

CHAPTER 10
PUBLIC EMPLOYEE-MANAGEMENT RELATIONS ACT

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§10101. Title. This Chapter may be cited as the *Public Employee-Management Relations Act of Guam*.

SOURCE: §4400 GC.

NOTE: This Chapter is a virtual copy of the first federal Executive Order authorizing federal unions, signed by President Kennedy. Obvious references to various federal agencies have been deleted and other local references added, but the substance is the same, as is most of the wording.

§10102. Declaration of Policy. The Legislature of the territory of Guam declares that it is the policy and

purpose of this Chapter, in the public interest, to promote orderly and constructive relationships between Government and its public employees by providing an opportunity for effective participation by employees in the formulation and implementation of policies and procedures affecting conditions of their employment, subject to paramount requirements of law for conducting efficient and uninterrupted operations of Government. Further, this policy shall be effected by:

(a) assuring all public employees of the right to form, join and assist any employee organization or to refrain from such activity;

(b) recognizing that legitimate employee organizations provide meaningful representation for public employees for purposes of consultation and negotiation with government management officials;

(c) continuing the prohibition against strikes, acts, activities and conduct described in Chapter 9 of this Title; and

(d) establishing implementing rules and procedures to faithfully reflect the intent and purpose of this Chapter, without modification or compromise of the merit system as the basic personnel policy of the government of Guam.

SOURCE: §4401 GC.

§10103. Exclusions. This Chapter shall not apply to any government department or to any office or entity in the Executive Branch, which is primarily performing investigative, intelligence or security functions, if the Governor of Guam determines that the provisions of this Chapter cannot be applied, in whole or in part, in a manner consistent with security requirements and considerations.

SOURCE: §4402 GC.

§10104. Definitions. As used in this Chapter:

(a) *Government* means the Executive Branch of the government of Guam, including any political or organizational subdivision thereof, and any corporation, association or authority wholly owned by the government of Guam.

(b) *Department* means the Department of Administration.

(c) *Director* means the Director, Department of Administration.

(d) *Employee organization* means any lawful association, labor organization, federation, council or brotherhood or any trade, craft or industrial union, made up in whole or in part of employees of the government of Guam and having as a primary purpose the improvement of working conditions among government employees, but such term shall not include any organization;

(1) which asserts the right to strike against the Government, or to assist, participate or conduct any such strike, or

(2) which advocates the overthrow of the constitutional form of government in the United States or the government of Guam, or

(3) which discriminates with regard to the terms or conditions of membership because of race, color creed or national origin.

(e) *Exclusive recognition* means recognition of a qualified employee organization by the Government as the sole representative of an appropriate unit of public employees for purposes of consultation and negotiation with management officials.

(f) *Organization representative* means any representative of an employee organization, whether an employee or nonemployee of the Government, who is designated to deal with government officials in behalf of the employee organization.

(g) *Public employees* means any persons employed in graded and ungraded positions of the classified service of the Government.

(h) *Dispute* means a disagreement between management officials and employee organizations concerning the appropriateness of a unit or the right of an employee organization to exclusive recognition.

(i) *Grievance* means an employee's expressed feeling of dissatisfaction with aspects of his working conditions and working relationships which are outside his control, including appeals from adverse disciplinary actions not covered by paramount law or regulations.

SOURCE: §4403 GC.

§10105. Right of Organization. Public employees shall have the right to form, join, assist and participate in the management of employee organizations or their own choice and to act as organization representative or to refrain from any such activity, without interference, restraint, coercion or discrimination and without fear of penalty or reprisal; provided that, employees shall not participate in the management of an organization or act as an organization representative, where such activity would result in a conflict of interest or otherwise be incompatible with law or with employee's official duties.

SOURCE: §4404 GC.

§10106. Right of Representation. Public employees shall have the right to be represented by employee organizations when exclusive recognition has been granted to such organizations for purposes of

consultations and negotiations with government management officials concerning terms and conditions of their employment not otherwise fixed by law and in the settlement of grievances and disputes.

In the absence of exclusive recognition, management officials shall consult with otherwise qualified employee organizations when requested or on their own initiative, regarding the formulation and implementation of personnel policies and practices and matters affecting working conditions which are of concern to the organizations' membership.

SOURCE: §4405 GC.

§10107. Qualifications of Employee Organizations.

As a prerequisite for securing and retaining exclusive recognition under the provisions of this Chapter, an employee organization must subscribe to the following standards either by adoption by the organization itself or by the national, international or federation of organizations with which it affiliates:

(a) the exclusion from office in the organization of persons affiliated with Communist or other totalitarian movements;

(b) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members;

(c) the maintenance of fiscal integrity in the conduct of organization internal affairs;

(d) the maintenance of democratic procedures and practices within the organization to provide fair and equal treatment of individual members.

