IN THE SUPREME COURT OF GUAM

GUAM FEDERATION OF TEACHERS,
Petitioner-Appellee,

on behalf of
MATTHEW J. RECTOR,
Real Party in Interest-Appellee,

vs.

LOURDES M. PEREZ,
in her capacity as
Director of the Department of Administration,
Respondent-Appellant.

OPINION

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Supreme Court Case No. CVA04-031
Superior Court Case No. SP0170-03

Appeal from the Superior Court of Guam
Argued and submitted on June 30, 2005
Hagåtña, Guam

Appearing for the Respondent-Appellant:
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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; FRANCES M. TYDINGCO-GATEWOOD, Associate Justice; and ROBERT J. TORRES, JR., Associate Justice.

CARBULLIDO, C.J.:

[1] This is an appeal from a writ of mandate issued by the Superior Court of Guam in favor of Petitioner-Appellee Guam Federation of Teachers (GFT), compelling Respondent-Appellant Lourdes M. Perez, the Director of the Department of Administration, to hold a hearing on an unfair labor practice charge filed by Real Party in Interest-Appellee Matthew J. Rector. In granting the petition, the lower court held that the provisions of the Administrative Adjudication Law applied to the Department of Administration (DOA) and required it to conduct a hearing on the unfair labor practice charge filed by Rector. DOA filed a motion to reconsider, challenging the Superior Court's subject matter jurisdiction. The motion was denied, and a writ was issued ordering Perez, the Director of DOA, to conduct a hearing on the unfair labor practice claim. The Director appealed.

[2] We hold that the provisions of the Administrative Adjudication Law, the Public-Employee Management Relations Act, and the related administrative regulations, do not require that the Director of DOA conduct a hearing on the unfair labor practice claim filed by Rector. Specifically, upon review of the provisions therein, we conclude that there was no legal duty to hold a hearing on the part of the Director, and consequently, the issuance of the writ of mandate was not appropriate. Accordingly, we reverse.

I.

[3] John F. Kennedy (JFK) High School teacher and Guam Federation of Teachers union steward Matthew J. Rector attended a faculty and administration meeting, where he presented the concerns of several teachers regarding the performance of an assistant principal as a collective grievance. At the meeting, Rector requested that the principal consider the presentation of those concerns as "Step I" of the administrative grievance process against the assistant principal. Appellant's Excerpts of Record (hereafter referred to as ER), p. 10 (Pet. for Alt. Writ. of Mand.; Memo. of Points and Auth., Ex. B (Letter from Kutz to Perez, March 13, 2003)). The principal agreed. Rector later received an adverse action notice resulting in his demotion from Teacher Class III status to Teacher Class I for 10 days for insubordination at the faculty and administration meeting. Rector appealed this adverse action to the Civil Service Commission. In addition to challenging the demotion as a civil service matter, Record also filed Unfair Labor Practice Charge No. DOE-2002 with DOA, claiming he was being disciplined for his actions as a union steward. This appeal arises out of the unfair labor practice charge and does not address the civil service matter.

[4] In October 2002, Clifford Guzman, sitting as DOA Director at such time, informed the Governor that DOA had begun its investigation into the charge of an unfair labor practice (ULP).

[5] Guam Federation of Teachers President Elizabeth Taimanao, on behalf of the GFT, wrote Guzman on November 14, 2002, disputing the Department of Education's characterization of the ULP charge as an appeal of the adverse action against Rector. She also asserted that the ULP charge was a union action under the Public Employee-Management Relations Act (PEMRA), separate from Rector's appeal with the Civil Service Commission.

[6] DOE and Rector stipulated to continue the Civil Service Commission (CSC) appeal to proceed with the ULP charge through DOA to determine whether the matter was governed by the ULP procedures under PEMRA, or whether it was a disciplinary issue to be addressed by CSC.

[7] GFT counsel Robert P. Kutz later wrote to the successor DOA Director, Lourdes M. Perez (the Director) and stated that Rector was "hopeful that this action may be promptly processed." ER, pp. 11 (Pet. for Alt. Writ of Mand.; Memo. of Points and Auth., Exs. B (Letter from Kutz to Perez, March 13, 2003) and C). There was no response to this letter.

[8] GFT then filed its Petition for Alternative Writ of Mandate, asking the Superior Court of Guam to compel the Director, *inter alia,* to hold a hearing on the ULP charge. The Director filed her opposition on several grounds, including that the Superior Court lacked jurisdiction on sovereign immunity grounds.

