

IN THE SUPREME COURT OF GUAM

UNIVERSITY OF GUAM,
Petitioner-Appellee,

vs.

GUAM CIVIL SERVICE COMMISSION,
Respondent,

DR. CHRISTY FOLEY,
Real Party in Interest-Appellant.

OPINION

Supreme Court Case No. CVA00-018
Superior Court Case No. SP0032-96

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Appeal from the Superior Court of Guam
Argued and Submitted on February 9, 2001
Hagåtña, Guam

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BEFORE: PETER C. SIGUENZA, JR. Chief Justice,¹ JOHN A. MANGLONA, Designated Justice, and RICHARD H. BENSON, Justice Pro Tempore

SIGUENZA C.J.:

[1] Dr. Christy Foley (“Foley”) was terminated from employment as a professor at the University of Guam (“University”). Foley appealed the termination to the Civil Service Commission (“Commission”) which voided the termination on a procedural ground. The University sought judicial review of the Commission’s decision and the lower court held that the Commission lacked jurisdiction to consider Foley’s appeal because she was an unclassified employee. Foley appeals from that judgment. Upon review of the issues and applicable laws, we hold that Foley was a classified employee at the time of termination with the right to appeal to the Commission, and reverse the judgment of the lower court.

I.

[2] In August of 1988, Dr. Christy Foley, was hired by the University of Guam as an assistant professor. In May of 1993, Foley was alleged to have struck a student. In June of 1993, by notice of adverse action, Foley was suspended pending the outcome of a fitness for work examination. Foley appealed this suspension to the Civil Service Commission in Adverse Action Appeal No. CY93-AA22.

¹ At the time of oral argument, Benjamin J. F. Cruz was the Chief Justice but recused himself from this matter. Justice Peter C. Siguenza, Jr., served as Acting Chief Justice as the senior member of the panel and at the time of publication of this opinion is the Chief Justice of Guam.

The Commission voided the suspension on the ground that it violated the so-called sixty day rule.²

[3] By October of 1993, Foley had still not reported for the examination and she was terminated for insubordination and failure to report to work by issuance of another adverse action. In Commission Case No. CY94-AA30, Foley appealed the termination to the Commission.³ The University challenged the Commission's jurisdiction. However, the Commission held that it had jurisdiction and voided the adverse action for the University's violation of the sixty day rule. *Foley v. Univ. of Guam*, Adverse Action Appeal Case No. CY94-AA30 (Decision and Order Jan. 16, 1996).⁴ On February 15, 1996, the University filed a Petition for Review, Superior Court Special Proceedings Case No. SP0032-96. On February 17, 1999, Foley filed a Motion to Dismiss arguing failure to prosecute and attacking the trial court's jurisdiction and the procedure in which counsel for the University had brought the petition. On September 20, 1999, the trial court filed a Decision and Order and found that it had jurisdiction over the case, and then considered

² The sixty day rule is statutory:

An employee in the classified service who is dismissed, demoted, or suspended shall be given immediate notice of the action, together with a specific statement of the charges upon which such action is based in the manner required by Article 2 of this Chapter. . . . In no event may an employee in the classified service be given the notice and statement of the charges required by this Section after the sixtieth (60) day after management knew or should have known the facts or events which form the alleged basis for such action. Any action brought by management in violation of this Section is barred and any decision based on such action is void.

Title 4 GCA § 4406 (1996).

³ In the notice of adverse action terminating Foley, the University maintained that its adjudication committee had jurisdiction to hear any appeals of the termination; however, pursuant to a previous Commission decision, *Matheny, Mezo and Hall v. UOG*, Adverse Action Appeals Case Nos. CY92-AA07, CY92-AA08, CY92-AA09 (Ruling on Motion to Dismiss for Lack of Jurisdiction Feb. 18, 1993), she was being served notice of her ability to appeal to the Commission.

⁴ Record on Appeal vol. 1, tab 1 (Attachment). This Decision and Order was identified with the wrong case number, CY93-AA22. The Commission later corrected the case number to CY94-AA30. *Foley v. Univ. of Guam*, Adverse Action Appeal Case No. CY94-AA30 (Notice and Order of Corrected Case No. April 16, 1996).

the issue of the Commission's jurisdiction over academic personnel of the University. The trial court held that the Commission did not have jurisdiction over the University's academic personnel and that the Commission decision was void. The trial court did not reach any other substantive arguments raised in Foley's motion and in the University's opposition.

II.

