

**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

**[PROPOSED]
ORDER AFTER MAY 3, 2010
REVIEW HEARING**

This matter came before this Court on May 3, 2010 in Courtroom 205A pursuant to this Court’s Order of February 9, 2010, entitled “Order after January 25, 2010 Review Hearing.” *See Northern Mariana Islands Retirement Fund v. CNMI*, Civ. Action No. 06-0367, February 9, 2010 (“Order”). In its Order, the Court ordered an update regarding progress made on a pension obligation bond or legislation to address the judgment, and stated it would revisit the adequacy of the employer contribution amount. The Court additionally directed the Government to submit evidence regarding whether it could contribute 25% instead of 20% of the employer contribution amount.

Plaintiff Northern Mariana Islands Retirement Fund was represented by Viola Alepuyo, Esq., and Deborah E. Fisher, Esq., of the Law Office of Deborah E. Fisher, LLC, and Defendants 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 of Director, Mr. David Sablan.

The Plaintiff called Mr. Richard S. Villagomez, the Deputy Administrator of the Fund, to testify regarding the Five Point Plan and legislation which the Fund has drafted. Exhibits 1-3 were stipulated into evidence by agreement between the Plaintiff and the Government. Exhibit 1 consisted of a power point presentation of the Five Point Plan. Mr. Villagomez testified as to the Plan, and presented it to the Court. This same plan had been presented the week earlier to the Legislature. Exhibit 2 consisted of an April 13, 2010 Letter from NMIRF Negotiation Team Chairman Jerry P. Crisostomo and Government Chairman Tony Muna to the Hon. Ramon S. Basa, Chairman of the Ways & Means Committee of the 17th House of Representatives. The letter was in regard to Comments to HLI 17-1. Exhibit 3 was a Copy of Joint Resolution submitted to the legislature during the April 28, 2010 meeting with House and Senate members, resolving to support the Fund and Government's plans by passing much needed legislation and by not passing any bill giving added benefits to Defined Benefit plan members.

Mr. Villagomez described the effort to make the contributions into a line item appropriation. In addition, he described the effort to enact legislation for a pension obligation bond. Finally, he explained why the drawdown is currently above thirty-five million. A large contributing factor is the decrease in payroll since the Defined Benefit plan is closed to new members—so all the contributions which are attributable to the Defined Contribution plan are no longer counted.

The Government called Robert Schrack, the Special Assistant at the Department of Finance. He estimates that the Government is running a 17 million dollar deficit for the first six months of the year. This trend, he estimates, will continue. An additional five percent in employer contributions will require 1.1 to 1.2 million dollars for the second half of the year—Mr. Schrack estimates that five percent would be approximately 2.3 million for the whole year. Right now, the Government is struggling to meet payroll. In the past, the Government had money set aside for two payroll payments in advance, but now there is nothing set aside. Mr. Schrack testified that there are currently some unexpended Saipan local poker fees, and balances remaining on previously appropriated funds. A number of these are capital projects, and there is an issue regarding re-appropriating these funds for operations.

The Government also called Antonio S. Muna, the Government representative on the Negotiation Team. Mr. Muna testified to the Government's proposal of extending the life of the fund assets and "shepherding" current assets until the last dollar of liability is paid. He testified that the Government is looking at ways to decrease the Fund's annual draw down from investments from 40 to 45 million dollars to 20 million dollars per year by amending Public Law 6-17 and providing for a line item appropriation. Mr. Muna stated that by limiting the Retirement Fund's yearly drawdowns to 20 million dollars and assuming the 7.5% rate of return, fund asset life would last through the last dollar of liability. The Government hopes to accomplish this by identifying and implementing revenue generating sources as well as decreasing the Government's obligations. He testified that changes should start at the beginning of the fiscal year.

Finally, the Court asked the CRA members if they would like to address the Court. Mr. David Sablan took the podium. He stated that he believed it was fiscally impossible for the

Government to get out of debt, and found it distressing that the Government had not paid its employer contributions in full. He additionally stated he was disturbed that the Government would not pay until there was a Legislative appropriation and asked the Court to enforce the judgment.

The Court heard the testimony of all the witnesses, and the argument of CRA. While the Court believes Mr. Muna and Mr. Schrack, the Court also is wary of this Government's claim to be able to get to a point of increasing the monthly contribution to twenty million dollars in the near future. The parties have taken the right steps, by going to the Legislature, and implementing legislation to obtain a pension obligation bond. This is something which takes time: amending a Constitution is never easy or quick. The Court, however, is concerned as to whether the CNMI will be able to obtain financing at this time. Nevertheless, the Court sees tremendous progress by the parties.

The Government is current in its payments to the Retirement Fund, including the 20% employer contribution and the hotel/alcohol container taxes, as previously ordered by this Court. The Court must face the realities of the economic times in the Commonwealth. In addition, the Court continues to believe that settlement, and concerted effort by all the parties is the best way to resolve this matter. At the same time, the Court is committed to continuing enforcement of this judgment, which must be paid. Accordingly, the employer contribution shall remain at 20% at present, but the parties are on notice that unless something really significant has happened by the start of the next fiscal, the employer contribution is going to go up to 30%. Accordingly, it is

ORDERED, that a review hearing is set for August 11, 2010 at 9 o'clock a.m. in Courtroom 205A. At that time, the Court will expect an update regarding any progress made on a pension obligation bond or legislation to address the judgment; and it is further

ORDERED, that the employer contribution shall remain at 20% at present, but that unless the government presents evidence of a significant change in circumstance at the review hearing on August 11, 2010, the employer contribution shall increase to 30% at the beginning of the fiscal year, which starts October 1, 2010; and it is further

ORDERED, that all previous orders made by the Court remain in effect, including that the Government shall continue to remit employer contributions in the amount of twenty percent (20%), as well as the taxes currently being remitted to the Retirement Fund.

SO ORDERED this _____ day of June, 2010.

Kenneth J. Govendo
Associate Judge