[9] The lower court granted the writ of mandate, finding that the provisions of the Administrative Adjudication Law (AAL) applied to the Director and required her to conduct a hearing to resolve the ULP charge. In its decision, the lower court quoted Title 5 GCA § 9108 of the AAL and further referenced Title 2 Guam Administrative Rules and Regulations (GAR) § 5210, an administrative regulation which was promulgated through PEMRA.

[10] Subsequently, the Director, without holding an adjudicatory hearing on the ULP claim, transmitted a memorandum to Governor Felix P. Camacho informing him of her resolution of the ULP charge. She concluded that the management of DOE had not committed an unfair labor practice by demoting Rector, citing Rector's lack of authority over the criticized assistant principal, and Rector's failure to present the teachers' concerns pursuant to grievance procedures, as justifications for the adverse action. The investigation further determined that the demotion was not illegal under the PEMRA provisions found in Title 4 GCA §§ 10111 and 10112. Governor Camacho approved the memorandum on June 21, 2004.

[11] Meanwhile, DOA had filed a Motion to Reconsider the issuance of the Writ, arguing that the Superior Court lacked subject matter jurisdiction. The Superior Court denied the motion, finding *inter alia* that the decision to grant the writ of mandate was well supported. The lower court also stated, on reconsideration, that "the resolution of any remaining issues are [sic] best resolved by the Supreme Court," presumably including the jurisdictional challenge not addressed by the lower tribunal. ER, pp. 35-36 (Decision and Order, July 29, 2004). The parties stipulated to a final judgment in the matter, which reflects that a writ shall issue. A Writ was simultaneously issued and entered on the docket. The Director appeals.

II.

[12] We have jurisdiction over this appeal from a Superior Court final judgment. 48 U.S.C. § 1424-1(a)(2) (Westlaw through P.L. 109-127 (2005)); Title 7 GCA §§ 3107(b) and 3108(a) (2005).

III.

[13] Generally, a reviewing court examines whether the lower court's grant of a writ of mandate is supported by substantial evidence. *See* *Sablan v. Gutierrez*, 2002 Guam 13 ¶ 6 (citing *Holmes v. Territorial Land Use Comm'n*, 1998 Guam 8 ¶ 6); *see also* *Dumaliang v. Silan*, 2000 Guam 24 ¶ 5. However, where, as here, there are no facts in dispute, and the questions presented for review are strictly questions of law, the court's review is *de novo*. *See id.*

[14] In the case *sub judice*, the lower court issued the writ based on its interpretation of Guam Administrative Regulations enacted pursuant to PEMRA, as well as Guam's Administrative Adjudication Law ("AAL"). We review issues of statutory interpretation *de novo*. *Bank of Guam v. Reidy*, 2001 Guam 14 ¶ 16 (citing *Pangelinan v. Gutierrez*, 2000 Guam 11 ¶ 7); *Aguon v. Gutierrez*, 2002 Guam 14 ¶ 5 (citing *Ada v. Guam Tel. Auth.* 1999 Guam 10 ¶ 10).

[15] Similarly, the lower court's exercise of jurisdiction in the face of a sovereign immunity challenge is reviewed *de novo*. *See e.g.,* *Sumitomo Constr. Co., Ltd. v. Gov't of Guam*, 2001 Guam 23 ¶ 7.

IV.

[16] As a threshold matter, we must first consider the effect of the doctrine of sovereign immunity on the lower court's ability to issue the writ of mandate to compel the Director to act. We next determine whether the Director was required by law to hold a hearing on the ULP charge based on constructions of the AAL, PEMRA and the administrative regulations. Finally, we address GFT's arguments with regard to the validity of Title 2 GAR § 5111(c), and the effect of Title 2 GAR § 5112(c) on the proceedings.

A. Sovereign Immunity[1]

[17] We must first determine the effect of sovereign immunity on the lower court's jurisdiction to issue the writ of mandate to compel Perez to act in her capacity as a government of Guam officer.

[18] The Government of Guam enjoys broad sovereign immunity. *Sumitomo*, 2001 Guam 23 ¶ 8 (citing *Marx v. Gov't of Guam*, 866 F.2d 294, 298 (9th Cir. 1989) and *Wood v. Guam Power Auth.*, 2000 Guam 18 ¶ 10). Through the Organic Act of Guam, Congress provided a specific mechanism through which sovereign immunity may be waived. 48 U.S.C. § 1421a (Westlaw through P.L. 109-127 (2005)); *see Marx*, 866 F.2d at 298. Section 1421a of the Organic Act provides that:

> The government of Guam shall have the powers set forth in this chapter, shall have power to sue by such name, and, *with the consent of the legislature evidenced by enacted law, may be sued* upon any contract entered into with respect to, or any tort committed incident to, the exercise by the government of Guam of any of its lawful powers.