[4] This court has jurisdiction over an appeal from a final judgment. Title 7 GCA § 3107, (1994).

[5] The issue of whether the Commission had jurisdiction over Foley is a matter of statutory interpretation and review is *de novo*. See *Ada v. Gutierrez*, 2000 Guam 22, ¶ 10. Further, an agency's interpretation of a statute is a question of law reviewed *de novo*. *Blas v. Customs & Quarantine Agency*, 2000 Guam 12, ¶ 12 (citations omitted). In reviewing an agency's construction of a statute, the court must reject those constructions that are contrary to clear legislative intent or frustrate the policy that the Legislature sought to implement. See *id.* (citations omitted). "However, if a statute is silent or ambiguous on a particular point, the court may defer to the agency's interpretation; but that review is limited to whether the agency's conclusion is based on a permissible construction of the statute." *Id.* (citations omitted). Deference is not given to the agency if its interpretation involves a general question of law such as a jurisdictional or constitutional issue. *Assoc. Gen. Contractors v. Bd. of Oil and Gas and Mining*, 38 P.3d 291, 297 (Utah 2001).

III.

[6] The issue we address is whether Foley was a classified employee with the right to appeal her termination of employment to the Commission. The issue is complicated because, at the time this dispute arose, there were two seemingly conflicting laws: (1) the University's Charter, now codified at Chapter 16 of Title 17 Guam Code Annotated; and (2) Chapter 4 of Title 4 Guam Code Annotated, Personnel Policy and the Civil Service Commission. We note that at the present time, there is no apparent conflict as the Legislature has expressly excluded academic employees of the University from the classified and non-classified services; thus, the Commission presently has no jurisdiction over academic personnel. Title 4 GCA § 4102 (1996). However, this express exclusion was not made until 1995, well after Foley was terminated from employment.

[7] As previously stated, the Commission held that it had jurisdiction over the University's academic personnel. *Foley v. Univ. of Guam*, Adverse Action Appeal Case No. CY94-AA30 (Decision and Order Jan. 16, 1996).⁵ Specifically, the Commission reasoned that under 4 GCA § 4102 government employees are either classified or unclassified and that because section 4102 and Public Law 19-40 did not categorize academic employees as unclassified, such employees were therefore classified. *Id.* (citing *Matheny v. Univ. of Guam*, Adverse Action Appeals Case Nos. CY92-AA07, CY92-AA08, CY92-AA09 (Ruling on Motion to Dismiss for Lack of Jurisdiction Feb. 18, 1993).⁶ It further found that 4 GCA § 4105 mandated the University to adopt personnel rules providing its classified employees the right to

⁵ Record on Appeal vol. I, tab 1 (Attachment).

⁶ Record on Appeal vol. II, tab 59 (Attachment 1).

appeal to the Commission. *Id.* Ultimately, the Commission ruled that 17 GCA § 16111 did not repeal the applicable sections in 4 GCA Chapter 4. *Id.* We agree.

[8] With respect to the appointment of public employees, the Organic Act provides:

Appointment of heads; establishment of merit system; civil service commission, removal of commission members. The Governor shall, except as otherwise provided in this chapter or the laws of Guam, appoint, by and with the advice and consent of the legislature, all heads of executive agencies and instrumentalities. **The legislature shall establish a merit system and, as far as practicable, appointments and promotions shall be made in accordance with such merit system. The Government of Guam may by law establish a Civil Service Commission to administer the merit system.** Members of the Commission may be removed as provided by the laws of Guam.

48 U.S.C. § 1422c(a) (1987) (emphasis added). Pursuant to this authority, the Legislature promulgated Chapter 4 of Title 4 Guam Code Annotated, Personnel Policy and the Civil Service Commission, which established a merit system of employment applicable to the entire government of Guam. *See* Title 4 GCA § 4101 (1996). Employees hired under the merit system are known generally as “classified employees.” 4 GCA § 4102. Classified employees are generally entitled to appeal their personnel actions to the Commission. *See* Title 4 GCA §§ 4105 and 4403(b) (1996).

