**For Publication**

**IN THE SUPERIOR COURT**
**FOR THE**
**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

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| **THOMAS B. PANGELINAN**,<br><br>Plaintiff,<br><br>v.<br><br>**THE NORTHERN MARIANAS RETIREMENT FUND**, by and through its Fund Administrator, Karl T. Reyes,<br><br>Defendant. | **CIVIL ACTION NO. 04-0578C**<br><br><br><br>**ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S AND DEFENDANT'S CROSS-MOTIONS FOR SUMMARY JUDGMENT** |

## I. Introduction

THIS MATTER came before the Court for hearings on August 22, 2005, and September 9, 2005, at 9:00 a.m. in courtroom 220A to consider Plaintiff Thomas B. Pangelinan's ("Pangelinan") Motion for Summary Judgment ("MSJ"), and Defendant Northern Mariana Islands Retirement Fund's ("NMIRF" or "Retirement Fund") Motion for Summary Judgment. Plaintiff Pangelinan was present and represented by Robert T. Torres, Esq. Defendant Retirement Fund was represented by Assistant Attorney General David Lochabay. Having considered the arguments of counsel, the materials submitted and the applicable laws, the Court now issues its decision, granting in part, and denying in part, Pangelinan's Motion for Summary Judgment and Defendant Northern Marianas Retirement Fund's Motion for Summary Judgment for the reasons that follow.

## II. Factual and Procedural Background

Plaintiff Thomas B. Pangelinan is a retired former employee of the CNMI government. Beginning in August of 1967, Pangelinan was employed as a school teacher, then a school vice-principal, and finally a principal in the NMI Public School System. During his employment with the Public School System, Pangelinan contributed a percentage of his income to the Northern Mariana Islands Retirement Fund, starting in 1980 pursuant to Public Law 1-43. On July 21, 1995, Pangelinan retired at the age of 47 years after working for more than *28 years of actual service*, at which time he began receiving bi-weekly retirement benefits from the Retirement Fund. Upon Pangelinan's retirement, the Retirement Fund unilaterally added an extra five years in its computation of Pangelinan's years of credited service pursuant to Art. III, § 20(b) of the NMI Constitution.[1] Pangelinan's span of service *thereafter totaled 33 years and 6 months of credited service*, for the purpose of determining his benefits. The Retirement Fund also unilaterally issued to Pangelinan an "early retirement bonus" equivalent to 30% of his annual salary at that time, pursuant to 1 CMC § 8401. Pangelinan neither requested nor objected to receiving either of these benefits.

After retiring in 1995, Pangelinan was elected to the NMI Board of Education, where he served for four years. During his tenure with the Board of Education, Pangelinan did not draw a salary, but did receive a per diem stipend for each board meeting, and he continued to receive retirement benefits from the Retirement Fund. Pangelinan was later elected to the Twelfth CNMI Legislature, a position that he held from January 10, 2000 until January 13, 2002, for a total of *two years and three days*. On

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[1] Art. III, § 20(b) of the NMI Constitution is also known as "Constitutional Amendment 19,"which took effect in 1986.

February 11, 2002, Pangelinan was appointed by Governor Juan N. Baubauta to serve as Secretary for the Department of Land and Natural Resources ("DLNR"), and the appointment was confirmed by the Senate. Pangelinan served as Secretary of DLNR from February 11, 2002 until February 17, 2004, for *another two years and six days* of government service. Pangelinan re-retired thereafter on February 18, 2004, after earning *32 years and 6 months of actual service*, without counting the five years of credited service granted pursuant to the 1985 Constitutional Amendment 19.

During Pangelinan's tenure as a legislator, and at all times thereafter until Pangelinan's second retirement on February 18, 2004, the Retirement Fund stopped issuing bi-weekly retirement benefit payments to Pangelinan, and required him to resume making contributions to the Retirement Fund during the period of his reemployment with the government.[2] The Fund initially made a deduction according to the schedule for a Class I member, and thereafter made a correction and used the 9% rate of a Class II member. The Retirement Fund also required Pangelinan in 2000 to return the 30% "early retirement bonus" previously issued to him. As of March 15, 2004, the Retirement Fund determined that Pangelinan had a total of *37 years and 6 months* of "creditable service or benefit computation" based on his actual service, accumulated sick leave, and 5 years credit pursuant to the NMI Constitution.[3]

In his Complaint, Pangelinan contends that the NMIRF (1) should not have terminated his pension payments when he came out of retirement to work as a legislator in January, 2000; (2) should not have required him to resume paying retirement

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[2] The Retirement Fund also did not pay Pangelinan any retirement benefits for the period between January, 2002, the end of his legislative term, and February, 2002, the beginning of his service as DLNR Secretary.

[3] *See* Pangelinan's MSJ, Ex. 4 (Length of Service- Computation Date Class II Member).

contributions to the fund when he came out of retirement; and (3) should not have required him to return the 30% bonus he received. Pangelinan's prayer for relief principally seeks a monetary judgment for unpaid retirement benefits from January, 2000 to February, 2004, in the amount of $1,393.02 per month, plus pre-judgment and post-judgment interest, as well as a declaratory judgment holding that the NMRF Administrator misapplied the provisions of the Retirement Act and the NMI Constitution.

Defendant Retirement Fund asserts sovereign immunity from what it contends is a damages claim inappropriately brought as a complaint for declaratory relief. The Retirement Fund further argues that it was correct in withholding Pangelinan's retirement benefits during Pangelinan's post-retirement periods of government employment and that it was correct to require the remission of plaintiff's 30% retirement bonus and the resumption of contributions upon his return to work as a salaried legislator. Both parties submit to the court that there are no material facts in dispute and that their issues turn upon questions of law.

Jurisdiction is vested in this Court by N.M.I. Const. art. IV, § 2.

## III. Issues

1) Whether the NMI Retirement Fund is entitled to the sovereign immunity defense for the "declaratory judgments" sought by Pangelinan for his claims of wrongful withholding his retirement benefits from January, 2000 through February, 2004; and wrongful mandate that Pangelinan pay retirement contributions during his service as a legislator and as DLNR Secretary under either Article III, section 20 of the NMI Constitution and/or 1 CMC § 8392; and

2) Whether Pangelinan, as a retiree who falls under the statutory exceptions of 1 CMC 8392 and who has served 25 or more actual years of government employment prior to retirement, is constitutionally barred from receiving his retirement (bonus and/or) pension beyond his regular salary at a new government position, and is he required to re-enroll or contribute to the NMIRF while employed at that new position?