48 U.S.C. § 1421a (emphasis added). Thus, the Government of Guam's sovereign immunity is waived with respect to suits upon contracts and torts only by duly enacted legislation. *See Marx*, 866 F.2d at 298; *see also Wood*, 2000 Guam 18 ¶ 10; *Sumitomo*, 2001 Guam 23 ¶¶ 8-9.

[19] While sovereign immunity from suits applies to the "sovereign," suits against government officers may properly be considered suits against the sovereign under certain circumstances. "A judgment against a state official in his or her official capacity runs against the state and its treasury " *Guam Soc. of Obstetricians and Gynecologists v. Ada*, 962 F.2d 1366, (9th Cir. 1990) (citing *Kentucky v. Graham*, 473 U.S. 159 (1985)); *Dugan v. Rank*, 372 U.S. 609 (1963). A suit against an officer constitutes a suit against the sovereign if "the judgment sought would expend itself on the public treasury or domain, or interfere with the public administration, or if the effect would be to restrain the Government from acting, or to *compel it to act*." *Smith v. Grimm*, 534 F.2d 1346, 1351 n.6 (9th Cir. 1976) (quotation marks and citations omitted) (emphasis added)). Accordingly, as a general rule, the principles of sovereign immunity equally apply to suits against government of Guam officers.

[20] The present case involves the lower court's issuance of a writ of mandate to compel the Director to conduct a hearing on the ULP charge submitted by Rector and GFT (collectively referred to as GFT). Perez argues that sovereign immunity bars the court's exercise of jurisdiction in issuing the writ of mandate against

[1] We observe that while the Director challenged the lower court's jurisdiction to issue the writ of mandate based on sovereign immunity grounds in her opposition to GFT's petition for the writ, and in her motion for reconsideration, the lower court failed to address the jurisdictional issue in its decisions. We remind the lower court of its "duty to analyze the merits of the motion before rendering its decision." *Mano v. Mano*, 2005 Guam 2 ¶ 14 (quoting *In re Petition of Quitugua v. Flores*, 2004 Guam 19 ¶ 28). In *Mano*, the Superior Court ruled on a motion without addressing the jurisdictional argument before it, and instead based its ruling on a party's failure to file an opposition to the motion. *Mano*, 2005 Guam 2 ¶ 15. We remanded the matter to the Superior Court to consider jurisdiction. *Id.* ¶ 17. In the present case, the lower court similarly failed to "analyze the merits of the motion before rendering its decision" because it did not address the jurisdictional effect of sovereign immunity in its decisions on the writ petition and motion for consideration. *Id.* ¶ 14. "Sovereign immunity implicates a court's subject matter jurisdiction. Therefore, the defense of sovereign immunity can be raised at any time, either by a party or by the court." *Sumitomo*, 2001 Guam 23 ¶ 22 (citation omitted). Though *Mano* underscores the Superior Court's error in failing to examine the jurisdictional issue of sovereign immunity, we now consider the issue in the present appeal.

her,[2] while GFT asserts that the Superior Court had proper jurisdiction under Title 7 GCA, Article 2 ("Writ of Mandate").[3]

[21] Sovereign immunity, as noted by GFT counsel, is not implicated in the same way when the relief sought is injunctive relief rather than damages. "The rule is entirely different, however, when the suit is for injunctive relief." Guam Soc. of Obstetricians, 962 F.2d at 1371 (quoting Will v. Michigan Dep't of State Police, 491 U.S. 58, 63-65, 71 n.10 (1989) (applying the injunctive relief principle to territories)). This is because suits for injunctive relief are not suits against the public purse in the same way as suits for damages. "[G]ranting injunctive relief does not itself affect the public treasury." *Guam Soc. of Obstetricians and Gynecologists v. Ada,* 776 F. Supp. 1422, 1430 (D. Guam 1990).