[9] With respect to the University, and pursuant to the Organic Act, the Legislature required that academic personnel be hired on the basis of merit. Specifically, when Foley was hired in August of 1988, the University statute pertaining to the hiring of academic personnel was Guam Government Code § 11841 (as amended by Public Law 16-23) which stated:

Personnel Rules: Academic Personnel and Administrative Officers. Rules and regulations governing selection, compensation, promotion, performance evaluation, and disciplinary action affecting academic personnel and administrative officers shall be adopted by the Board in accordance with Sections 4 GCA §§ 4104 and 4105. Such rules and regulations

shall provide for the employment of persons **on the basis of merit**, and shall include an orderly and systematic method of recruitment and the establishment of qualified lists for employment purposes. For the purpose of this Section, an ‘administrative officer’ is defined as one who holds any of the following positions: Associate or Assistant Dean; Associate or Assistant Director; Dean or Director; Assistant to the President or Vice-President; provided, however that nothing in this Chapter shall be construed as preventing the Board from establishing other administrative officer positions or abolishing any of the existing positions indicated herein and further provided, however, that nothing in this Section nor in any other section of this Chapter involving the outlay of public funds shall become effective unless funds, therefore, shall have been provided in the University's annual budget.

Guam Govt. Code § 11841 (as amended by Guam Pub. L. 16-23 (Aug. 12, 1981)) (emphasis added).

Section 11841, as it was written, clearly did not exclude academic employees from the classified service.

Moreover, with respect to the government as a whole, at the time Foley was terminated, 4 GCA § 4102

(as reenacted by P.L. 16-23 and amended by P.L. 16-41)) stated:

Classified and Unclassified Services. All offices and employment in the Government of Guam shall be divided into classified and unclassified services as follows:

(a) The unclassified service shall include the positions of:

- (1) elective officials;
- (2) judges;
- (3) Superior Court marshal, chief clerk, chief probation officer and court administrator of the Superior Court;
- (4) heads of agencies and instrumentalities and not more than one (1) secretary for each such officer;
- (5) The first assistant, by whatever title denominated, to the heads of agencies and instrumentalities stated in paragraph (4) of this Subsection; except that the first assistant to the Police Chief of the Guam Police Department shall be the classified position of Deputy Police Chief and the person occupying that position, or if that position is vacant, a person occupying another classified position in the Guam Police Department, shall be the Acting Police Chief in the absence of the Police Chief and, notwithstanding any other provision of law, there shall be no Deputy Director of the Guam Police Department;
- (6) persons employed on a temporary basis;
- (7) members of boards and commission;

- (8) executive director of the Commissioner's Council;
- (9) all offices and employment in the Executive Branch whose appointment are required to be confirmed by the Guam Legislature;
- (10) all offices and employment made, by law, to be at the pleasure of any board, commission or officer;
- (11) all legislative employees;
- (12) members of the Guam Gaming Commission;
- (13) physicians and health care administrators employed at the Guam Memorial Hospital Authority;
- (14) all positions in the Department of Military Affairs; and
- (15) employees of the office of the Governor and Lieutenant Governor including off-island offices and Government House, as authorized in the applicable appropriation law.
- (16) Property Management Officer at the Department of Corrections.

(b) The classified service shall include all other positions in the government of Guam.

Title 4 GCA § 4102 (as reenacted by Guam Pub. L.16-23:1 (Aug. 12, 1981) and amended by Guam Pub. Ls. 16-41:1 (Sept. 30, 1981); 16-111:23 (Oct. 7, 1982); 16-120:14 (Dec. 18, 1982); 17-5:2 (Apr. 22, 1983); and 18-15:48 (Sept. 28, 1985)). Thus, because neither section 4102(a), nor any other section of law, expressly exempted academic employees, such employees fell into the catchall provision of section 4102(b).⁷

⁷ Section 4102 was not further amended until P.Ls. 20-132:9 (Jan. 24, 1990); 21-17:3 (May 8, 1991); 23-26:1 (June 6, 1995); and 23-45:IV:21 (Oct. 18, 1995). The express exclusions were added by P.L. 23-26:1 which stated in part:

All offices and employment in the Government of Guam, except for employment as academic personnel of the Guam Community College (GCC) and the University of Guam (UOG), as the term 'academic personnel' is defined in enabling laws of GCC and UOG, shall be divided into classified and unclassified services as follows:

....

(c) Notwithstanding any law or rule to the contrary, employment as academic personnel of the Guam Community College and the University of Guam shall be governed by rules adopted by the Board of Trustees and the Board of Regents, respectively, in order to provide academic freedom and autonomy to the institutions, as intended by P.L. 14-77 as to GCC, and P.L. 19-40 as to UOG.

[10] We note, as the University illustrates, that the laws distinguished between academic and non-academic employees long before this dispute arose. Specifically, the University statute pertaining to non-academic personnel stated:

Non-Academic Personnel. Notwithstanding any law, rule or regulation to the contrary, all non-academic personnel shall be classified and matters relating to employment of non-academic personnel shall be governed by and in accordance with Title V of the Government Code.

