



PORT OF GUAM
ATURIDAT I PUETTON GUAHAN
Jose D. Leon Guerrero Commercial Port
1026 Cabras Highway, Suite 201, Piti, Guam 96925
Telephone: 671-477-5931/35 Facsimile: 671-477-2689/4445
Website: www.portguam.com



Lourdes A. Leon Guerrero
Governor of Guam
Joshua F. Tenorio
Lieutenant Governor

December 1, 2021

RECEIVED
Manuel Fejeran
OFFICE OF THE ATTORNEY GENERAL
ADMINISTRATION
12/1/21 11:35 AM

The Honorable Leevin T. Camacho
Attorney General of Guam
Office of the Attorney General of Guam
287 West O'Brien Drive
Hagatna, Guam 96910

RE: PAG Board Resolution No. 2021-34 Relative to directing the General Manager to exercise authority to take any and all administrative and/or criminal actions necessary pursuant to OAG Opinion dated November 9, 2021 re Request for Opinion on Retroactive Salary Adjustments for Former Management at the Port Authority of Guam.

Dear General Camacho:

Thank you for your letter dated November 9, 2021, in response to the Port Authority of Guam's ("PAG") request for the Office of the Attorney General's ("OAG") Opinion on Retroactive Salary Adjustment of Former Manager at the PAG (Ref. PAG 21-0111). With the specific guidance provided by your office in the OAG's GHURA Opinion dated November 1, 2021 (OPA 20-0375), the Office of the Public Auditor's ("OPA") July 2020 Performance Audit, and the Legal Memorandum provided by PAG Legal Counsel, the PAG Board of Directors at a Regular Meeting on November 24, 2021, passed Board Resolution No. 2021-34 Relative to directing the General Manager to exercise authority to take any and all administrative and/or criminal actions necessary pursuant to Guam law. Enclosed, and officially transmitted herewith, is a signed copy of PAG Board No. 2021-34 for your records.

As the current PAG General Manager, I am committed to ensuring the protection of ratepayer funds, particularly with regard to the misuse and misappropriation thereof, and will take appropriate actions without hesitation, especially when such matters are brought to my attention. Thus, having confirmed that several salary adjustments for the former PAG management were applied retroactively, and to guarantee the proper execution of this resolution, the PAG and the OAG must work diligently together to ensure that the illegal funds received by Senator Joanne Brown, as well as all those similarly situated both past and present, are recovered and returned back to the People of Guam.


You recognized in the OAG's GHURA Opinion, that Guam law prohibits retroactive pay unless expressly authorized by statute. While Title 4 GCA § 6202 entitles *classified employees* to an anniversary increment that cannot be annulled in the event of a delayed performance evaluation or increment certification, *the law does not apply to unclassified/exempt employees* – i.e. former

Letter to Hon. Leevin T. Camacho
RE: PAG Board Resolution No. 2021-34
December 1, 2021
Page 2 of 2

PAG General manager and current Senator Joanne Brown. Thus, absent statutory authority similar to Title 4 GCA § 6202, *there is absolutely no authority* for the former PAG General Manager, an unclassified employee, to receive retroactive pay increases.

Mr. Attorney General, I trust that you will exercise your authority and join the PAG in taking all appropriate means necessary to act on this imperative resolution expeditiously. As public servants, we cannot sit idle and allow this to proceed without consequence. We must do right by the public and return all those illegal monies received back into the rightful hands of the People of Guam.

Respectfully,


Rory J. Respicio
General Manager

Attachments (1)

Cc: PAG Board Chairman and Board of Directors

BOARD OF DIRECTORS
Francisco G. Santos, Chairman
Nathan T. Taimanglo, Vice Chairman
Isa Marie C. Koki, Board Secretary
Dorothy P. Harris, Member



Resolution No. 2021-34

RELATIVE TO DIRECTING THE GENERAL MANAGER TO EXERCISE AUTHORITY TO TAKE ANY AND ALL ADMINISTRATIVE AND/OR CRIMINAL ACTIONS NECESSARY PURSUANT TO OAG OPINION DATED NOVEMBER 9, 2021 RE REQUEST FOR OPINION ON RETROACTIVE SALARY ADJUSTMENTS FOR FORMER MANAGEMENT AT THE PORT AUTHORITY OF GUAM