[22] However, the distinction between injunctive relief and damages in sovereign immunity is not consequential to this issue, as this is not a suit for injunctive relief, but more specifically a suit seeking an order for a public official to perform what GFT considers a ministerial duty This court agrees that a Petition for Writ of Mandamus is the proper remedy when seeking an administrative hearing at the hands of an agency official. *Beck Dev. Co. v. S. Pac. Transp. Co.*, 52 Cal. Rptr. 2d 518, 540 (Ct. App. 1996) ("A petition for a writ of mandate is an appropriate remedy for compelling an administrative agency to provide a fair hearing where one has been refused."). The more specific issue, then, is whether sovereign immunity is implicated by a Petition for Writ of Mandamus.

[23] Title 7 GCA § 31202 provides that a writ of mandate may be issued:

> [B]y any court, [except a commissioner's court or police court,] to any inferior tribunal, corporation, board, or person *to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station*; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board or person.

Title 7 GCA § 31202 (2005) (emphasis added). Since Guam's mandamus statute is rooted in California Code of Civil Procedure § 1085,[4] California case law construing the identical statute is persuasive. *Holmes*, 1998

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[2] The Director asserts that waiver of sovereign immunity in the present case derives from Title 5 GCA § 6105(c), the Government Claims Act, and the discretionary function exception of the Federal Tort Claims Act. Because the issue is whether there is writ jurisdiction, it is unnecessary to address the applicability of the Government Claims Act in resolving whether sovereign immunity applies to the lower court's consideration and/or issuance of the instant writ of mandate against the Director.

[3] GFT also disputes the applicability of the Government Claims Act where injunctive relief is sought. However, as mentioned in the preceding footnote, we decline to address the applicability of the Government Claims Act since such consideration is unnecessary in determining the jurisdictional effect of sovereign immunity.

[4] Title 7 GCA section 31202 mirrors California Code of Civil Procedure § 1085, which states in similar language:

> A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right of office to which the party is entitled, and from which the party is unlawfully precluded by such inferior tribunal, corporation, board or person.

Cal. Civ. Proc. § 1085 (Westlaw through 2005 laws, Governor's Reorganization Plans No. 1&2, and all propositions appearing on the Nov. 8, 2005 ballot).

Guam 8 ¶ 6 ("[S]ince Guam's mandamus statutes were adopted from the California Civil Code [sic] California cases applying the mandamus standard are persuasive authority."); *Ueda v. Bank of Guam*, 2005 Guam 23, ¶ 16 n.7 ("We find California case law to be persuasive authority in the interpretation of Title 21 GCA § 1254, as that section was derived from California Civil Code § 711").

[24] California courts recognize that "[t]he writ lies to compel the performance of a legal duty imposed on a government official." *Envtl. Prot. Info. Ctr., Inc. v. Maxxam Corp.*, 6 Cal. Rptr. 2d 665, 670 (Ct. App. 1992). California courts also for the most part acknowledge that "where the action is one simply to compel an officer to perform a duty expressly enjoined upon him by law, it may not be considered a *suit against the state*." *Los Angeles County v. Riley*, 128 P.2d 537, 543 (Cal. 1942) (emphasis added). As a result, California courts have held that "[a]ctions seeking traditional mandamus to compel a state officer to comply with a mandatory duty . . . do not invade sovereign immunity . . . ." *Santa Ana Hosp. Med. Ctr. v. Belshe*, 65 Cal. Rptr. 2d 754, 765 (Ct. App. 1997) (discussing money awards). We similarly hold that Guam's statutory writ of mandate does not invade sovereign immunity because the writ generally lies to compel the performance of a legal, mandatory duty imposed on a government of Guam official and, therefore, is not considered a suit against the government of Guam.

[25] Therefore, the ultimate issue is whether there is a legal duty to provide a hearing, in which case the duty is ministerial, and there is writ jurisdiction. If the decision whether to hold a hearing is discretionary, then there is no writ jurisdiction. Mandamus will not lie to compel the exercise of discretion in a particular manner. *Holmes*, 1998 Guam 8 ¶ 12. Mandamus is appropriate only where there is a "clear, present and ministerial duty to act." *Id*. ¶ 11.

[26] In conclusion, sovereign immunity does not prevent the issuance of a writ to perform a non-discretionary act. The converse of this rule is that if the relief sought is a discretionary act, then we must find that the trial court erred in entertaining the petition for writ of mandate.

B. Legal Duty

[27] We consider whether the Director has a legal duty to hold a hearing on the ULP charge filed by Rector and if so, whether a writ of mandamus should issue.