All employees of the University of Guam who have acquired government of Guam civil service tenure on the date of enactment of this Act and who are transferred to the corporate university in accordance with § 11845 of this Act shall retain their tenure and status as employees of the government of Guam.

Guam Govt. Code § 11842 (as amended by Guam Pub. L. 13-194 (Oct. 4, 1976)).⁸ However, the mere fact that separate statutes govern academic and non-academic employees is not dispositive. Section 11841 directs the Board of Regents to adopt personnel rules and regulations for academic employees in accordance with 4 GCA §§ 4104 and 4105, which require that personnel rules be made based on the merit system. Section 11842 directs that non-academic personnel are classified and governed by the laws on classified personnel. At the time Foley was hired, there were no laws which expressly or impliedly repealed the applicability of 4 GCA § 4102 to University academic personnel; thus, they were still part of the classified service with the rights and benefits entitled to such employees by law.

⁸ Government Code §§ 11841 and 11842 were amended by P.L. 19-40 on December 30, 1988, which was after Foley was hired. Public Law 19-40 repealed and reenacted the University's charter into Chapter 16 of Title 17 Guam Code Annotated. Sections 11841 and 11842 are now codified as 17 GCA §§ 16112 and 16113. Foley argues that P.L. 19-40 does not affect her classified status.

[11] On December 30, 1988 (some three months after Foley was hired), P.L. 19-40 was enacted. This law repealed and reenacted Chapter 16 of Title 17 Guam Code Annotated as the University's Charter. The University argues that 17 GCA § 16111, as enacted by P.L. 19-40, expressly repeals the application of any personnel law to its academic personnel except as provided. Foley argues that section 16111 was enacted after she was hired and was inapplicable to her; moreover, even if the section was applicable, it does not expressly repeal the application of 4 GCA § 4102 to academic personnel.

[12] Section 16111 states:

Insofar as the provisions of this Chapter are inconsistent with the provisions of any other law, the provisions of this Chapter shall be controlling; and in particular but not by way of limitation, except as may be provided in this Chapter, no provision of any law with respect to employment of personnel, shall be applicable to the University unless the Legislature shall specifically so state; provided, however, that the University may utilize in its operations the procedures and facilities provided by any such law or by the executive agencies of the government of Guam.

Title 17 GCA § 16111 (as enacted by Guam Pub. L. 19-40 (Dec. 30, 1988)).⁹

[13] Repealing statutes are generally either express or implied. 1 A NORMAN J. SINGER, SUTHERLAND STAT. CONST. § 23.07 (5th ed.1992). “While repeals by implication are disfavored, such repeal may be found when a later statute,[sic] covers the whole situation of an earlier one and is clearly intended as a substitute.” *Topasna v. Superior Court*, 1996 Guam 5, ¶ 13 (citations omitted). In an express repeal, a legislature expressly declares its intent to abrogate an earlier statute. *See Merrill v. Navegar, Inc.* 110 Cal.Rptr.2d 370, 387, 26 Cal.4th 465, 487, 28 P.3d 116, 130 (Cal. 2001). Section 16111 actually states two repealer provisions: (1) a repeal against laws inconsistent with Chapter 16 of Title 17 Guam Code

⁹ Section 16111 has not been amended since P.L. 19-40.

Annotated; and (2) a repeal against the applicability of other personnel laws except as specifically provided by the Legislature. 17 GCA § 16111. With respect to the first repealer clause, a clause which repeals inconsistent enactments is a general repealing clause. 1 A NORMAN J. SINGER, SUTHERLAND STAT. CONST. § 23.08 (5th ed. 1992). It has been observed that such a clause should legally be a nullity. *Id.* Such a clause cannot be an express repeal because it does not identify any act to be repealed, or an implied repeal because it does not declare the inconsistency but conditions repeal upon the existence of a conflict. *Id.* However, an inconsistent statute repealer may show legislative intent. *Id.* More important to the University's case is the repeal against other personnel laws unless specifically provided by law. The specific repeal of section 16111 of "any law with respect to employment of personnel" identifies the affected acts with reasonable certainty; and in this respect, appears to be an express repeal. *See Id.* § 23.07. However, this express repeal is not without condition as section 16111 provides that it will not take effect "unless the Legislature shall specifically so state." Thus, the analysis turns to whether the Legislature specifically applied the Civil Service laws to academic personnel. We answer in the affirmative.