3) Did the NMIRF violate Pangelinan's constitutional right to due process under the law by disallowing his receipt of pension benefits during his post-retirement government employment, requiring Pangelinan to return his early retirement bonus, and requiring him to contribute to the Retirement Fund during his post-retirement government employment, all without affording him notice or an opportunity to be heard?

## IV. Analysis

**1. Applicable Legal Standard.**

Both Pangelinan and the NMI Retirement Fund have moved for summary judgment. Summary judgment is appropriate where the materials submitted to the Court demonstrate "that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Com. R. Civ. P. 56(c); *e.g., In re Estate of Roberto*, 2002 MP 23 ¶14. "In deciding a summary judgment motion, a court will construe the evidence and inferences drawn therefrom in favor of the non-moving party." *Santos v. Santos*, 4 NMI 206, 209 (1995), *citing Rios v. Marianas Pub. Land Corp*., 3 NMI 512, 518 (1993).

> A moving party bears the "initial and the ultimate" burden of establishing its entitlement to summary judgment. *Lopez v. Corporacion Azucarera de Puerto Rico*, 938 F.2d 1510, 1516 (1st Cir. 1991). If a moving party is the plaintiff, he or she must prove that the undisputed facts establish every element of the presented *claim*. *Id*. If a movant is the defendant, he or she has the correlative duty of showing that the undisputed facts establish every element of an asserted affirmative *defense*. *Id*. Upon satisfying this burden, the non-moving party must establish that there exists a genuine issue of material fact. *Bais v. Advantage Int'l, Inc.*, 905 F.2d 1558, 1561 (D.C. Cir. 1990).

*Id.* at 210 (emphasis added). A "genuine" dispute exists "if the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Eurotex, Inc. v. Muna*, 4 NMI 280, 283-84 (1995) (citations omitted). A non-moving party "may not rest upon mere allegations or denials" of the moving party's pleading, but must "set forth specific

facts showing that there is a genuine issue for trial." Com. R. Civ. P. 56(e); *also, e.g.*, *Eurotex v. Muna*, *supra*, 4 NMI at 283. The fact that both parties have filed motions for summary judgment does not relieve the court of the duty to determine whether or not any genuine issue of material fact exists for trial. *Rayphand v. Tenorio*, 2003 MP 12 ¶ 91, 6 N.M.I. 575, 599.

**2. Defendant NMIRF's Motion for Summary Judgment.**

Defendant NMI Retirement Fund asserts that Plaintiff Pangelinan's action is a complaint for declaratory judgment for relief of past wrongs, and as such, it is inappropriate for declaratory judgment. Therefore, the Retirement Fund claims, it is entitled to the defense of sovereign immunity, making it not subject to suit absent its permission to be sued.[4] At the same time, the Retirement Fund notes that it is undisputed that the parties have a continuing relationship, and as Pangelinan may someday again become a government employee, concedes there is a need for a declaration of the parties' rights and duties prospectively. The NMIRF seeks a judgment in its favor by declaring that it has correctly interpreted and applied the parties' rights and duties under Article III, Section 20 of the NMI Constitution and 1 CMC § 8392.

**a. The NMIRF is not entitled to sovereign immunity from a suit by a member for a breach of contract claim under the Commonwealth's retirement system.**

The common law sovereign immunity principle provides that a state is immune from suit absent its permission to be sued. This principle is derived from the Sovereign Immunity Clause of the 11th Amendment to the U.S. Constitution. While the 11th

[4] The Court notes that Pangelinan's opposition brief to the NMIRF's motion fails to address the Retirement Fund's assertion of the defense of sovereign immunity. Nevertheless, this Court must still render its decision based on its interpretation of the law.

Amendment generally governs actions against a state by citizens of other states, the U.S. Supreme Court has long held that this prohibition also bars suits against a state by its own citizens. *See Hans v. Louisiana*, 134 U.S. 1, 10 S. Ct. 504 (1890); *Great Northern Life Ins. Co. v. Read*, 322 U.S. 47, 64 S. Ct. 873 (1944); *Edelman v. Jordan*, 415 U.S. 651, 94 S.Ct. 1347 (1973). Given this general constitutional prohibition against filing suits against a state without the state's consent, this Court must first determine if there is any NMI law that, notwithstanding the NMI government's immunity from suits, would permit the filing of this suit against the NMI Retirement Fund.

First, this Court agrees that Pangelinan is ostensibly seeking a declaratory judgment based on the Complaint's caption and prayer for relief.[5] However, as the Retirement Fund itself quoted in its moving papers, "whether the action is one for declaratory relief or a simple suit for damages for past actions is determined by the content of the pleadings, not by the caption or prayer for relief."[6] Upon reviewing Pangelinan's Complaint and the facts pleaded therein, this Court concludes that it does assert a breach of contract cause of action, and this action has already accrued for Pangelinan's claim for retirement benefits from January 2000 to February 2004.[7]

Second, Article III, Section 20(a) of the NMI Constitution expressly states that "[m]embership in an employee retirement system of the Commonwealth shall constitute a *contractual relationship*. Accrued benefits of this system shall be neither diminished nor

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[5] COMPLAINT FOR DECLARATORY JUDGMENT RE: ILLEGAL WITHHOLDING OF RETIREMENT BENEFITS FROM JANUARY 2000 TO FEBRUARY 2004; UNLAWFUL TAKING OF PROPERTY WITHOUT DUE PROCESS; BREACH OF CONTRACT ("Complaint") filed Dec. 10, 2004, citing 7 CMC § 2421 and Com.R.Civ. P. Rule 57.

[6] Brief in Support of Defendant's Motion for Summary Judgment, filed June 20, 2005, p. 9, *quoting, Travers v. Louden*, 254 Cal.App.2d 926, 930 (Cal.App., 2nd Dist. 1967).

