 petitioners will face if the injunction is denied
11 against the harm the respondents will face if the
12 injunction is granted; (4) the effect of the injunction
13 on the public interest.

14 Sablan v. Board of Elections, Civil Action No. 93-1274 at 5
15 (Super. Ct. Jan. 3, 1994), (citing King v. Saddleback Junior
16 College Dist, 425 F.2d 426, 427 (9th Cir. 1970).

17 Alternatively, a trial court may grant a preliminary
18 injunction if it finds that serious issues of law are presented
19 and that the petitioners will face much greater harm if the
20 injunction is denied than the respondents will if it is granted.
21 Marianas Public Land Trust v. Government of CNMI, 2 CR 999, 1002
22 (D.N.M.I. App. 1987) (citing Los Angeles Memorial Coliseum *Comm.*
23 v. *Nat'l* Football League, 634 F.2d 1197, 1201 (9th Cir. 1980)).

24 ^{2/} The Governor contends that a preliminary injunction is
25 not proper in the case at bar because the Mayor already has an
26 adequate remedy at law - declaratory relief - available to him.
27 The Governor's framing of the issue exhibits a general
28 misunderstanding. Although the Mayor has requested declaratory
relief in this matter, such a request does not by itself estop him
from requesting the more urgent form of equitable relief known as
the preliminary injunction. Plaintiffs are entitled to
preliminary relief during the pendency of the final hearing
concerning legal or equitable remedies if a court determines the
four factor preliminary injunction analysis favors the petitioner.
See King v. Saddleback Junior College Dist, 425 F.2d 426, 427 (9th
Cir. 1970).

III. DISCUSSION & ANALYSIS

1. Irreparable Harm

The Mayor alleges irreparable harm in two areas. First, the Mayor alleges that his constitutional rights as Mayor have been usurped and cites *Elrod v. Burns*, 96 S.Ct. 2673 (1976) for the proposition that a continuing violation of a constitutional right constitutes irreparable injury. *Id.* Second, the Mayor alleges irreparable injury exists because the local government of the Island of Rota has been thrown into a state of confusion over the power struggle initiated by the Governor.

The Mayor contends that Article VI, Section 3 of the Constitution confers upon him the sort of constitutional rights, which if in danger of violation, constitute irreparable injury. The Court does not agree. The *Elrod* decision upon which the Mayor relies, stands for the proposition that irreparable injury exists when First Amendment interests are clearly threatened or impaired at the time relief is sought. The Mayor does not allege any First Amendment violations in his Complaint. Further, the Court does not share the Mayor's view that the pronouncement of his duties in Article VI, Section 3 amounts to the sort of constitutional right contemplated in the *Elrod* decision.

Although the Governor's recent actions may have frustrated the Mayor's ability to carry out duties which he believes are traditionally his own, the Court has received very little evidence of the alleged irreparable harm being inflicted on the local government and the people of Rota. During testimony, the Mayor listed the ways in which local government employees on Rota have

1 been left in a state of confusion concerning whether they ought to
2 follow the authority of the Mayor or the Governor.

3 First, after complaining about how his recent investigation
4 into local labor violations have been frustrated by the Governor's
5 decision to launch his own investigation, the Mayor admitted that
6 the Governor had been within his rights and failed to specify how
7 the Secretary of Labor's investigation had interfered with his
8 own. Next, the Mayor claimed that the Governor had interfered
9 with his powers to appoint and/or dismiss resident department
10 heads. During cross examination, the Mayor admitted that he had
11 never exercised his power to dismiss. Although the Mayor did cite
12 two occasions where his selection for a resident department head
13 had been allegedly replaced by a person appointed by the secretary
14 of the department,?' specific evidence that the replacements have
15 or intend to cause chaos or confusion has not been forthcoming.

16 The Mayor also complained that the recent takeover of
17 administrative and annual leave by the Governor's Representative
18 has made it very difficult to have enough employees at any given
19 time to administer public services on Rota. The Mayor
20 specifically cited an occasion where the Governor's Representative

22 ^{3/} First, on May 26, 1994, Mayor Inos appointed Ms.
23 Joaquina C. Atalig as Acting Resident Secretary of the Department
24 of Public Health. **See** Plaintiff's Exh. 6. On January 20, 1995,
25 Dr. Isamu J. Abraham, the Secretary of Health designated Ms.
Patricia **Songsong** as Acting Resident Director of the Rota Health
Center. **See** Plaintiff's Exh. 1.

26 Second, on **September 7, 1994**, Pedro Q. Dela Cruz, the
27 Secretary of Commerce temporarily assigned Juan Q. Inos to Rota to
oversee enforcement of labor laws, **see** Plaintiff's Exh. 8, even
28 though Acting Resident Secretary of the Department of Labor and
Immigration, **Nicolas A. Songsong** had already been appointed by the
Mayor on August 23, 1994. **See Mayor's Memo Concerning Songsong
Appointment** (submitted by Plaintiff via fax at Court's request
Feb. 23, 1995).