[14] Section 16112, which governed academic personnel, stated:

Personnel Rules: Academic Personnel and Administrative Officers. **Rules and regulations governing selection, compensation, promotion, performance evaluation and disciplinary action affecting academic personnel and administrative officers shall be adopted by the Board in accordance with Title 4 Guam Code Annotated Sections 4104 and 4105.** Such rules and regulations shall provide for the employment of persons on the basis of merit, and shall include an orderly and systematic method of recruitment and the establishment of a list of qualified applicants for employment purposes. For the purpose of this Section, an 'administrative officer' is defined as one who holds any of the following positions: Associate or Assistant Dean; Associate or Assistant Director; Dean or Director; Assistant to the President or Vice-President; provided, however, that nothing in this Chapter shall be construed as preventing the Board from establishing other

administrative officer positions or abolishing any of the existing positions indicated herein and further provided, however, that nothing in this Section nor in any other section of this Chapter involving the outlay of public funds shall become effective unless funds therefore shall have been provided in the University's annual budget.

Academic personnel shall have the right to form, join, assist and participate in the management of employee organizations of their 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 the employee's official duties.

Within ninety (90) days of the effective date of this Act, the Board, in cooperative consultation with the recognized bargaining agent, shall develop and adopt reasonable rules for the settlement of collective bargaining disputes, including access to impartial mediation and arbitration.

Title 17 GCA § 16112 (as enacted by Guam Pub. L. 19-40 (Dec. 30, 1988)) (emphasis added).¹⁰ This section explicitly applies the procedures and requirements of 4 GCA §§ 4104 and 4105 to academic employees.

[15] Turning first to section 4104, at the time this dispute arose, this section stated in relevant part:

Departmental Rules. Rules **subject to criteria established by this chapter** governing the selection, promotion, performance, evaluation, demotion, suspension and other disciplinary action, shall be adopted by the Board of Directors for the Guam Airport Authority, Board of Directors for Guam Economic Development Authority, Board of Directors for Guam Housing Corporation, Board of Commissioners for Guam Housing and Urban Renewal Authority, Judicial Council, the Board of Directors of the Guam Telephone Authority, the Board of Directors of the Port Authority of Guam, the Board of Directors of the Guam Power Authority, the Board of Education, **the Board of Regents of the University of Guam**, the Guam Community College Board of Trustees, the Board of Trustees of the Guam Memorial Hospital Authority and by the Public Utility Agency of

¹⁰ This section was amended by P.L. 23-26 after this dispute arose. Those amendments are inapplicable in this case.

Guam with respect to personnel matters within their respective branches, agencies or departments, and by the Director of Administration as to all other executive branch employment. Such rules shall, to the extent practicable, provide standard conditions for entry into the other matters concerning the government service. The personnel rules adopted for **University of Guam**, Guam Airport Authority, Guam Telephone Authority, Port Authority of Guam, Guam Power Authority, Department of Education, Guam Memorial Hospital Authority, the Director of Administration and by the Public Utility Agency of Guam **shall require that all their classified employee appeals be heard by the Civil Service Commission**. The personnel rules adopted for the Judiciary Branch by the Judicial Council shall require that all their classified employee appeals be heard by the Council. Personnel rules governing any other Executive Branch entities may require that their classified employee appeals be heard by the Civil Service Commission. Rules concerning the Executive Branch shall take effect upon their approval by the Civil Service Commission, by Executive Order of the Governor and filing with the Legislative Secretary. Rules concerning the Judicial Branch shall take effect upon adoption by the Judicial Council of Guam.

....

Title 4 GCA § 4104 (as reenacted by Guam Pub. L. 16-23:1 (Aug. 12, 1981), and amended by Guam Pub. L. 20-03:XII:7 (Apr. 8, 1989)) (emphasis added).¹¹

[16] Turning next to section 4105, this section stated in relevant part:

Personnel Rules. The personnel rules provided for in §4104 of this Chapter shall provide procedures for the employment of persons on the basis of merit, and shall include an orderly and systematic method of recruitment and the establishment of qualified lists for employment purposes. They shall provide for a probationary period of not less than three (3) nor more than twelve (12) months for all original appointments, except for original academic appointments at the University of Guam or the Guam Community College, during which time the employee may be dismissed at any time without right of appeal and without right of being given reasons or charges in writing. Specific procedures and policies shall be included, governing the following:

...