[7] The Complaint lists the damages prayed for by Pangelinan, including a declaratory judgment that the Fund Administrator breached Pangelinan's contract with the NMIRF.... *See* Complaint at 9-10.

impaired." (emphasis added). As the NMIRF conceded in its brief, "Plaintiff's retirement benefits are contractual in nature and that he has a vested interest therein."[8] Therefore, this Court concludes that there is a contractual relationship between Pangelinan and the NMI Retirement Fund, and under 7 CMC § 2251(b), Pangelinan can pursue a breach of contract action against this Commonwealth government agency.[9]

Defendant's reference to Section 2204(a) of the Government Liability Act of 1983 (7 CMC § 2201 *et seq*.) is misplaced as the Act only addresses the Commonwealth government's liability in tort. To the extent that any of Pangelinan's claims appear to be in tort for damages arising from the negligent or intentional acts of the government employees interpreting and applying the laws of the Commonwealth, this Court agrees that such tort action falls within 7 CMC § 2204(a) and is barred by the doctrine of sovereign immunity as it was not expressly waived by the Commonwealth government.[10] For the foregoing reasons, the Retirement Fund's motion based on its defense of sovereign immunity against Pangelinan's breach of contract claim is denied.

In regard to Pangelinan's claim for his contributions to the Retirement Fund during the period he served as an elected official and as DLNR Secretary, as well as both

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[8] Def's Reply to Pltf's Opp'n to Def's Mot. for Summ.J. at 2.

[9] Title 7, Section 2251(b) of the Commonwealth Code provides as follows:

> Except as otherwise provided in article 1 of this chapter (commencing with 7 CMC § 2201), actions upon the following claims may be brought against the Commonwealth government in the Commonwealth Trial Court which shall have exclusive original jurisdiction thereof:
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> . . . .
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> (b) Any other civil action or claim against the Commonwealth government founded upon any law of this jurisdiction or any regulation issued under such law, or *upon any express or implied contract with the Commonwealth government*, or for liquidated or unliquidated damages in cases not sounding in tort.

[10] Title 7, Section 2204 of the Commonwealth Code expressly states when the government is *not* liable under particular categories of claims.

parties' request for a declaratory judgment as to the parties' rights and duties under Article III, Section 20 of the NMI Constitution and 1 CMC § 8392, they are addressed in the following discussion of Pangelinan's motion for summary judgment.

**3. Plaintiff Pangelinan's Motion for Summary Judgment.**

In his motion for summary judgment, Pangelinan contends that the constitutional prohibition against "double-dipping" as expressly stated in Article III, Section 20 of the NMI Constitution, applies only to "early retirees," that he is not an early retiree, and that he should therefore have been allowed to "double-dip" when he served as a legislator and a department secretary.[11] Pangelinan also contends that he never "elected" to retire under Article III, Section 20, and that the Retirement Fund added the five years to his total for purposes of determining the size of his monthly retirement allotment without his consent.

The NMI Retirement Fund on the other hand argues that Article III, Section 20 of the NMI Constitution mandated that it give Pangelinan the five additional years to his total service, and that when Pangelinan received and accepted the benefit of the five additional years, he was constitutionally barred from "double-dipping."

Pangelinan first retired in 1995 at the age of 47 years. After he retired and before he became re-employed by the CNMI government, Article III, Section 20(b) of the NMI Constitution was amended in 1997. Therefore, this Court will first analyze Pangelinan's rights when he first retired in 1995, and then it will analyze what effect, if any, the 1997 amendment to Article III, section 20(b) of the NMI Constitution had on him.

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[11] The Court notes that there is no constitutional or statutory definition of "double-dipping." However, according to Black's Law Dictionary, "double-dipping" is defined as an act of seeking or accepting essentially the same benefit twice, either from the same source or from two different sources, as in simultaneously accepting retirement and unemployment benefits. BLACK'S LAW DICTIONARY (7th ed. 1999).

**a. Pangelinan's rights under Article III, Section 20(b) of the NMI Constitution in 1995.**

At the time of Pangelinan's initial retirement in 1995, Article III, section 20(b) of the NMI Constitution read as follows:

> An employee who has acquired not less than twenty years of creditable service under the Commonwealth retirement system *shall* be credited an additional five years and *shall be eligible to retire*. *An employee who elects to retire* under this provision *may not be reemployed by the Commonwealth Government* or any of its instrumentalities or agencies, for more than 60 days in any fiscal year *without losing his or her retirement benefits for the remainder of that fiscal year*.

Second Const. Conv. Amend. 19 (1985), adopted in 1986 as Article III, section 20 of the N.M.I. Constitution. (hereinafter "1985 Constitutional Amendment" or "Amendment 19") (emphasis added).

Section 20(b) contains two conditions that must be satisfied before its terms can apply to an employee. First, the employee must have acquired at least 20 years of creditable service. If the employee has less than 20 years of creditable service, then Amendment 19 does not apply, and the employee is not *constitutionally* prohibited from "double-dipping." Second, the employee must elect to retire under this provision. If these two parts are satisfied, then the employee is constitutionally and conditionally prohibited from returning to government service. If the employee chooses to return to government service for more than 60 days in any fiscal year, then the employee loses his or her retirement benefits for the remainder of that fiscal year.

In this case, Pangelinan clearly satisfied the first condition. At the time of his initial retirement in 1995, he had acquired 28 years of actual service. The Retirement Fund, pursuant its interpretation of Section 20(b) and relying on the language "*shall* be credited an additional five years," added an extra five years credit to Pangelinan's total credited service, and used it in its computation of Pangelinan's retirement benefits.

According to the Retirement Fund, it was *required* to add five years to Pangelinan's creditable service, because the plain language of Section 20(b) mandates that it credit an additional five years to the total number of creditable years for *any employee* who acquires 20 years of creditable service. This Court agrees that the plain language of Section 20(b) mandates that every employee with at least 20 years of creditable service shall receive an additional five years and enables the employee to retire with full benefits. *Aquino v. Tinian Cockfighting Bd.*, 3 N.M.I. 284 (1992) (use of the word "shall" in statute is mandatory and has the effect of creating a duty, absent any legislative intent to the contrary. This is particularly so when the statute is addressed to public officials.); *also, Camacho v. Northern Marianas Retirement Fund*, 1 N.M.I. 362, 368 (1990) ( the principles which apply to statutory construction are equally applicable in cases of constitutional construction.) However, these two mandates, that an employee is entitled to be credited an additional five years and be deemed eligible to retire, need to be read in conjunction with the plain text of the subsequent sentence in Section 20(b). Section 20(b) continues with the following provision:

> [a]n employee *who elects to retire under this provision* may not be reemployed by the Commonwealth Government or any of its instrumentalities or agencies, for more than 60 days in any fiscal year *without losing his or her retirement benefits for the remainder of the year*.

