

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

NORTHERN MARIANAS COLLEGE,
Plaintiff/Appellant,

v.

CIVIL SERVICE COMMISSION and JACK ANGELLO,
Defendants/Appellees.

Supreme Court Appeal No. CV-06-0021-GA
Superior Court Case No. 03-0092D

OPINION

Cite as: *N. Marianas Coll. v. Civil Serv. Comm'n II*, 2007 MP 8

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BEFORE: MIGUEL S. DEMAPAN, Chief Justice; ALEXANDRO C. CASTRO, Associate Justice; and JOHN A. MANGLONA, Associate Justice

DEMAPAN, Chief Justice:

¶ 1 Appellant Northern Marianas College (“NMC”) appeals the trial court’s decision that appellee, the Civil Service Commission (“CSC”), has jurisdiction over administrative appeals brought by NMC employees. Because the plain language of the constitutional provision which establishes NMC as an autonomous agency exempts NMC from the civil service system, we hold that CSC does not have jurisdiction over NMC’s administrative appeals. On that basis, we reverse.

I.

¶ 2 We review constitutional provisions and statutes *de novo*. *N. Marianas Coll. v. Civil Serv. Comm’n*, 2006 MP 4 ¶ 6 (per curiam); see *United States v. Juvenile*, 451 F.3d 571, 575 (9th Cir. 2006) (“Questions of statutory and constitutional interpretation are reviewed *de novo*.”).

II.

¶ 3 Appellee Jack Angello (“Angello”) was a NMC employee until September 24, 2002, when NMC terminated his employment under the “without cause” provision of his employment contract. He appealed his termination to the NMC Employee Appeals Committee, which upheld NMC’s decision. Angello then appealed the ruling to CSC. While Angello’s appeal was pending with CSC, NMC filed a motion to dismiss on grounds that CSC lacked jurisdiction over NMC’s employment decisions. CSC held that

in the absence of a provision in the law specifically exempting NMC employees from the civil service system, CSC retained jurisdiction.

¶ 4 NMC appealed CSC’s holding to the trial court. CSC filed a motion for summary judgment, arguing that NMC lacked standing to appeal CSC’s decision. The trial court granted the motion and held that NMC, as a government agency, lacked standing to seek judicial review of CSC’s administrative decision. NMC appealed the trial court’s decision on the motion for summary judgment to this Court. We reversed and remanded the case for the trial court to resolve whether NMC employees are subject to the Civil Service Act, 1 CMC §§ 8101 *et seq.*, and thus, the civil service system. *See N. Marianas Coll.*, 2006 MP 4 ¶ 24.

¶ 5 On remand, the trial court held that NMC employees were part of the civil service system because the Commonwealth Code did not specifically indicate that NMC was exempt from the Civil Service Act. The trial court further found that NMC’s authority over the hiring, firing, compensation, and classification of its employees did not affect an employee’s right to appeal to CSC in accordance with the Civil Service Act. NMC appeals.

III.

¶ 6 The Commonwealth of the Northern Mariana Islands Constitution (“CNMI Constitution”), as amended, created NMC,¹ and directed it to provide “education in the areas of adult and continuing education, postsecondary and adult vocational education and professional development for the people of the Commonwealth.” N.M.I. Const. art.

¹ Prior to the constitutional provision relating to NMC, the legislature established NMC as a nonprofit public corporation. 3 CMC § 1304(b); PL 4-34, § 4(b). The CNMI Constitution does not provide for the creation of NMC as a nonprofit public corporation. Rather, NMC is an agency within the executive branch.

XV, § 2(b). Under Article XV, Section 2(a) of the CNMI Constitution, “[t]he board of regents . . . shall have autonomy in the administration of its affairs and shall formulate policy relating to the higher education needs of the Commonwealth” Autonomy is defined as “the *sovereign authority* to govern oneself.” *State v. Mallan*, 86 Haw. 440, 469 n.19 (1998).

¶ 7 The CNMI Constitution, as amended, also established CSC as a government agency to “administer personnel policies” for the government. N.M.I. Const. art. XX, § 1. CSC hears and decides employee appeals for disciplinary actions, suspensions, demotions, and dismissals from the civil service. 1 CMC § 8116(c). The CNMI Constitution further provides that, “[e]xemption from the civil service shall be as provided by law, and the [CSC] shall be the sole authority authorized by law to exempt positions from civil service classifications.” N.M.I. Const. art. XX, § 1. Similarly, the legislature entrusted CSC with the power to regulate appointments, promotions, and removals. 1 CMC § 8117(a).