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE PORT AUTHORITY OF GUAM:

WHEREAS, on July 15, 2020, the Office of Public Accountability (“OPA”) released OPA Report No. 20-04, relative to Unclassified Employees’ Pay Raises and Bonuses at the Port Authority of Guam (“PAG”), after receiving a request from the Office of the Attorney General (“OAG”) to review potential violations of the Open Government Law in relation to employee compensation within autonomous agencies; and

WHEREAS, the OPA, in a similar matter, requested that the OAG review pay increase adjustments given to former and current executives of another Government of Guam autonomous agency, to determine whether any upward payments were made in violation of Guam laws prohibiting retroactive compensation; and

WHEREAS, on February 9, 2021, the PAG asked the OAG to review legality of certain salary adjustments for former PAG management from 2012 through 2018; and

WHEREAS, on November 1, 2021, the OAG issued an Opinion Memorandum that directly addressed the Port’s inquiry regarding the validity of the pay adjustments in question, to wit: “Do the pay adjustments . . . constitute evidence of an illegal retroactive salary adjustment under Guam law?” *See Pay Raises Granted to Former and Current GHURA Executive Directors and Deputy Directors*, Op. Att’y Gen. No. OPA 20-0375 (Nov. 1, 2021); and

WHEREAS, on November 9, 2021, the PAG received the Opinion Memorandum issued by the OAG in response to the PAG’s request for Opinion on Retroactive Salary Adjustments of Former Management at the PAG, wherein the OAG enclosed the GHURA Opinion and directed PAG Legal Counsel to determine the validity and legality of the PAG Board of Directors’ (“BOD”) past actions with respect to former General Managers Joanne Brown’s salary adjustments and best practices moving forward; and

WHEREAS, Title 4 GCA § 2103.14 provides, “[n]o unclassified employee or officer of the government of Guam may receive a retroactive pay increase unless specifically authorized by statute.” *See 4 GCA § 2103.14 (Retroactive Pay)*; and

WHEREAS, Title 4 GCA § 6218.1 further provides, “[w]henver a classified or unclassified employee of the Government of Guam, including all departments, agencies and instrumentalities, whether or not autonomous, receives an increase in pay resulting from step increase, pay range increase, promotion or any other cause, such increase in pay shall not be retroactive from the date of its authorization unless so specified by law. Any person who authorizes a pay raise which is retroactive in violation of this Section shall be guilty of a misdemeanor.” *See 4 GCA § 6218.1 (Prohibition on Retroactive Pay Raise)*; and

WHEREAS, based on PAG in-house legal review, and with the guidance provided by both the OPA’s Performance Audit and the OAG’s Opinion Memorandum, it appears that salary adjustments for former PAG General Manager Joanne Brown were applied retroactively in violation of Title 4 GCA § 2103.14 (Retroactive Pay) and Title 4 GCA § 6218.1 (Prohibition on Retroactive Pay Raises).

WHEREAS, it is the duty of the General Manager to ensure the protection of ratepayer funds, particularly with regard to the misuse and misappropriation of public funds; and

WHEREAS, the PAG must confirm and calculate any and all retroactive payments resulting from any and all salary adjustments to the former PAG management from December 2012 through December 2018, and seek any and all administrative and/or criminal actions necessary pursuant to the OAG’s Opinion Memorandum and Guam law; and

NOW THEREFORE BE IT RESOLVED, that the Board of Directors, hereby directs the PAG General Manager to exercise authority to take any and all administrative and/or criminal actions necessary pursuant to OAG Opinion dated November 9, 2021 re Request for Opinion on Retroactive Salary Adjustments for Former Management at the Port Authority of Guam

RESOLVED, the Chairman certify to, and the Secretary attest to, the adoption hereof.

PASSED AND ADOPTED BY A MAJORITY VOTE BY THE BOARD OF DIRECTORS THIS 24th DAY OF NOVEMBER, 2021.


FRANCISCO G. SANTOS
CHAIRMAN, BOARD OF DIRECTORS
PORT AUTHORITY OF GUAM


ISA MARIE C. KOKI
SECRETARY, BOARD OF DIRECTORS
PORT AUTHORITY OF GUAM

Digitally signed by Isa Koki
Date: 2021.11.29 10:39:17
+10'00'