NMI Const. art. III, § 20(b) (emphasis added). If the five-year bonus is *automatically* given to all employees with at least 20 years of service, the question then becomes, how does someone "elect" to retire under Article III, Section 20? In the hearing, Defendant NMIRF stated that *all* persons *who choose to retire and have at least 20 years of credited service* do so under Article III, Section 20, and they would be subject to the constitutional prohibition. Because this interpretation effectively nullifies the "election" language, this

Court rejects the NMIRF's interpretation of Article III. *Estate of Faisao v. Tenorio*, 4 N.M.I. 260, 265 (1995) (one statutory provision should not be construed to make another provision either inconsistent or meaningless). The "election" language in Section 20(b) provides for a very serious consequence. It expressly and constitutionally bars that employee from becoming reemployed by the Commonwealth Government, unless the employee is willing to lose his or her retirement benefits beyond 60 days. Because it is a *constitutional* mandate, not even the legislature can exempt these constitutionally barred employees from double-dipping. *Ada v. Sablan*, 1 N.M.I. 417, 427 (1990) ("The NMI Constitution is a *paramount* source of Commonwealth law ….") (emphasis added).[12] The controversy between the parties is the legal question of whether Pangelinan, by his conduct after the NMIRF credited him with the additional five years, "elected" to retire under the constitutional provision of Article III, thereby subjecting him to the constitutional prohibition against double-dipping, or whether he elected to retire solely under another legal authority, thereby avoiding the constitutional prohibition.

Prior to the adoption of Amendment 19, the Commonwealth government had a statute in effect that governed the Commonwealth's employee retirement system. Therefore, in order to properly determine how this constitutional mandate affected Pangelinan in 1995, this Court turns to the statutory provisions in effect at the time of the

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[12] *E. g., U.S. v. Villamonte-Marquez*, 462 U.S. 588, 103 S. Ct. 2573, 2578, 77 L. Ed. 2d 22 (1983) ("[No] Act of Congress can authorize a violation of the Constitution."). Moreover, Section 102 of the COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, 48 U.S.C. § 1801 note, *reprinted in* CMC at *lxxxi*, et seq. ("Covenant"), which became effective on January 9, 1978, states that the relations between the NMI and U.S. will be governed by the Covenant which, together with the provisions of the Constitution, treaties and the laws of the United States applicable to the NMI, will be the supreme law of the NMI. Article II of the Covenant provides for the formulation and approval of an NMI constitution for self-governance to be structured, in broad form, after the U.S. Constitution. *Accord*, SINGER (6th Ed. 2000), *supra*, § 2:1 ("It is axiomatic in the American system of limited government that the existence and authoritative capacity of governmental instrumentalities for making law, their powers, and the methods by which their powers may legally be exercised, are all subject to the higher law of the constitution.").

mandate's adoption in 1986 that already applied to the existing government employees. NORMAN J. SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 49:01 at 8 (6th ed. 2000) ("Extrinsic aids of statutory construction include information about circumstances and events existing at or after the time when a statute goes into effect. Use of legislative intent as the governing criterion for interpretation focuses attention on circumstances and events at the time when a bill was enacted.").

The original statute establishing the NMI Retirement Fund, Public Law 1-43, took effect in January, 1980. P.L. 1-43 had no provisions prohibiting any re-employment of government retirees. Section 11(b) of that Act provided as follows: "Any employee who has completed twenty-five (25) years of service *may retire and shall be entitled to full retirement annuity*." Section 11(b) would have entitled Pangelinan *in 1986* to "full retirement annuity" *without any reduction* for being under the age of 60 because he would have been statutorily eligible to retire. In contrast, Section 11(d) of the same Act subjected an employee *with at least 20 years of service but less than 25 years* to a reduction in his retirement annuity until the age of 60.[13] Therefore, in order to avoid this *statutory* reduction in benefit, the employee must elect to receive the additional five years allowed by Article III, Section 20 of the NMI Constitution.

However, by the time Pangelinan first retired in 1995, the original NMI retirement fund statute had been repealed and reenacted by the Commonwealth legislature. In 1995, the Retirement Fund was governed by the Northern Mariana

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[13] P.L. 1-43, Section 11(d) provided as follows: "[a]ny employee or member, whether active or inactive, at his option *may retire after twenty (20) years of service*, regardless of age. The retirement annuity for any employee or member described in this paragraph ***shall be reduced one-quarter of one percent for each month such employee or member is under the age of sixty (60);*** reduction shall be from the amount determined for such employee or member as hereinafter provided." (emphasis added)

Islands Retirement Fund Act of 1988 (Public Law 6-17), which took effect in 1989, and was codified at 1 CMC § 8301 *et seq*., as amended. When Pangelinan originally retired with over 25 years of service, he did so pursuant to 1 CMC § 8343(b), which provides that "[a]ny class II member who has 25 years of vesting service may retire on *a service retirement annuity upon written application to the board*." Complaint, ¶ 5; Answer, ¶ 5. Section 8344 of the same law governed how a class II member's retirement annuity was to be calculated. Like the former provision from Public Law 1-43, Public Law 6-17 provided for a computation formula that is derived strictly from the average annual salary *and years of credited service*. 1 CMC § 8344.[14] It also provided that "[n]o basic annuity shall exceed 85 percent of the average annual salary at time of retirement." 1 CMC § 8344(c).[15] Therefore, in 1995, Pangelinan's basic annuity was capped at 85% of his average annual salary at the time of retirement, regardless of the years of credited service.[16] Furthermore, although 1 CMC § 8343(b) allowed Pangelinan to retire without incurring any *statutory reductions*, Pangelinan's ability to retire and *increase* his retirement benefits could only occur if he received additional

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[14] The relevant text of 1 CMC § 8344 is the following:

> A Class II member's retirement annuity shall be calculated as follows:
> (a) An amount equal to two percent of average annual salary for each of the first ten years of credited service, and 2.5 percent of average annual salary for each year or part thereof of credited service over ten years.
> (b) In addition, there shall be added to the amount set forth in subsection (a) of this section an amount equal to $20 multiplied by each year of credited service, the total of which shall then be reduced by an amount equal to 1/100 of one percent of the total for each $1 that a member's average annual salary exceeds $6,000.
> (c) No basic annuity shall exceed 85 percent of the average annual salary at time of retirement.
> ….