¶ 8 The question we must determine is whether NMC is exempt from the civil service system under the CNMI Constitution and supporting legislation. Generally, only the legislature can exempt employees from the civil service system. *Manglona v. CNMI Civil Serv. Comm’n*, 3 N.M.I. 244, 249 (1992). NMC, however, is granted autonomy separately from CSC through Article XV, Section 2(a) of the CNMI Constitution so that it can fully control the administration of its affairs.²

² In its brief and at oral arguments, CSC maintained that its authority extends to the administrative staffs of the legislative and judicial branches. We reject this argument in its entirety. CSC relies on the citation of Article XX, Section 1 in *Manglona*, where we added parenthetical marks for clarification of the issues in that case. 3 N.M.I. at 248. In actuality, there are no parenthetical marks in Article XX, Section 1. Article XX, Section 1 of the CNMI Constitution states that CSC’s “authority shall extend to positions other than . . . the administrative staffs of the legislative and judicial branches.” Accordingly, based on the plain

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A basic principle of constitutional construction is that language must be given its plain meaning. *See, e.g., Camacho v. N. Marianas Ret. Fund*, 1 N.M.I. 362, 368 (1990). When we examine Article XV, Section 2(a), we find that the use of the term “shall” is mandatory and has the effect of creating a duty. *Aquino v. Tinian Cockfighting Bd.*, 3 N.M.I. 284, 292 (1992). The word “shall” is unambiguous and means “must.” *Id.* Therefore, when the CNMI Constitution states that “[t]he board of regents . . . shall have autonomy in the administration of its affairs,” it means that NMC *must* have autonomy in the administration of its affairs. The term “may,” which connotes a permissive rather than a mandatory provision, is not used, *In re Estate of Rofag*, 2 N.M.I. 18, 26 (1991), nor is the term “should.” *Wabol v. Villacrusis*, 4 N.M.I. 314, 317 (1995). Furthermore, there is no language in the CNMI Constitution or any other legislation which gives CSC the ability to direct NMC’s administration of its affairs. Therefore, because Article XV, Section 2(a) of the CNMI Constitution specifically uses the word “shall,” and since there is no additional language which permits CSC to participate in NMC’s internal decisions, we find that the CNMI Constitution grants NMC’s board autonomous powers over its affairs which CSC cannot infringe.³

¶ 10

The statutory provisions dealing with NMC also implement and clarify NMC’s autonomy under the CNMI Constitution and support our plain meaning analysis of Article XV, Section 2(a) of the CNMI Constitution. Of particular importance is 3 CMC § 1316(n), which has undergone numerous amendments. In March, 1985, NMC was

meaning, CSC’s authority does not extend to the administrative staffs of the legislative and judicial branches.

³ The CNMI Constitution also guarantees NMC an annual budget of not less than one percent of the general revenues of the Commonwealth, which may not be reprogrammed for other purposes. N.M.I. Const. art. XV, § 2(c). NMC’s constitutional budgetary provision further indicates NMC’s autonomy and supports the plain meaning of Article XV, Section 2(a) of the CNMI Constitution.

specifically exempted from the civil service system under 1 CMC § 8131(a), and the board’s power to appoint and terminate under 3 CMC § 1316(n) was directed to be consistent with “applicable rules and regulations of the [CSC].” PL 4-34, § 18.