[28] "A writ of mandate is an extraordinary remedy that may be issued by a court to compel the performance of an act which the law specifically enjoins, only if the party seeking the writ has no plain, speedy or adequate remedy in the ordinary course of law." *Dumaliang*, 2000 Guam 24 ¶ 7 (citing Title 7 GCA §§ 31202-31203).[5] We stated in *Bank of Guam*, 2001 Guam 14:

> Generally, in reviewing a petition for *mandamus* relief, the petitioner must show there is "(1) [a] clear, present and usually ministerial duty on the part of the respondent; and (2) [a] clear, present and beneficial right in the petitioner to the performance of that duty." *Baldwin-Lima Hamilton Corp. v. Superior Court*, 208 Cal. App. 2d 803, 813, 25 Cal. Rptr. 798, 805, (Ct. App. 1962) (describing basic requirements of analogous California writ of mandate statute); *see* Title 7 GCA §§ 31202, 31203 (1993)[.] The primary purpose of *mandamus* is the enforcement of a plain, nondiscretionary legal duty to act. *See* 7 GCA § 31202; *see generally Farrington v. Fairfield*, 194 Cal. App. 2d 237, 239, 16 Cal. Rptr. 119, 120 (Ct. App. 1961). *Mandamus* will not issue to compel performance of an act by one not having a clear, present, and usually ministerial duty to perform that act. *See Baldwin-Lima Hamilton Corp.* 208 Cal. App. 2d at 813, 25 Cal. Rptr. at 805.

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[5] Title 7 GCA section 31203 provides that a writ of mandate:

> [M]ust be issued in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. It must be issued on the verified petition of the party beneficially interested.

Title 7 GCA § 31203 (2005).

Bank of Guam, 2001 Guam 14 ¶¶ 13-14; s*ee also Holmes*, 1998 Guam 8 ¶ 11; *Sablan*, 2002 Guam 13 ¶ 7.

[29] In this case, the lower court held, in granting GFT's petition for writ of mandate:

> [Perez in her capacity as DOA Director] is required to hold hearings pursuant to 2 GAR Section 5210 for the purpose of resolving the unfair labor practice which it is required to resolve. Furthermore, the Court finds that there is no reason why Respondent would be exempt from the provisions of the Administrative Adjudication Act [sic]. Specifically, 5 GCA Section 9108 provides: "*Administrative adjudication* means that administrative investigation, hearing and determination by any agency of issues or cases applicable to particular parties." The provisions of that Act would also require Respondent to conduct hearings within.

ER, pp. 23-25 (*Disision yan Otden*, Feb. 9, 2004).

[30] After the Department of Administration resolved the ULP dispute, the case was transferred to a new judge, who thereafter denied DOA's motion for reconsideration, leaving the February 9, 2004 reasoning undisturbed. The court also found that the decision granting the writ "appears to have been based on a thorough evaluation of the parties' arguments as well as other issues the Court considered *sua sponte*" and that such decision "was clear on its face with a directive for DOA to conduct a hearing on the matter." ER, pp. 35-36 (Decision and Order, July 29, 2004).

[31] Perez challenges the Superior Court's interpretation of the AAL, arguing that the AAL's provisions do not require her to conduct a hearing on the ULP charge due to the limited applicability of the AAL, and moreover that the procedures listed under Article 2 are applicable only when an agency hearing is required by another law. GFT, on the other hand, defends the trial court's decision, citing PEMRA, the administrative regulations promulgated through it, and finally arguing that the AAL was intended to establish appropriate procedures to protect the rights of parties in labor-management disputes.

[32] In addressing whether, pursuant to the AAL, PEMRA and the PEMRA-based regulations, a hearing on a ULP claim constitutes an "act which the law specially enjoins," 7 GCA § 31202, we begin with the plain language of the statute. *Aguon,* 2002 Guam 14 ¶ 6 (citing *Pangelinan*, 2000 Guam 11 ¶ 23). Furthermore, we recognize that "[i]n looking at the statute's language, the court's task is to determine whether or not the statutory language is 'plain and unambiguous. The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.'" *Aguon*, 2002 Guam 14 ¶ 6 (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340, 117 S. Ct. 843, 846 (1997)). Furthermore, "in expounding on a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy." *Sumitomo*, 2001 Guam 23 ¶ 17 (quoting *Kelly v. Robinson*, 479 U.S. 36, 43 (1986)).

1. Administrative Adjudication Law

[33] Guam's AAL establishes the procedures to be followed by an agency when conducting adjudication and also addresses the procedures for agency rulemaking. Title 5 GCA, Chapter 9 (2005). The AAL was part of the original Government Code of Guam enacted in 1952, and was subsequently amended. *See Note* to Title 5 GCA, Chapter 9 (2005).