1 approved administrative leave for forty Rota employees to
2 participate in a local Halloween festivity.^{4/} However, the Mayor
3 failed to document which specific public service had been denied
4 the people of Rota on that day which would have threatened
5 irreparable injury. Nor did the Mayor indicate that he would not
6 have given a similar number of administrative furloughs on that
7 occasion.

8 Finally, the Mayor claims that his power to promulgate
9 regulations on local matters has been usurped by the Secretary of
10 Health Services by his statement that mayors lack the authority to
11 promulgate rules and regulations regarding the Department of
12 Public Health. The Court simply has not been shown how the
13 current transfer of the power to make regulations from the Mayor
14 to the secretaries of the various executive departments poses a
15 threat of irreparable injury to the Mayor or the people of Rota.
16 The fact that the Mayor has not attempted to promulgate a
17 regulation in this or any other department during his tenure as
18 Mayor further lessens the likelihood that government employees on
19 Rota will encounter inconsistent regulations from the offices of
20 the Mayor and the secretaries of the various executive
21 departments.

22 In conclusion, the Court has been shown substantial evidence
23 that the Governor's actions have made the local government of Rota
24

25 During his testimony, the Mayor referred to a similar
26 event that occurred during the Christmas holiday. However, since
27 the Christmas incident was never mentioned in any of the Mayor's
28 pleadings, and the Halloween incident was never mentioned during
testimony, it is unclear to the Court whether or not the Mayor
misspoke during testimony. Nevertheless, even if the Christmas
incident was a separate occurrence, the Court's analysis of the
Halloween incident is applicable.

1 function differently, but no evidence that the local government of
2 Rota has ceased to function efficiently for the benefit of the
3 people. The propriety of the Governor's actions shall be
4 adjudicated in due time. Thus far, this Court has not been shown
5 how his actions present a threat of irreparable harm.

6
7 **2. Likelihood of Success on the Merits**

8 The Mayor relies on Article III, Section 17(a)^{5/} in
9 conjunction with Article VI, Section 3 of the C.N.M.I.
10 Constitution for his contention that the Governor and his
11 Secretaries have usurped his power. Article III, Section 17(a)
12 states:

13 The governor shall delegate to a mayor elected under the
14 provisions of Article VI, Section 2, responsibility for
15 the execution of Commonwealth laws as deemed appropriate
16 and the administration of public services in the island
17 or islands in which the mayor has been elected.
18 Services being provided on a decentralized basis in Rota
19 and Tinian and Aguiguan, on the effective date of this
20 provision shall continue. In furtherance of this
21 section, the mayor shall have the responsibility for
22 ensuring that the resident department heads faithfully
23 execute their duties under the law and in accordance
24 with the policies of the Commonwealth government for the
25 administration of public services, in the island or
26 islands in which the mayor has been elected.

Commonwealth Constitution, Art. III, § 17(a) (as amended 1985).

21 In pertinent part, Article VI, Section 3 states:

22 (b) A mayor shall administer government programs, public
23 services, and appropriations provided by law for the
24 island or islands served by the mayor, and shall report
25 quarterly to the governor relating to those programs and
26 services or appropriations . . .

(c) A mayor may investigate complaints and conduct
public hearings with respect to government operations

27 ^{5/} Amendment 25, created during the 1985 Constitutional
28 Convention, amended the original Article III, Sections 17(a) and
17(b), and is the source of Article III, Sections 17(a), 17(b),
and 17(c) of our current Commonwealth Constitution.

1 and local matters, and may submit findings or
2 recommendations to the governor and the legislature. .
3 (g) The mayors of Rota, Tinian and Aguiguan, shall
4 appoint, in consultation with the head of the respective
5 executive branch department, all resident department
6 heads . . .

7 Commonwealth Constitution, Art. VI, § 3. "When the intention of
8 the law making body is so apparent from the face of the statute
9 that there can be no question as to its meaning, there is no room
10 for construction." SUTHERLANDS STAT CONST § 46.01 (5th Ed.). The
11 Plaintiff contends that the plain language of Article III, Section
12 17(a), when read in conjunction with Article VI, Section 3,
13 prohibits the Governor from taking part in the execution of
14 Commonwealth laws and the administration of decentralized public
15 services on Rota.

16 With equal vigor, the Governor contends Section 17(a)
17 empowers the Governor to reclaim power he has delegated to the
18 Mayor when the Governor sees a need to do so. The Governor seems
19 to have based his understanding of Article 17(a) on the first
20 sentence which places the Governor in the act of "delegating" the
21 responsibility for the execution of Commonwealth laws "as deemed
22 appropriate" and the administration of public services to the
23 Mayor. The act of delegating authority, rather than a complete
24 surrender or relinquishment of authority, is merely entrusting
25 power to another to act for the good of the one who authorizes
26 him. 11A WORDS AND PHRASES, 421 (1994), (citing *Mouledoux v. Maestri*,
27 2 So.2d 11, 15 (1941)).

