

BOARD OF DIRECTORS

*Francisco G. Santos, Chairman
Nathan T. Taimanglo, Vice Chairman
Isa Marie C. Koki, Board Secretary
Dorothy P. Harris, Member
Dr. Judith P. Guthertz, Member*



Resolution No. 2022-01

RELATIVE TO ADOPTING THE RECOMMENDATIONS MADE BY THE OFFICE OF PUBLIC ACCOUNTABILITY (OPA) IN ITS PERFORMANCE AUDITS (OPA REPORT NO. 21-03 AND OPA REPORT NO. 21-09), SPECIFICALLY THE RATIFICATION OF BACK WAGES PROVIDED FOR SEVEN RECENTLY REINSTATED PORT EMPLOYEES, AS RECOMMENDED BY THE OPA, AND RATIFYING SUCH ACTION SPECIFYING LEGAL REMEDIES; I.E, COMPENSATION OF THE TOTAL BACK WAGES, INTEREST, AND LEGAL FEES AND COSTS, AND TO FURTHER PROVIDING HEREIN A STRUCTURE ESTABLISHING UNIFORMITY AND CONSISTENCY IN HOW PORT MANAGEMENT WILL PROSPECTIVELY ADDRESS THESE PERSONNEL MATTERS.

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

WHEREAS, during December 2019, February 2020, June 2020, and July 2020, the Port Authority of Guam, as directed by its Board of Directors, entered into settlements to satisfy judgments and orders, involving seven wrongfully terminated Port employees; and

WHEREAS, after years of costly litigation, the Supreme Court of Guam and the Guam Civil Service Commission ultimately determined that these seven Port employees were wrongfully terminated; and

WHEREAS, the former General Manager as well as former Port legal counsel, continued to pursue repeated appeals of these cases, which led to significant financial damage to the Port, to wit: millions of dollars paid to satisfy attorney's fees to former Port legal counsel and other legal counsels, court costs, and payouts ordered by the Guam Supreme Court and the Civil Service Commission, that which continued to accumulate interest thereby substantially consuming both ratepayer money and the Port's time and resources; and

WHEREAS, the former in-house Port Staff Attorney, through Board direction, as well as the current Deputy General Manager for Administration and Finance also through Board direction, entered into settlement agreements with these seven wrongfully terminated employees which allowed the Port and these Port employees to agree upon a payment plan for back wages spreading over a year or two-year period. These settlement agreements benefitted the Port by avoiding negative impacts to cash flow avoiding immediate, one-time payments and by mitigating the actual back wages that resulted in a significant cost savings to the Port; and

WHEREAS, because the Port was successfully able to negotiate and mitigate these settlements, we were able to realize a total savings to the Port of more than \$1.5 MILLION; and

WHEREAS, in doing so, this also brought justice to these seven wrongfully terminated employees who endured almost eight years of tiring and costly litigation resulting in both personal and financial hardships; and

WHEREAS, through the efforts of the Port's current management, and at the direction of its Board, the Port acted diligently to honor the judgments and orders by the Guam Civil Service Commission, Superior Court of Guam, and the Guam Supreme Court; and

WHEREAS, in the interest of transparency and accountability, the Board of Directors directed management in Board Resolution No. 2020-04 to transmit the finalized and signed settlement agreements to the Honorable Benjamin J.F. Cruz, Guam Public Auditor, for his review; and

WHEREAS, the Guam Office of Public Accountability then released two audits regarding their review of the first three settlements, and those audits are identified as OPA Report No. 21-03 and OPA Report No. 21-09; and

WHEREAS, the Board of Directors are grateful for the OPA's acknowledgment of how the Port handled these very complicated settlement agreements regarding the wrongful terminations of these employees and is pleased with the report relative to the issuance of back wages and appreciates the acknowledgment by the OPA that the Port handled the appeals of these employees properly; and