[34] Title 5 GCA § 9108 (2005) defines "administrative adjudication" as "that administrative investigation, hearing, and determination by any agency of issues or cases applicable to particular parties." The trial court found that this language supported its conclusion that a hearing was required.

[35] This section appears in Article 1 of the AAL, the chapter entitled "Definitions." Section 9108 merely provides a definition for the term "hearing" and does not, by itself, create a right to a hearing. Section 9108 does not include any reference to DOA or the duties of the Director, particularly with respect to a ULP charge. Section 9108 also includes other definitions.[6] The language and context of 5 GCA § 9108 do not support the Superior Court's finding that the AAL provisions require Perez to conduct a hearing on Rector's ULP claim.

[6] Sections 9102 through 9107.1 define the terms "agency," "agency member," "party," "respondent," "hearing officer," and "rule." *See* Title 5 GCA, Chapter 9. (2005).

[36] With respect to applicability, the first provision of Article 2, Title 5 GCA § 9200 (2005) states: "The procedure of any agency shall be conducted pursuant to the provisions of this Chapter in any proceeding before an agency in which legal rights, duties or privileges of specific parties are *required by law* to be determined after an agency hearing." (emphasis added). Like section 9108, section 9200 lacks any language that mandates that the Director conduct a hearing on a ULP charge. Rather, the text of 5 GCA § 9200 simply states that the hearing procedures delineated in Article 2 must be followed by an agency *when the agency is required by law to conduct a hearing*. In other words, if an agency is not legally required to hold a hearing, then the Article 2 hearing procedures do not apply to such agency procedures. The plain language of Title 6 GCA § 9200, therefore, does not support the lower court's holding that the Director is required to hold a hearing on this ULP claim.

[37] Accordingly, upon review of the plain language of the AAL provisions discussed above, we find that there was no support for the lower court's holding that the provisions of the AAL required the Director to conduct a hearing on the ULP charge filed by Rector.

2. Public Employee Management Relations Act

[38] The next issue we must address is whether PEMRA imposes on the Director a legal duty to conduct a hearing on a ULP charge. PEMRA establishes the rights, duties and limitations of public employees, employee organizations and management officials. Title 4 GCA § Chapter 10 (2005). PEMRA delineates the particular types of conduct which constitute unfair labor practices. The provisions of PEMRA further require the Director to issue regulations on procedures for determining the merits of ULP allegations. 4 GCA § 10111 (2005). Unlike the AAL, PEMRA includes provisions with specific references to unfair labor practices, DOA and the Director. We review each of these provisions in turn.

[39] Entitled "Unfair Labor Practices," Title 4 GCA §10111 sets forth prohibited conduct of management officials and employee organizations, and includes "restraining, coercing or interfering with the exercise of the rights assured to public employees by the terms of this Chapter." Title 4 GCA § 10114 (2005), entitled "Grievances," addresses a different aspect of PEMRA. Grievances are not unfair labor practices and do not relate to them; grievance procedures "shall not extend to the settlement of disputes or allegations of *unfair labor practices* for which procedures are otherwise provided by law or regulation." 4 GCA § 10114(b) (emphasis added).

[40] Addressing both, however, Title 4 GCA § 10115 (2005), entitled "Executive Branch and Responsibility, states:

> A comprehensive employee-management relations program, consistent with the policies in this Chapter, . . . shall be administered by the *Director, Department of Administration*, who shall have the powers and functions described in this Chapter, in addition to the responsibilities heretofore or hereafter assigned to that *Department*.

(Emphasis added). This provision simply defines the term "unfair labor practices." The plain language of this provision cannot be read to require that the Director hold a hearing on a ULP charge. Other PEMRA provisions establish that negotiated grievance procedures do not apply to the settlement of ULP allegations, and mandate that the DOA director administer an employee-management relations program and formulate procedures to determine the merits of ULP allegations. Title 4 GCA §§ 10111, 10114-10116. None of these provisions contain language requiring a ULP hearing. Title 4 GCA, Chapter 10. We therefore hold that the provisions of the PEMRA statutes do not themselves require the Director to hold a hearing on a ULP claim.

3. Administrative regulations

[41] We must now decide whether the regulatory provisions promulgated through PEMRA impose a legal duty on the Director to hold a ULP hearing.