[15] The original law creating the NMI Retirement Fund had the same provision. P.L. 1-43, § 12(c).

[16] Pltf's Response to Court Order of Sept. 19, 2005 Requesting Supplemental Briefing at p. 10.

years of creditable service.[17] 1 CMC § 8344(a). The only way for Pangelinan to receive additional creditable service was through Amendment 19's five-year credit.

In this case, although Pangelinan had 27 years of actual service, the Retirement Fund approved Pangelinan's service retirement application based on his total credited service of 33 years and 6 months. Pangelinan's MSJ, Ex. 2. The difference between Pangelinan's actual service and the Retirement Fund's total credited service is the additional five years granted pursuant to Constitutional Amendment 19, or Article III, Section 20 of the NMI Constitution. Pangelinan's MSJ Ex. 3 (Pangelinan Deposition at 29). Therefore, the critical issue for purposes of Pangelinan's Motion for Summary Judgment is whether Pangelinan "elect[ed] to retire under this provision" of Amendment 19, in which case he forfeited the ability to receive retirement benefits when he received a salary upon returning to work for the CNMI government (*i.e.*, "double dip") as a legislator and then a department secretary.

**b. Pangelinan exercised his constitutional and statutory rights by retiring in 1995 and retaining all corresponding benefits.**

At the heart of the controversy, therefore, is an ambiguity in Amendment 19 regarding what it means for a government employee to "elect" to retire "under this provision." The NMIRF argues that after Article III, Section 20 came into effect, every

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[17] At the August, 2005, motion hearing, Plaintiff's counsel represented to the Court that Pangelinan did not receive any additional benefit from the five additional years credited to him. Subsequent to the hearing, Defendant, through the Retirement Fund's Benefits Manager, submitted to the Court a declaration showing how the additional five years in fact benefited Pangelinan because he received an additional $5,306.88 per year in annuity, or a total of $23,718.41 in additional annuity for the period between his initial retirement in 1995 and his assumption of public office in year 2000. The five-year credit was maintained in the recalculation of Pangelinan's annuity upon his second retirement in 2004, yielding him an additional $344.47 per month that he would not have received but for the application of the five-year credit.

government employee who completes 20 or more years of actual service must fall "under this provision" and that any such employee who "elects" to retire (in the sense of not being forced to retire) must accept the limitations as well as the benefits of this constitutional provision.[18]

By contrast, Pangelinan argues that a person "elects" to retire under this section *only* if that person chooses to retire *and could not have retired* but-for the additional five-year bonus added to their total years of creditable service. However, at the time Amendment 19 was passed by the people, the Commonwealth retirement system under Public Law 1-43 allowed employees with 20 years of service, regardless of age, to retire. P.L. 1-43, § 11(d). The only consequence for retiring with at least 20 years but less than 25 years of service was a reduction in the retirement annuity. Therefore, in 1986, an employee with at least 20 years but less than 25 years of service could elect to retire under Public Law 1-43, not Amendment 19, and be subjected to a statutory reduction in benefits. By electing to retire under Public Law 1-43 rather than under Amendment 19, the employee could still become re-employed by the Commonwealth government and continue receiving his retirement benefits, thereby avoiding the constitutional prohibition against double-dipping. However, in 1989, Public Law 1-43 was repealed and replaced by Public Law 6-17, the Retirement Fund Act of 1988. By passing Public Law 6-17, the Commonwealth Legislature imposed the first statutory prohibition, with a limited exemption, against reemployment of retirees, but did not allow any exempted retirees to

[18] Defendant's Reply to Plaintiff's Opposition to Defendant's Motion for Summary Judgment, filed July 14, 2005, p. 5.

double-dip. P.L. 6-17, § 83811.[19] The following year, Public Law 6-17 was repealed by Public Law 6-41, effectively allowing "double-dipping" without any statutory restrictions. Thereafter, the Legislature amended the law further, at one point amending it twice in one year. It initially provided that the reemployed retiree would lose the benefits, and then it allowed the reemployed retiree to retain the benefits. P.L. 7-39 and 7-40 (1991). The current language is that prohibition contained in 1 CMC § 8392, which prohibits reemployment unless the retiree falls under an exception. Based on the historical review of the NMI's retirement system, this Court concludes that the prohibition against double-dipping contained in Amendment 19 operates as an exception to the general rule that retirees reemployed by the Commonwealth government were entitled to continue receiving retirement benefits in addition to their wages.[20] The "election" language contained in Amendment 19 confirms that retirees may either choose to retire under Article III, section 20(b), using the five year bonus to retire and to receive additional benefits, or choose not to retire under Article III, Section 20(b), thereby avoiding its restriction on double-dipping.

As previously noted, Pangelinan was only 47 years old when he first chose to retire in 1995. As a Class II member, he could not retire based solely on his age because

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[19] Section 83811 read as follows: Provided, that a person who has retired may accept "employment" by election to public office. Receipt of retirement benefits ... shall be suspended during the time the retiree is actually holding such elective post. Benefit payment shall recommence after the retiree has left elective office."