SOURCE: §4406 GC.

§10108. Appropriate Employee Units. For purposes of exclusive recognition requested by qualified employee or organizations, appropriate units of employees shall be established by government management officials on any reasonable basis, such as departmental, functional, craft, or other basis, which will assure a clear and identifiable community of interest in employment conditions among the employees involved. No unit shall be established which includes government managerial officers, supervisors or personnel workers in other than clerical positions, nor a unit which includes both professional employees and nonprofessional employees unless a majority of such professional employees vote for inclusion in such unit.

SOURCE: §4407 GC.

§10109. Exclusive Recognition of Employee Organizations. Government management officials shall recognize a qualified employee organization as the exclusive representative of public employees in an appropriate employee unit when determination is made that the organization has a membership of not less than ten percent (10%) of the total number of employees in the unit, and has been designated as their exclusive representative by a majority of the unit employees, except that such recognition shall not preclude:

(a) any public employee, regardless of employee organization membership, from consulting with appropriate government officials on matters of personal concern to such employee or from choosing his own representative in a grievance or appellate procedure; and

(b) consultations between government officials and other lawful special interest groups or associations on policies or matters of concern to public employee members of such groups, provided that, such consultations shall not result in actions inconsistent with the recognition of an exclusive representative in an employee unit or adverse to the

interest of other employees in such units.

SOURCE: §4408 GC.

§10110. Settlement of Disputes. Procedures for the settlement of disputes between management officials and employee organizations or among employee organizations, concerning the appropriateness of employee units for exclusive recognition purposes or concerning the right of an employee organization to receive exclusive recognition, shall be issued by the Governor of Guam. Such procedures shall provide, as a final step in dispute settlements where necessary:

(a) advisory arbitration by a qualified nongovernmental neutral party; and

(b) acceptance or rejection of advisory arbitration decisions by the Governor or his designee; and

(c) the cost of arbitration to be shared equally between the Government and the employee organizations involved.

SOURCE: §4409 GC.

§10111. Unfair Labor Practices. The provisions of this Section apply to all government of Guam management officials and to all employee organizations accorded exclusive recognition to represent public employees under this Chapter.

(a) Management officials are prohibited from:

(1) restraining, coercing or interfering with the exercise of the rights assured to public employees by the terms of this Chapter;

(2) dominating, sponsoring, controlling or otherwise assisting employee organizations,

except that routine services and facilities may be furnished impartially to such organizations consistent with other provisions of this Chapter;

(3) discriminating against public employees in regard to hiring, tenure or any term or condition of employment to encourage or discourage membership in any employee organization;

(4) disciplining or otherwise discriminating against any public employee for legitimate activities in representing an employee organization or participating in procedures implementing this Chapter;

(5) refusing to grant exclusive recognition to a qualified employee organization for an appropriate public employee unit;

(6) refusing to consult or negotiate with an employee organization accorded exclusive recognition on matters within the scope of this Chapter and implementing rules and regulations.

(b) Employee organizations are prohibited from:

(1) restraining, coercing or interfering with the exercise of the rights assured to public employees by the terms of this Chapter;

(2) attempting to cause management official to coerce any public employee in the exercise of his rights under this Chapter;

(3) disciplining or otherwise discriminating against any public employee member of the organization as reprisal for, or for the purpose of obstructing the discharge of the employee's official duties in the government service;

(4) engaging in or inducing public employees to engage in any strike, work stoppage, slowdown or picketing against the Government;

(5) discriminating against any public employees as to terms and conditions of membership because of race, color, creed or national origin;

(6) denying membership to any public employee in the exclusive recognition unit, except for failure to meet reasonable standards of the employee organization uniformly applied to all other members.

SOURCE: §4410 GC.

§10112. Management Responsibilities. Government management officials shall retain the right and responsibility, in accordance with applicable law and regulations to:

(a) maintain efficient government operations and direct public employees;

(b) hire, promote, transfer and assign employees to government positions;

(c) suspend, demote, discharge or take other disciplinary action against employees for just cause;

(d) to determine the methods, organization and assignment of personnel for the conduct of operations, including necessary actions in emergency situations.

SOURCE: §4411 GC.

COURT DECISIONS: 1. Section 11012 gives the government wide powers of supervision over the education system and its employees, which it cannot delegate away and make subject to the wishes of a teachers' union.

2. A contract provision which would continue it in perpetuity

subject only to union members' approval of a new contract is an illegal delegation of power from the Board of Education to the teachers' union.

People v. GFT, D.C.Guam App.Div. 1978, 2 Guam R. 203.