[42] The administrative regulations found in the GAR, and also entitled "The Public Employee-Management Relations Act," mirror the provisions of its authorizing statute, PEMRA, and establish procedures governing proceedings before the Director pursuant to the statute. Title 2 GAR, Chapter 5 (1997). Especially important to the case *sub judice*, the regulations provide for the Director's discretion in determining the truth of

a ULP allegation. 2 GAR § 5111(c) (1997). Such regulations were formulated through the Director's rule-making authority under PEMRA, specifically Title 4 GCA § 10116. 2 GAR, Chapter 5; 4 GCA § 10116.

[43] The lower court held that the Director was required to hold a hearing on the ULP charge pursuant to Title 2 GAR § 5210, under "Part B. Rules of Procedure" of the regulations. ER, pp. 23-25 (*Disision Yan Otden*, Feb. 9, 2004).

[44] The Director argues this is in error because ULP hearings are discretionary under the regulations. She asserts that Part B of the relevant regulations provides procedures for such hearings *if* the Director deems a hearing necessary. While GFT concedes that the regulations under Part B govern the *conduct* of such hearings, it asserts that a ULP hearing is mandatory unless waived by the parties pursuant to Title 2 GAR § 5221(c).

[45] Title 2 GAR § 5210 (1997), labeled "Scope," establishes that, "*[t]hese rules govern procedure* before the Director of Administration under the Public Employee-Management Relations Act of Guam as now or hereafter amended, and such other related acts as may now or hereafter be administered by the Director." (Emphasis added). Section 5210 sets forth who shall conduct a hearing, the nature of the hearing, and the duties, powers and limitations of a hearings officer.[7] Title 2 GAR § 5211(c) (1997), entitled "Waiver of

[7] Title 2 GAR § 5210 (1997) provides:

> (a) Who Shall Conduct. The hearing for the purpose of taking evidence may be conducted by the *Director* or hearings officer.
>
> (b) Nature Of Hearing. The hearing shall be open to the public, unless otherwise provided by the rules, or ordered, for good cause, by the *Director* or hearings officer.
>
> (c) Duty Of Hearings Officer. It shall be the duty of the hearings officer to inquire fully into all matters at issue to obtain a full and complete record.
>
> (d) Powers Of Hearings Officer. The hearings officer shall have the authority, subject to the Act and the rules, to:
>
> (1) Give notice concerning the hearing.
> (2) Administer oaths and affirmations.
> (3) Take or cause depositions to be taken whenever the ends of justice would be served thereby.
> (4) Rule upon offers of proof and receive relevant evidence.
> (5) Call, examine and cross-examine witnesses and to introduce into the record documentary or other evidence.
> (6) Limit lines of questioning or testimony which are repetitive, cumulative or irrelevant.
> (7) Hold conferences for the settlement or simplification of the issues.
> (8) Dispose of procedural requests, motions or similar matters which shall be made part of the record of the proceedings, recommend dismissal of cases or portions thereof, and to order hearings reopened prior to issuance of the hearings officer's report and recommendations.
> (9) Request the parties at any time during the hearing to state their respective positions concerning any issue in the proceedings or theory in support thereof.
> (10) Dispose of any other matter that normally and properly arises in the course of any proceedings, and to take any other action authorized by the Act, rules or by any other statute.
>
> (e) Termination Of Hearings Officer's Authority. The hearings officer's authority in each

Hearing," states that "[t]he Parties to an agreed statement of facts *may* agree to a waiver of a hearing." (Emphasis added). These provisions do not contain language mandating that the DOA director hold a hearing on a ULP charge. The sections are also located in "Part B. Rules of Procedure" of the regulations. The text and context of the Part B provisions of the regulations, therefore, do not support the writ of mandate against the Director because such regulations do not impose on her a duty to hold a hearing on the ULP charge filed by Rector. Nor do the "General" provisions in "Part A" of the regulations support the conclusion that a hearing is statutorily required. Finally, there is no support for the argument that section 10116 of PEMRA requires the Director to hold a hearing on a ULP charge. The regulations' authorizing statute consequently cannot be read as mandating such hearing.

[46] More importantly, Title 2 GAR § 5111(c) (1997) provides:

> Any charge of an unfair labor practice shall be filed in writing with the Director and *he shall take such action as he determines necessary to ascertain the truth of the allegation.* Upon completion of his investigation, the Director shall forward his findings in writing to the Governor.