[20] The Court notes that under the existing statutes, double-dipping is still permitted for those persons who resumed employment with the CNMI government after retiring *without obtaining 20 years of creditable service*, including class II members who are at least 60 years old; class I members who are at least 62 years old and have at least 3 years of "contributing membership service"; and class I members who are at least 52 years old and have at least 10 years of "vesting service." 1 CMC §§ 8341, 8342, and 8343(a).

he was not at least 60 years of age. 1 CMC § 8343(a).[21] However, because he already had at least 25 years of vesting service, he was eligible to retire under 1 CMC § 8343(b). At the same time, because he already acquired at least 20 years of creditable service, he was eligible to receive an additional five years and be eligible to retire under Article III, Section 20(b) of the NMI Constitution. The question for Pangelinan then becomes whether he is an employee who elected to retire under 1 CMC § 8343(b) only, or under Article III, Section 20(b) of the NMI Constitution as well. If in fact he retired under the statute only, then he is not constitutionally barred from double-dipping, and he may double-dip if he falls under a statutory exception to being barred from reemployment under 1 CMC § 8392 such that he would be entitled to "double-dip" when serving as a legislator in 2000 and as a department secretary in 2002. On the other hand, if he in fact retired under Article III, Section 20(b) of the NMI Constitution, then he is constitutionally barred from double-dipping as provided therein, and the statutory exceptions would not apply to him. *Ada v. Sablan, supra*,1 N.M.I. at 427.

The legislative history provides some insight into the intended scope of Amendment 19. The record of the Second Constitutional Convention of 1985 shows that the Framers intended Amendment 19 to address the budget impact of an oversized government workforce by inducing government employees to retire early. A Committee Report to the Convention states in part:

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[21] 1 CMC § 8343 provides as follows:

(a) Any class II member who is at least 60 years of age may retire on a service retirement annuity upon written application to the board.

(b) Any class II member who has 25 years of vesting service may retire on a service retirement annuity upon written application to the board.

> Your Committee on Governmental Institutions recommends adoption of the attached Committee Recommendation relative to Civil Service.
>
> The referenced proposal has the following features:
>
> 1. It will recognize the contractual relationship between a member employee and the Retirement Fund;
>
> 2. It will ensure that the accrued benefits will not be diminished or impaired; and
>
> 3. It will provide for 5 years of service credit to the present employees who have 20 years or more qualified service.
>
> ….
>
> *The third feature is intended to entice those employees who have 20 years or more of qualified service to retire early from the public employment. This is consistent with the concern that the number of employees in the public sector must be reduced within the next seven years*.

Defendant's MSJ, Attachment A: Report to the Convention by the Committee on Governmental Institutions, 1985 (emphasis added).

The clearly expressed intention of the authors was to entice government employees with 20 years "or more" to retire "early." Plaintiff contends that "early" retirement should be construed to apply only to those who elect to retire having completed between 20 and 25 years of service. Pangelinan's position is that, even though he was only 47 years old at the time of his retirement, he nevertheless was not an "early" retiree because he had served more than 25 actual years as a government employee. Implicit in this position is the idea that once an employee reaches the point at which the employee is entitled to a calculation of a full pension annuity, that employee cannot be considered to retire "early."

Plaintiff's interpretation of the provision "20 years or more" adds a limitation not to be found in the language of Amendment 19 or in its legislative history. Applying such

a narrow scope to the provision would be inconsistent with the stated policy goal of inducing significant numbers of government employees to retire. Delegates to the Second Constitutional Convention expressed a different interpretation of the amendment from the convention floor:

> Delegate Tenorio: Thank you, Mr. President. This is just for clarification also. May I ask what's the retirement limit and what's the number of years that is the maximum for the full retirement?
>
> Delegate Mafnas: The full retirement is 25.
>
> Delegate Tenorio: Now, if a person retires at 25, is he going to be affected by this provision, the amendment?
>
> Delegate Mafnas: If the employee has 25 years of creditable service or qualified service, yes.
>
> Delegate Tenorio: Will he be affected also?
>
> Delegate Mafnas: Yes
> .
> Delegate Tenorio: Thank you.

Defendant's MSJ, Attachment B: Second Constitutional Convention Journal, 33rd day, July 20, 1985, pp. 695-97.

It is apparent that these delegates interpreted the provisions of Amendment 19 as equally applicable to government employees who have reached the point at which they may retire with a full annuity. This interpretation is consistent with the policy of encouraging government employees to leave government service.[22]

This Court has determined that Amendment 19 operates as an exception to the general rule that allowed retirees to receive dual benefits in the form of a government

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[22] In the motions hearing, Plaintiff's counsel argued that awarding 5 additional years without having the employee contribute to the fund creates an unfunded liability. However, the retirees' pensions are not paid from taxpayers' money, but are paid from the retirement contributions and their accumulated funds.

salary along with a government pension. A government employee could retire, for example, at the completion of less than twenty years of service, forfeiting any benefit under Article III, Section 20, and accepting a reduction in annuity, but preserving the ability to engage in future government service without the loss of retirement benefits. Likewise, a government employee who retires solely based upon having reached the age of 60 years and who has accepted no benefit from Article III, Section 20 would not be constitutionally barred from double-dipping.

In this case, when Pangelinan retired in 1995, he did so with the credit of an additional five years pursuant to Article III, Section 20, a benefit that he retains to this day. Although he qualified for retirement under 1 CMC § 8343(b) because he had completed over 25 years of actual service, his acceptance of the additional credit enhanced his benefits by being included in the calculation of his annuity. The fact that the Retirement Fund awarded this credit without Pangelinan's express consent and failed to forewarn him of his options for retirement and their consequences does not allow Pangelinan to turn back the clock and avoid incurring any of the burdens imposed by Article III, Section 20, particularly after he has accepted the benefits of that provision for so long without objection. RESTATEMENT (SECOND) OF CONTRACTS § 381 cmt. a (a party with grounds for avoidance may not speculate on the future advantageousness of the agreement). This Court concludes that Pangelinan retired in 1995 subject to the restrictions on double-dipping set forth in Article III, Section 20 of the N.M.I. Constitution when he received the five-year credit and attached benefits and failed to raise any objection within a reasonable time. The Court therefore *denies in part* Pangelinan's request for money damages equal to the total amount of annuity payment

withheld by the NMIRF for the four years and nine days he served as an elected representative and as Secretary of DLNR.