28 Surely, the Framers' use of the word "delegate" tends to
express an intent to empower the Governor with the right to
suspend that which he has delegated. However, the Mayor directs
the Court to the second sentence of Section 17(a) which states:

1 "Services being provided on a decentralized basis in Rota . . . on
2 the effective date of this provision shall continue." It is
3 widely known that prior to the passage of Amendment 25,
4 decentralized services such as the Department of Public Works,
5 Department of Public Safety, Department of Commerce and Labor,
6 Department of Health and Environmental Services had traditionally
7 been administered by the Mayor. The second sentence of Section 17
8 suggests that the Mayor should retain his authority over these
9 decentralized services.

10 The fact that such an inconsistency is present in the plain
11 language of Section 17(a) compels the Court to delve into the
12 history and legislative intent underlying Section 17(a).^{6/} At
13 this time, the Court has not been adequately briefed by either
14 party on this subject. Accordingly, the Court does not feel that
15 the "likelihood of success on the merits" lies with either party.
16

17 3. Balance of **Hardships**

18 Based on the Court's analysis of the threat of irreparable
19 harm to the Mayor and the people of Rota, the Court finds that the
20 Mayor failed to prove that he or the people of Rota would incur
21 substantial hardship if the injunction is denied. In all
22 sincerity, neither do the facts show that the Governor would incur
23 hardship if he were made to relinquish the control he has assumed.
24 Therefore, this factor does not weigh in the favor of either
25 party.
26

27 ^{6/} The Court does not rule out the possibility that other
28 inconsistencies may exist between Article III, Section 17(a) and
Article VI, Section 3. However, further discussion of this matter
is not necessary to decide the Mayor's Motion for Preliminary
Injunction.

1 **4. Public Interest**

2 In the Court's view, the Mayor has failed to show how the
3 Governor's recent actions on Rota have caused or will cause
4 confusion and chaos. Thus, the Court believes the public interest
5 will not be jeopardized if the Governor is allowed to retain the
6 control he has assumed until this Court has had the opportunity to
7 rule on the merits of this case. However, the Court can only
8 speculate as to how the public interest would be affected if the
9 Mayor and his resident department heads were to resume control
10 over local affairs. Faced with these two choices, the Court finds
11 that it is in the public's best interest to preserve the current
12 relationship between the central and the local government.

13 After taking all four factors of the preliminary injunction
14 analysis into account, the Court finds that the Mayor's petition
15 does not warrant an injunction.

16
17 **5. Serious Issues of Law but Harm not Great**

18 A trial court also may grant a preliminary injunction if it
19 finds that serious issues of law are presented and that the
20 petitioner will face much greater harm if the injunction is denied
21 than the respondents will if it is granted. *Marianas Public Land*
22 *Trust v. Government of CNMI*, 2 CR 999, 1002 (D.N.M.I. App. 1987)
23 (citing *Los Angeles Memorial Coliseum Comm. v. Nat'l Football*
24 *League*, 634 F.2d 1197, 1201 (9th Cir. 1980)). Although the issues
25 presented are serious, the Mayor has not shown that he will face
26 much greater harm from a denial of this injunction than the
27 Governor would endure if the injunction were granted.

28

1 Accordingly, the Mayor's petition does not satisfy this
2 alternative test.

3 Thus, the Court finds that the Mayor's Petition for
4 Preliminary Injunction does not meet the stringent tests set forth
5 by law for the granting of this kind of extraordinary, equitable
6 relief and is therefore DENIED.^{2/}

7

8 IV. CONCLUSION

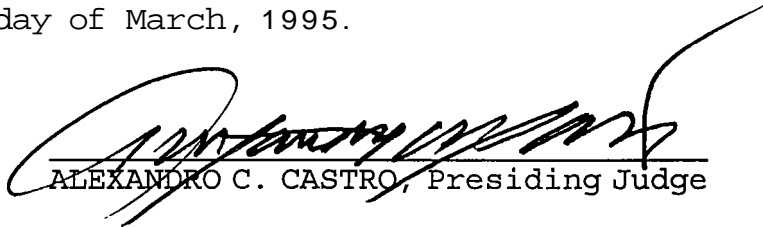
9 For the foregoing reasons, the Mayor's Motion for Preliminary
10 Injunction is DENIED.

11

12 So ORDERED this 1st day of March, 1995.

13

14



ALEXANDRO C. CASTRO, Presiding Judge

15

16

17

18

19

20

21

22

23

24

25

26

27 ^{2/} While the Court's doors remain open to both parties for
28 the resolution of disputes of this nature, the Court encourages
both parties to amicably settle their disputes so that the people
of Rota may receive efficient public service from their elected
officials.