(Emphasis added). The plain language of this section means that the Director may hold a hearing if she believes such hearing is "necessary to ascertain the truth" of the ULP charge, but the provision does not require such hearing. *Id.*

[47] We therefore hold that the lower court erred in issuing the mandate based on the administrative regulations. Petitioner failed to meet the burden of proving a legal duty and right to a hearing on the ULP claim.[8]

[48] Finally, we note that the federal counterpart to the regulation in question, found at 5 C.F.R. § 2423.8, contains the following sentence, "The Regional Director, on behalf of the General Counsel, conducts such investigation of the charge as the Regional Director deems necessary." This sentence is verbatim in the Guam regulation, in 2 GCA. § 5207(c) ("The [Director] shall take such action as he deems necessary . . ."). However the federal regulation contains a second sentence: "During the course of the investigation, all parties involved are afforded an opportunity to present their evidence and views to the Regional Director." Title 5

> case will terminate either upon the submission of his findings, conclusions and recommendations to the *Director*, or upon the certification of the record in the proceeding to the *Director*, or when he shall have withdrawn form [sic] the proceeding upon considering himself disqualified, or when he has been withdrawn by the *Director* for good cause shown.
>
> (f) Disqualification Of Hearings Officer. Upon approval of the *Director*, a hearings officer assigned by the *Director* to hold a hearing and to make recommendations shall withdraw from the *Director*, for good cause found, after timely affidavits alleging personal bias or other disqualifications have been filed and the matter has been heard by the *Director*.
>
> (g) Substitution. A hearings officer may be substituted at any time for the hearings officer previously presiding.
>
> (h) Unavailability Of Hearings Officer. In the event the hearings officer designated to conduct the hearing becomes unavailable, the *Director* may designate another hearings officer for the purpose of further hearing or issuance of a report and a recommendation on the record as made, or both.

(Emphasis added).

8 This court does not address whether the lack of a statutorily mandated hearing on an unfair labor practice claim, specifically, a demotion in alleged retaliation for union activity, invokes the protections of procedural due process outlined in such cases as *Board of Regents of State College v. Roth*, 408 U.S. 564 (1972), as this issue has not been properly presented to the court.

C.F.R. § 2423.8. The Guam counterpart has no such sentence. This reveals that the express intention was to allow the Director to conduct such investigation as he feels necessary but there was a conscious decision not to expressly state that a hearing would be guaranteed. The court takes this as further evidence that there is no statutory or regulatory right to a hearing.

[49] GFT defends the writ of mandate issued by the lower court by challenging the validity of Title 2 GAR § 5111(c). GFT argues that the regulatory provision should be stricken because section 5111(c) is inconsistent with PEMRA's "Declaration of Policy" under Title 4 GCA § 10102. GFT also asserts that the drafters of the regulations wrongfully omitted provisions of the Federal Labor Relations Authority, because the Director did not "consult with and consider the view of identifiable interested employee organizations" in formulating the ULP regulations. Appellee's Brief, pp. 6-10 (May 3, 2005). In rebuttal, DOA argues that the regulations, including 2 GAR § 5111(c), were properly promulgated through authority granted to the DOA director in PEMRA, and that GFT's challenge of 2 GAR § 5111(c) in a writ of mandate proceeding was improper. GFT essentially argues that 2 GAR § 5111(c) is not consistent with the AAL, PEMRA and the regulations themselves. However, this cannot change the fact that none of the statutes quoted imposes a legal duty to hold a hearing.

[50] Finally, in defending the trial court's issuance of the writ, GFT relies on an analogy with the PEMRA alternative dispute resolution methods in 2 GAR § 5112(c), which specifically reference a hearing. The Director asserts that such issues could not be raised for the first time on appeal since no exceptional circumstances justify the failure to raise the issue below. Rather than rule on whether these issues are properly before us, we reject GFT's argument by analogy. The PEMRA mediation statutes clearly address a hearing, but the PEMRA statutes and regulations do not require a hearing. It is on this basis that we conclude the trial court was not justified in granting the writ.

IV.

[51] We hold that the lower court erred in holding that pursuant to the laws of Guam, the Director of the Department of Administration is required to a conduct a hearing on the unfair labor practice claim filed by Matthew J. Rector against the Department of Education. The applicable Guam laws with respect to such claim, found in the Administrative Adjudication Law, the Public Employee-Management Relations Act, and Guam Administrative Regulations, do not support the conclusion of the trial court that a hearing was required. Consequently, whether to hold a hearing is a discretionary act. The law does not support a writ to issue compelling the performance of a discretionary act. Accordingly, we **REVERSE** and **REMAND** for entry of judgment consistent with this opinion.