**c. Pangelinan's rights regarding contributions and recomputation upon his reemployment in 2000 and following his retirement in 2004.**

Subsection (b) of Article III, § 20 of the NMI Constitution was amended according to the provisions of House Legislative Initiative 10-4 (1997) and ratified in 1998. Retaining the existing language of the subsection, the 1997 amendment added the following provisions:

> [E]xcept that the legislature may by law exempt reemployment of retirees as classroom teachers, doctors, nurses, and other medical professionals from this limitation, for reemployment not exceeding two (2) years. No retiree may have their retirement benefits recomputed based on any reemployment during which retirement benefits are drawn, but every such reemployed retiree shall nevertheless be required to contribute to the retirement fund during the period of reemployment, at the same rate as other government employees. The legislature may prohibit recomputation of retirement benefits based on reemployment after retirement in any event or under any circumstances.

Second Const. Conv. Amend. 19 (1985); as amended by House Legislative Initiative 10-4 (1997) ("1997 Amendment").

The 1997 Amendment authorized the legislature to carve out a limited exception to Amendment 19's general prohibition from double-dipping. It also addressed a retiree's rights in regards to recomputing retirement benefits and contribution requirements.

When Pangelinan served as a legislator in 2000, as DLNR Secretary in 2002, and when he retired for the second time on 2004, the current version of 1 CMC § 8392 was in effect. This statute generally prohibits government reemployment of government retirees

unless the retiree falls under a specific exemption. The relevant portions of Section 8392 are the following:

> Reemployment and Double Dipping:
> (a) A person who has retired and received retirement benefits from the government of the Northern Mariana Islands shall not be reemployed by or under an employment or consulting contract with the government of the Northern Mariana Islands or its public corporations, boards or commissions, unless the person is:
>
> (1) Appointed by the Governor to a position requiring the advice and consent of the Senate or House of Representatives or both.
>
> ….
>
> (3) Elected to public office.
>
> ….
>
> (b) A person who has retired and received a retirement benefit shall not be eligible to receive prior service credit if the person continues to receive retirement benefits from the government while accruing service that is eligible for credit as prior service credit upon reemployment with the government.
>
> (c) Provided, however, that any person who elected to retire pursuant to the provisions of N.M.I. Const. art. III, § 20(b) may be employed by the Commonwealth for no more than 60 calendar days in any fiscal year without forfeiting any retirement benefits.
>
> (d) Retirees are allowed to return to government employment as classroom teachers, nurses, doctors and other medical professionals for a period not to exceed two years without losing their retirement benefits. However, no such re-employed retiree shall have their retirement benefits recomputed based on any re-employment during which retirement benefits are drawn, but every such re-employed retiree shall nevertheless be required to contribute to the retirement fund during the period of re-employment, at the same rate as other government employees.

1 CMC § 8392 (2004).

Section 8392(c) restates the provisions of the Constitution that limits a person who retired under NMI Const. art. III, § 20(b) to double dip for no more than 60 calendar days in any fiscal year, and losing the retirement benefits for the remainder of the year. Section 8392(d) is the legislature's exercise of its constitutionally delegated authority to exempt certain retirees from the constitutional prohibition against double-dipping. Section 8392(b), however, reflects the legislature's exercise of its power to prohibit recomputation of retirement benefits based on reemployment after retirement.

Neither the 1997 amendment to Article III, Section 20(b), nor the statutory provisions of 1 CMC § 8392, effect a change in Pangelinan's ability to collect dual benefits or the recalculation of his benefits on his retirement in 2004. As an elected official and as an appointee of the Governor with the concurrence of the legislature, Pangelinan was clearly exempted from the ban on government reemployment as provided by subsections (a)(1) and (a)(3) of Section 8392. However, Pangelinan's two new government positions did not qualify him for any of the exceptions provided for certain professionals in short supply as specified in the 1997 Amendment to Article III, Section 20(b) of the Constitution or 1 CMC § 8392(d). Those employees are allowed to receive retirement benefits along with their government salaries for two years, at the price of making contributions to the retirement fund and without their additional years of government service being used to recalculate their retirement annuity.

In this case, Pangelinan received no retirement benefits during his periods of government reemployment and his retirement annuity was in fact recalculated based upon his additional years of government service. This recalculation of benefits is consistent with the constitutional and statutory scheme only upon the conclusion that Pangelinan

elected to retire pursuant to Article III, Section 20. As discussed above, Pangelinan's retention of the benefits of retirement pursuant to Article III, Section 20, can only confirm that he did retire under this authority. Pangelinan has benefited from an additional five years credited to his service record and from a recalculation of his benefits based upon his additional years of service. The quid pro quo for these benefits is that he was not allowed to collect a government salary and, at the same time, to receive retirement annuity payments beyond 60 calendar days of government work during any fiscal year.

It is among the undisputed facts presented to this Court that Pangelinan was issued no annuity payments for the 60 calendar days each fiscal year that he was reemployed by the government, and that Pangelinan also received no annuity payments for the period between the end of his term as a legislator on January 13, 2002, and the beginning of his service as DLNR Secretary on February 11, 2002. Pangelinan was constitutionally and statutorily entitled to receive these 60 calendar days of benefits and the court finds no waiver of these rights in Pangelinan's failure to properly apply for a reinstatement of his benefits or to timely appeal the Retirement Fund's decision to halt the semi-monthly payments of his annuity upon his government reemployment. Pangelinan's motion for summary judgment is therefore *granted in part*, and the summary judgment motion of the NMIRF is *denied* to the extent that it prays for a judgment that the NMIRF owes nothing to Pangelinan during and between the periods of his government reemployment.

**d. Whether or not Pangelinan, upon assuming elected office, was mandated to repay the 30% early retirement bonus that he received pursuant to 1 CMC § 8401 *et seq*.**

In order to encourage the elective retirement of government employees, the CNMI legislature established the Early Retirement Bonus Program ("ERBP") in 1993. P.L. 8-

30. This program was codified at 1 CMC § 8401 *et seq*. The ERBP allowed government employees with 20 years or more of vesting service credit to retire within 90 days of October 1, 1993, or within 90 days of completion of at least 20 years of credit. 1 CMC § 8301; P.L. 8-30, § 2. Section 8403(b) of the program also allowed employees with at least 20 years or more of vesting service credit who were under government contract to retire within 90 days after the end of their contract if the contract was not to be renewed. P.L. 8-30, § 4. All government employees who elected to retire within the time limitation prescribed by the ERBP were entitled to receive a bonus payment equal to 30 percent of the employee's annual salary and to collect an annuity.