¶ 11 In November, 1985, however, voters ratified forty-four amendments to the CNMI Constitution, including Article XV, Section 2(a), containing the autonomy language for NMC and Article XX dealing with CSC.⁴ In 1993, NMC’s specific exemption from the civil service system was repealed, and 3 CMC § 1316(n) moved closer to its present form when the board’s power to appoint and terminate no longer had to be consistent with CSC’s rules and regulations. Instead, the board’s power to appoint and terminate only had to be “consistent with its adopted rules and regulations” PL 8-18, § 10.⁵

¶ 12 In the Higher Education Act of 1995, the legislature further refined the scope of the board’s responsibilities for establishing and maintaining the autonomy of its personnel. PL 9-53, § 3. First, 3 CMC § 1316(e) was amended and granted NMC the power “[t]o adopt, amend and repeal policies governing the conduct of its business and the performance of the powers and duties granted to or imposed upon it by law or the Constitution.” PL 9-53, § 6. Second, 3 CMC § 1316(n) again moved closer to its present form when the board’s power to appoint and terminate extended to “the president, officers, faculty, employees and staff of the College, and consistent with its adopted rules

⁴ Article XX of the CNMI Constitution, the provision regarding CSC, deals with the Commonwealth government in general and applies to all government personnel. On the other hand, Article XV, Section 2 of the CNMI Constitution is specific as it applies only to NMC and its personnel. A specific statute controls a general statute. *Limon v. Camacho*, 1996 MP 18 ¶ 30.

⁵ EO 94-3, § 214(e) is inconsistent with Article XV, Section 2(a) of the CNMI Constitution. EO 94-3, § 214(e) provides that “[n]otwithstanding any other provision of law, the function of taking any personnel action is, *subject to the policies set forth by the [CSC]*, vested in the respective appointing authorities and shall not require further approval.” EO 94-3, § 214(e) (emphasis added). In 2001, the legislature repealed EO 94-3, § 214, in its entirety. PL 12-54. In 2002, however, the legislature repealed PL 12-54 in its entirety, and reenacted EO 94-3, § 214, in its entirety. PL 13-1.

and regulations, to specify their responsibilities and authority, and to set their classifications and salaries.” PL 9-53, § 6.

¶ 13 In the Higher Education Act of 1997, the legislature once again amended 3 CMC § 1316(n). PL 10-77 (“the 1997 amendments”). The legislature recognized that accreditation from the Western Association of Schools and Colleges was “dependent upon the [board] maintaining its constitutionally created autonomy.” PL 10-77, § 2. The purpose of the 1997 amendments was “to clarify ambiguities in the law and confirm that the [board] shall have sole power and authority to set the salaries for the Chief Executive Officer, faculty and staff” of NMC. PL 10-77, § 3. In furtherance of this stated purpose, NMC was exempted from the 1984 Compensation Adjustments Act, 1 CMC §§ 8241 *et seq.*, as amended, and the Commonwealth Salary Act of 1988, 1 CMC §§ 8211 *et seq.*, as amended.

¶ 14 Section 1316(n), in its current form, provides that the board has the power to appoint and terminate “the president, officers, faculty employees and staff of the college, and consistent with its adopted rules and regulations, to specify their responsibilities and authority, and to set classifications of salaries.” 3 CMC § 1316(n). Nowhere does the CNMI Constitution or any statutory provision require NMC to develop personnel policies which are consistent with CSC’s policies. Rather, the statutory provisions dealing with NMC implement and clarify NMC’s autonomy under the CNMI Constitution. Accordingly, 3 CMC § 1316(n) clearly shows that the CNMI Constitution’s aim is to enable NMC to make its own employee termination decisions without CSC’s review.

¶ 15 Our decision is by no means an attempt to strip CSC of its powers of management, or to hamper CSC in its efforts to pursue its stated mission under the CNMI

Constitution. Furthermore, our opinion does not usurp the legislature's role in exempting other agencies from the civil service system. Such an attempt would not be permissible under Article XX, Section 1 of the CNMI Constitution. *See Manglona*, 3 N.M.I. at 249. NMC is unique to the extent that the CNMI Constitution grants it autonomy. The legislature may still exempt other agencies from the civil service system which are not specifically granted autonomy under the CNMI Constitution.

IV.

¶ 16 We hold that NMC is a fully autonomous agency under the CNMI Constitution. As such, NMC is exempted from the civil service system. CSC does not have the authority to consider administrative appeals from NMC's employees, including Angello's administrative appeal. Accordingly, we REVERSE the trial court's decision.

DATED this 28th day of MARCH, 2007.

/s/ Miguel S. Demapan

MIGUEL S. DEMAPAN
Chief Justice

/s/ Alexandro C. Castro

ALEXANDRO C. CASTRO
Associate Justice

/s/ John A. Manglona

JOHN A. MANGLONA
Associate Justice