WHEREAS, the most recent audit states in its conclusion, "Our performance audit of the back wages of two reinstated Port employees found that the Port's reinstatements of Employee S & Employee T were generally made in accordance with administrative and judicial review judgments and orders. The legal remedies stipulated in the Agreement to Satisfy Judgment and Settlement Agreement were likewise generally complied with by the Port;" and

WHEREAS, when the analysis was conducted on the methodology the Port utilized for the reconstruction of these back wages, it was determined that the Port had in fact underpaid two reinstated employees and, as such, this means there was no overpayment made, so far as to any of such audits conducted; and



WHEREAS, the OPA found the following in its 21-03 report the following:

- Port adhered to certain terms and conditions of Employee Q's that were not required by the Civil Service Commission (CSC) or the courts' judgments, such that:
 - The highest number of incremental sub-steps were granted based partly on two (2) prior years' "Outstanding" performance evaluation ratings that were not approved by the former (or any) General Manager (GM); and
 - A 6% interest charge was paid to Employee Q without any court order requirement, negotiated terms, and proper calculation.
- Successor management approved salary increments that their predecessors did not approve of themselves;
- Legal remedies were executed without seeking the Board of Directors (Board) ratification by resolution and without a formal agreement and liability release until after the final payment in May 2020;
- Different legal opinions resulted in delay and certain unorganized remedial actions; and

WHEREAS, the OPA found the following in its 21-09 report the following:

- Legal remedies paid (satisfied) without board ratification by a resolution; and
- Inconsistencies and deficiencies in the Agreement to Satisfy Judgment and Settlement Agreement; and
- Deviations from certain provisions of Port's Personnel Rules and Regulations; and
- Highest number of incremental sub-steps granted annually without the required performance evaluations approved by the former General Manager (GM); and
- Annual salary increments based partly on three prior years' "Outstanding" or "Highly Satisfactory" rating not approved by any GM; and
- Discrepancies in using the "Outstanding" and "Highly SAT" ratings instead of eligible "Marginal Satisfactory" rating due to the absence of or NRPER not approved by former GM; and
- Conflicting Notifications of Personnel Actions; and
- Deficiencies in Port back wages calculations resulting to potential overpayments due to:
 - Unapproved increments due prior to employees' terminations included in paid back wages; and
 - Questionable and unaccounted back wages paid.
- Income Tax withholding not deducted from paid back wages; and
- Other Matters:
 - Potential violation prohibition on retroactive pay raises; and
 - Pay raise prior to end of freeze period potentially violated the freeze increment mandate; and
 - Appearance of conflict of interest; and

WHEREAS, Port management responded to both OPA Audits 21-03 and 21-09 and both responses are attached as a part of this resolution for recorded purposes; and

WHEREAS, despite the Port management's response, the OPA made recommendations for OPA Report No. 21-03 and OPA Report No. 21-09; and

WHEREAS, for OPA Audit 21-03 the following recommendations are made:

- The GM and the Board standardize a salary increment process for back wages to include a required performance evaluation report (of the sort) accountable to the incumbent GM who approves the number of sub-steps on the personnel action forms; and
- The GM seek the Board's ratification, via board resolution, specifying the composition of total back wages and interest paid to Employee Q; and
- The GM execute a comprehensive formal agreement that includes (1) the purpose, amounts, and terms of what Port paid for Employee Q's back wages, benefits, attorney fees, and interest charge; (2) a liability release provision; and (3) the signatures of the relevant parties and witness; and
- The GM and the Board reconsider their practice of unifying employees' increment anniversary dates moving forward; and
- The Board comply with Guam Code and provide parity to ratepayers and taxpayers by incorporating in its PRR the relative (or similar) provisions of 4 GCA Chapter 6 §6202; and

WHEREAS, for OPA Audit 21-09 the following recommendations are made:

- Consistently seek Board's ratification via a Resolution specifying the legal remedies such as: composition of the total back wages, interest, and legal fees and costs; and
- Ensure the execution of formal & comprehensive settlement agreements disclosing therein the legal remedies such as amount and terms of gross and net back wages, mitigation, other benefits, interest charges, legal costs, and a liability release provision; and
- Standardize a salary increment process for reinstated employees to include a performance evaluation report to be signed by the incumbent GM; and



- If recommendation #3 is not feasible, we recommend that moving forward Port management and the Board should decide on how this PRR requirement on annual increments for reinstated employees be satisfactorily complied by seeking the Attorney General’s opinion; and
- Adhere to the restrictions on retroactive pay raises on performance-based increments; and
- Review the following:
 - Port actions in granting increments during the freeze increment period; and
 - Port policy on conflict of interest; and

WHEREAS, as a result of the OPA’s findings and recommendations for corrective actions cited in OPA Audit Report No. 21-03 and 21-09, this Board Resolution is intended to resolve and affirm the agency’s actions in regards to the settlements in line with the OPA recommendations and ratifies via this Board Resolution the specific legal remedies such as the composition of the total back wages, interest, and legal fees and costs; now therefore be it

RESOLVED, that the Board of Directors hereby ratifies Port management’s methodology to reconstruct the salaries for the reinstated employees covered in the OPA Audit Report No. 21-03 and 21-09 as well as employees covered under PAG Board of Directors Resolution 2020-04; and be it further

RESOLVED, that the Board of Directors hereby ratifies and accepts management’s submissions of the formal agreements that included the purpose, amounts, and terms of what the Port paid for these seven reinstated employees, to include back wages, benefits, attorney fees, and interest, and directs management to inquire of the OPA on whether any further documents are required for his review; and be it further

RESOLVED, that the Board of Directors hereby ratifies and accepts management’s submissions of the liability release provisions signed by all seven reinstated port employees, to include the signatures of the relevant parties and witnesses; and be it further

RESOLVED, that the Board of Directors hereby accepts and ratifies the General Manager’s submission (to be filed as Board Policy 2022-01, adopted herein), which establishes and standardizes a salary increment process for back wages of reinstated employees to include a performance evaluation report to be signed by the incumbent General Manager who approves the number of sub-steps on the personnel action forms; and be it further


RESOLVED, that the Board of Directors hereby directs the General Manager to include in the process that the General Manager shall seek the Board’s ratification, via board resolution, specifying the composition of total back wages and interest paid to all future reinstated employees; and be it further

RESOLVED, that the Board of Directors directs Port management to implement and adhere to Public Law 34-145 authored by Senator Mary Camacho Torres “AN ACT TO AMEND §§ 4406 AND 4406.2 OF ARTICLE 4, CHAPTER 4, TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO ENHANCING PROCEDURAL PROTECTIONS WITHIN THE CIVIL SERVICE COMMISSION IN FAVOR OF INCREASING TIMELINESS, EFFICIENCY, AND DUE PROCESS FOR CLASSIFIED EMPLOYEES OF THE GOVERNMENT OF GUAM;” in order to prevent similar situations from reoccurring; and be it further

RESOLVED, that the Board of Directors, directs that the General Manager willfully adhere to Public Law 34-145 whenever duly ordered by the Civil Service Commission; and be it further

RESOLVED, the Chairman certify to, and the Secretary attest to, the adoption hereof and that copies of the same be transmitted to Governor Lou Leon Guerrero; Lt. Governor Joshua Tenorio; Speaker Therese M. Terlaje of the 36th Guam Legislature; Port’s Legislative Oversight Chairperson Senator Telena C. Nelson of the 36th Guam Legislature; the 36th Guam Legislature; and the Honorable Benjamin J.F. Cruz, Guam Public Auditor.

PASSED AND ADOPTED UNANIMOUSLY BY THE BOARD OF DIRECTORS THIS 20th DAY OF JANUARY, 2022.



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



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