§10113. Employee Organization Responsibilities. An employee organization which has been recognized as exclusive representative of an appropriate public employee unit, under provisions of this Chapter, shall be responsible for representing the interests of all employees in the unit without discrimination and without regard to organization membership, and shall be entitled to:

(a) request conferences with government management officials concerning personnel policies and practices affecting working conditions of employees in the unit; and

(b) negotiate written agreements with appropriate government officials reflecting bilateral determination of specific terms and conditions of employment, subject to paramount law and regulations; and

(c) represent individual employees in grievance or appellate administrative procedures, with the consent of the employee involved, and to be represented and heard at any conference with an employee or his personal representative on grievances or other matters affecting employment conditions in the unit; and

(d) retain exclusive representation status as long as qualified under criteria of this Chapter, and for a period of not less than twelve (12) months from date of initial recognition without challenge by another employee organization; and

(e) receive payroll deductions for membership dues voluntarily allotted by public employee members, but not including initiation fees, special assessments,

back dues, fines and similar charges against such employee members, subject to recovery of reasonable costs by the Government from the employee organization for providing such service.

SOURCE: §4412 GC.

COURT DECISIONS: Contracts negotiated under this Chapter are subject to the doctrine of “sovereign immunity” and are subject to the Government Claims Act. *Alexander v. Bordallo*, D.C.Guam App.Div. 1979, 2 Guam R. 173.

§10114. Grievances. Agreements negotiated under the terms of this Chapter between management officials and employee organizations which have been granted exclusive recognition in appropriate public employee units may contain procedures for consideration, and final settlement of grievances, including advisory arbitration subject to approval of the appropriate management official, provided that:

(a) such procedures shall be the exclusive procedures available to public employees in the unit for settlement of individual or group grievances;

(b) the negotiated grievance procedures shall extend only to the interpretation or application of existing agreements or to government personnel policies and regulations and not to changes in government policies, and shall not extend to the settlement of disputes or allegations of unfair labor practices for which procedures are otherwise provided by law or regulation;

(c) advisory arbitration, if included in the procedures, shall be invoked only with the consent of the public employees involved and the exclusive employee organization representative, and arbitration expenses shall be shared equally between the Government and the employee organization.

SOURCE: §4413 GC.

§10115. Executive Branch and Responsibility.

A comprehensive employee-management relations program, consistent with the policies in this Chapter, shall be under the direction and control of the Governor of Guam in accordance with the powers and duties vested in him by the Organic Act of Guam and the Guam Code Annotated and shall be administered by the Director, Department of Administration, who shall have the powers and functions described in this Chapter, in addition to responsibilities heretofore or hereafter assigned to that Department.

SOURCE: §4414 GC.

§10116. Department of Administration.

Effective no later than six (6) months following approval of this Chapter, the Director, Department of Administration, shall issue appropriate policies, rules and regulations, with the approval of the Governor of Guam, for the implementation of this Chapter, including:

(a) procedures for the determination of appropriate public employee units and for the determination of exclusive recognition of employee organizations by current membership lists, by valid signed authorization cards, dues deductions authorizations, or secret ballot elections if necessary;

(b) procedures to resolve disputes concerning public employee units and exclusive recognition status of employee organizations;

(c) procedures for the negotiation of written agreements between government officials and exclusive representatives of public employees, with clarification of subjects within the scope of negotiations, in whole or in part;

(d) methods of resolving impasses in negotiations, with consideration of mediation and advisory arbitration procedures;

(e) procedures for voluntary authorizations by public employees for payroll deductions of membership dues allotted to employee organizations which have been granted exclusive recognition in an appropriate unit;

(f) procedures for determination of the merits of allegations of unfair labor practices by employee organizations or management officials;

(g) delegations of authority to heads of departments and agencies to assist in carrying out the objectives of the Chapter;

(h) terms and conditions for securing advisory services of competent mediators, arbitrators or consultants for dispute settlement or other problem areas in employee-management relationships;

(i) provision for technical advice to departments and agencies on implementation of the employee-management relations program.

In the formulation of such policies, rules and regulations, the Director shall consult with and consider the view of identifiable interested employee organizations and shall conduct such other inquiries as may be appropriate to assure orderly and equitable procedures.

The Director shall also develop programs for training of government management officials in their responsibilities for the employee-management relations objectives and shall provide for continuous study and review of the effectiveness of the comprehensive program and implementing procedures with a view toward making

recommendations for improvement.

SOURCE: §4415 GC.

§10117. Services to Employee Organizations.

Solicitation of memberships, collection of membership dues or other internal organization business may be conducted only during nonduty hours of the employees involved. This does not preclude reasonable government services to employee organizations, such as provision for bulletin boards and space for organization meetings on nonduty hours. Consultations and negotiations between government officials and employees organization representatives shall be conducted during regular duty hours of public employees involved, subject to reasonable rules concerning the duration of such meetings and the number of employees participating in consultations and negotiations.