¹¹ Section 4104 is presently codified as 4 GCA § 4105. This section remained unchanged until 1995 when it was amended by P.L. 23-26:3. The 1995 amendments, made subsequent to this dispute arising, are not applicable in this case.

(14) **Appeal of an adverse action not inconsistent with §§ 4175 and 4176 of this Chapter,**

- (15) In the case of academic employees of the University of Guam or the Guam Community College, and their successor agencies, a system of tenure appropriate to the academic nature of the respective institutions; and

.....

Title 4 GCA § 4105 (as reenacted by Guam Pub. L. 16-23:1 (Aug. 12, 1981) (emphasis added)).¹²

Sections 4175 and 4176 governed the procedures for issuing adverse actions, the filing of appeals thereto, and standards for the Commission's decisions. *See* Guam Pub. L. 16-23:1 (Aug. 12, 1981).¹³

[17] Under the aforementioned laws, the Board of Regents was mandated to promulgate personnel rules and regulations for academic employees "subject to the criteria of [4 GCA Chapter 4]." 4 GCA § 4104 (as amended by Guam Pub. L. 20-03:XII:7 (Apr. 8, 1989)). Sections 4104 and 4105 expressly required that the University's classified employees have the right to appeal to the Commission. Section 4105 required the University to promulgate rules based on the merit system. However, none of these sections of law excluded academic personnel from the classified service. Thus, we cannot say that 17 GCA § 16111 expressly or impliedly repeals any applicable section of 4 GCA Chapter 4 because section 16112 specifically applied 4 GCA § 4104, which in turn specifically applied the whole of 4 GCA Chapter 4. In the broadest sense, section 16112 appears to permit academic employee appeals to the Commission. Further, we cannot conclude that there is a repeal of section 4102 because the University statutes did not

¹² Section 4105 is presently codified as 4 GCA § 4106. This section remained unchanged until it was amended in 1995 by P.L. 23-26:4. Those amendments are inapplicable in this case.

¹³ Sections 4175 and 4176 are now codified at 4 GCA §§ 4406 and 4407.

remove academic employees from the classified service. Thus, the University statutes neither “cover the whole situation” of, nor are clearly intended as a substitute for, section 4102. *See Topasna*, 1996 Guam 5 at ¶ 13.

[18] We note the listing of autonomous agencies in 4 GCA § 4104 and that the University appears to be treated the same as those agencies. The effect here seems to be that the Legislature wanted to ensure that the employees of the autonomous agencies, including the University, be hired on the basis of merit.

[19] The Organic Act gives the Legislature the authority to establish the merit system and, as far as practicable, requires that government employees be hired thereunder. 48 U.S.C. § 1422c(a); *see also Haeuser v. Department of Law*, 97 F.3d 1152, 1157 (9th Cir. 1996) (“If it is ‘practicable’ to include the position within the merit system, the position must be included in the merit system.” (citing 48 U.S.C. § 1422c(a))). Under this authority, the Legislature can also exclude employees from the merit system as it has done for physicians, judges and numerous other positions. *See* 4 GCA § 4102. When Foley was hired, and until the time she was terminated from employment, academic personnel were not excluded from the classified service. The Legislature had ample opportunity to do this in P.L. 19-40 if the clear intent at that time was to give the University complete administrative control over its academic faculty. Instead, the Legislature opted to require the University to follow the requirements in 4 GCA §§ 4104 and 4105, which made no distinction between classified employees and academic personnel, and explicitly gave classified employees of the University the right to appeal to the Commission. We hold that P.L. 19-40 did not remove or exclude academic personnel from the classified service.

[20] We note the University’s argument that Foley, as a member of the Guam Federation of Teachers Union, was bound by the existing Collective Bargaining Agreement (“CBA”) which governed disciplinary action for faculty. However, the University failed to raise the issue of the CBA in its Petition for Review of Civil Service Commission Decision. Appellant’s Excerpts of Record tab 1. As a general rule, this court will not address an argument raised for the first time on appeal. *Dumaliang v. Silan*, 2000 Guam 24, ¶ 12. Thus, the University’s argument is not considered.

IV.

[21] We hold that Foley was a classified employee at the time of her termination and that the Commission had jurisdiction to hear the appeal of her termination. The Judgment of the trial court is **REVERSED** and the case is **REMANDED** for proceedings consistent with this opinion.

RICHARD H. BENSON
Justice Pro Tempore

JOHN A. MANGLONA
Associate Justice

PETER C. SIGUENZA, JR.
Chief Justice