SOURCE: §4116 GC.

COURT DECISIONS: SUPER.CT. 1981 The Department of Administration did not alter the rules and regulations, but only changed the interpretation of them and, therefore, the Administrative Adjudication Act was not violated when the Department permitted wider dues check off that it had permitted previously.

§10118. Special Bargaining Unit: Recognition of. Notwithstanding §10108 of this Chapter, a new bargaining unit to be known as "Special Bargaining Unit" is established within the Guam Community College created by Division 4 of 17 GCA. The bargaining unit shall include those positions transferred to the Community College as a result of the enactment of the Community College Act of 1977 which were included within an employee bargaining unit prior to such transfer. The Special Bargaining Unit shall be of a limited duration and shall come into existence on the transfer date of the positions involved as provided for by §§6 and 13 of the Community

College Act of 1977 [P.L. 14-77]. The duration of the Special Bargaining Unit shall be one (1) year from said transfer date. Upon the expiration of one (1) year, the Special Bargaining Unit shall expire and cease to exist.

SOURCE: §4417 GC, as added by P.L. 14-77.

NOTE: Section 2 of P.L. 14-77 contains the *Community College Act* by nature of the language found in 17 GCA §30101 (former §11960 GC). Reference to §§6 and 13 of the Community College Act of 1977 may have been intended to read §§6 and 13 of this P.L. 14-77.

Section 6 of P.L. 14-77 reads:

"Section 6. Transfer of Positions and Personnel.

(a) All positions and the employees occupying said positions on the effective date hereof in the Department of Education, the University of Guam, the Department of Labor and the Guam Vocational-Technical High School who are exclusively employed in the operation or administration of the programs except those relating to the Police Academy set forth in Section 5 of this Act are hereby transferred to the Guam Community College.

(b) On September 28, 1978, all positions and the employees occupying said positions who are exclusively employed in the operation or administration of the Police Academy are transferred to the Guam Community College."

Section 13 of P.L. 14-77 reads:

"Section 13. Effective Date.

This Act shall take effect upon adoption provided that none of the transfer provisions provided for herein shall be effective until sixty (60) days after the confirmation of four (4) members of the Board of Trustees. Further provided that the Board may by resolution extend the effective date of any or all such transfer provisions for another ninety (90) days. Provided, however, that the transfer provisions shall be effective no later than July 1, 1978 except those pertaining to the Police Academy."

§10119. Same: Exclusive Bargaining Agent.

Except as provided for in §10120, every position within the Special Bargaining Unit shall continue to be subject to such collective bargaining agreement as it was subject to prior to the transfer date mentioned in §10118. Such collective bargaining agreements shall be applicable within the Special Bargaining Unit to the greatest extent practicable during the time that the Special Bargaining Unit is in existence.

SOURCE: §4418 GC, as added by P.L. 14-77.

§10120. Same: Election of Agreement. No sooner than thirty (30) days from the transfer date mentioned in §10118 of this Chapter, the incumbents of the positions within the Special Bargaining Unit may, if a majority of their number so desire, elect to be covered by one of the collective bargaining agreements effective within the Special Bargaining Unit to the exclusion of all others. Evidence of the election of the majority of the members within the Special Bargaining Unit of a collective bargaining agreement may be made by any of the methods mentioned in §10114(a) of this Chapter.

SOURCE: §4419 GC, as added by P.L. 14-77.

§10121. New Bargaining Units and Exclusive Recognition. Prior to the expiration of one hundred and eighty (180) days after the transfer date mentioned in §10118 of this Chapter, government management officials shall entertain requests from qualified employee organizations pursuant to §10108 of this Chapter and shall make determinations relative to the granting of exclusive recognition of employee organizations pursuant to §10109 of this Chapter; provided that no bargaining unit or units which are determined appropriate shall come into existence until one hundred and eighty-one (181) days after the transfer date mentioned in §10118 of this Act; and further provided that exclusive recognition shall not be granted to any employee organization until the

expiration of one hundred and eighty-one (181) days from the transfer date mentioned in §10118 of this Chapter.

SOURCE: §4420 GC, as added by P.L. 14-77.

§10122. Same: Effective Date. Negotiations between the College and an exclusive bargaining agent or exclusive bargaining agents recognized for any unit or units within the College may commence upon the determination of such exclusive recognition, provided that no agreement negotiated may be effective until the expiration of the Special Bargaining Unit provided for in §10118 of this Chapter.

SOURCE: §4421 GC, as added by P.L. 14-77.