All employees who opted to take advantage of the ERBP were then prohibited from government reemployment unless they qualified under an exemption listed under Section 8402. Subsection (a) of Section 8402 specifically lifted the ban on government reemployment for retirees who were later elected to public office. The very same section of the ERBP, however, concludes with the provision that: "Any person covered by subsections (a) through (e) of this section shall repay any bonus paid pursuant to regulation established by the Board." 1 CMC § 8402; P.L. 8-30 § 3, modified.

When Pangelinan retired in 1995, he applied for and received a 30% bonus pursuant to the provisions of the ERBP. When Pangelinan assumed his position as a representative in the Twelfth Legislature on January 10, 2000, the ERBP was still in effect, including that provision of Section 8402 requiring repayment of the 30% early retirement bonus. On January 18, 2000, citing the burdensome cost of the program, the Twelfth Legislature enacted Public Law 11-114, which repealed the provisions of the ERBP in their entirety.

There is nothing ambiguous or uncertain about the provisions of the ERBP and the court will accordingly accept the "plain meaning" of the statute without resort to rules of construction. *Pelligrino v. Commonwealth*, 5 N.M.I. 242, 247 (1999); *Estate of Faisano, supra*, 4 N.M.I. at 265 (1995). There is also no dispute concerning the effective dates of either the enactment or the repeal of the ERBP. Legislative enactments, including enactments that repeal prior legislation, are interpreted as applying prospectively unless there is clear language to the contrary. *In re Estate of Aldan*, 2 N.M.I. 288, 298 (1991) (retroactive application of legislation implicates due process); *citing, Wabol v. Muna*, 2 CR 963 (Dist. Ct. App. Div. 1987) (retroactive application can only be supported by a clear manifestation of legislative intent); *accord, Marianas General Corp. v. CNMI*, 1 CR 408, 414 (Dist. Ct. App. Div. 1983) ("Unless express or implied legislative intent indicates otherwise, the repeal of a statute operates only prospectively; it does not undo the consequences of its operation while it was in force.").

Here, Pangelinan received his early retirement bonus in 1995 pursuant to 1 CMC § 8401. In 2000, he was allowed to return to government service only because he qualified for an exemption as an elected official under Section 8402(a). Section 8402, however, is the *very same section* that requires anyone who is permitted to be reemployed under any of its exceptions to repay their early retirement bonus. Although the ERBP was repealed by Public Law 11-114, the repeal took effect on January 18, 2000, a little more than a week after Pangelinan took office. Therefore, on January 10, 2000, Pangelinan was mandated to return the 30% bonus.

**e. Whether the NMIRF violated Pangelinan's right to due process by denying him the ability to double-dip, or by requiring him to contribute to the Retirement Fund upon his reemployment, without first providing him notice and an opportunity to be heard in opposition.**

Pangelinan asserts a vested property interest in his pension benefits as well as in his right to receive a government salary free of any further contributions to the Retirement Fund, and argues that the "unilateral" action of the NMIRF in suspending his annuity payments and in extracting contributions violate his rights to due process under the CNMI and U.S. Constitutions.[23] In support of this argument, Pangelinan focuses upon the language of CNMI Constitution, Article III, Section 20(a), which states: "Accrued benefits of this system shall be neither diminished nor impaired." Pangelinan contends that the prohibition on double-dipping and the requirement that he make retirement contributions from his government salary deprive him of property rights without due process of law.

In analyzing a due process claim under the CNMI Constitution, Article I, Section 5, Commonwealth courts apply the same analysis used in analyzing due process claims under the 14th Amendment to the U.S. Constitution. *Commonwealth v. Bergonia*, 3 N.M.I. 22, 36 (1992). In order to prevail on a constitutional due process claim for the deprivation of a property right, a plaintiff must prove three things: (1) a constitutionally protected property interest; (2) deprivation of that property interest by the government, and; (3) lack of required process. *Ulrich v. City and County of San Francisco*, 308 F.3d 968, 974 (9th Cir. 2002). Property interests are determined by state law. *Cleveland Board of Education v. Loudermill, et al*., 470 U.S. 532, 538-39, 105 S.Ct. 1487, 1491, 84 L. Ed. 2d 494. (1985).

In the present case, Pangelinan fails to prove even the first requisite; that is, a constitutionally protected property interest. The interests Pagelinan claims as protected

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[23] Pangelinan's Opp'n to Def's Mot. for Summ. J., pp. 3, 5-6.

property interests are the right to double-dip and the right to a government salary without deductions for contributions to the Retirement Fund. By focusing rather too narrowly on the language stating that *vested* rights will neither be "diminished nor impaired," Pangelinan ignores the further constitutional provisions, particularly at subsection (b) of Article III, Section 20, that actually *define* his interests under the retirement system. The rights which Pangelinan imagines as his constitutionally protected property interests are simply not to be found in the constitutional or statutory provisions upon which he relies. Pangelinan therefore cannot have been harmed by any lack of notice or opportunity to be heard.

The CNMI Supreme Court long ago determined that the right to public employment and the right to public retirement benefits were not fundamental rights, at least for equal protection analysis, and that the government may place limitations on those rights if it can demonstrate a rational relationship to a legitimate government purpose. *Camacho v. NMRF, supra,*1 N.M.I. at 370-71. The foregoing analysis of the history of the authority upon which Pangelinan bases his motion for summary judgment reveals that the Framers of the CNMI Constitution and the legislators who crafted the structure of the government retirement system have operated well within the bounds of the doctrine of substantive due process.

Public Law 6-41, which came into effect on January 19, 1990, mandated that all government employees pay retirement contributions to the Retirement Fund. 1 CMC § 8321(d). Because Pangelinan came out of retirement to work for the Commonwealth government, first as a legislator, and then as Secretary of DLNR, he is mandated by law to pay retirement contributions.

## IV. Conclusion

For all of the above stated reasons,

**1.** The motion of Plaintiff Thomas B. Pangelinan for summary judgment is DENIED IN PART, and GRANTED only to the extent of awarding Plaintiff damages equal to any retirement benefits that were in fact withheld in contravention of Article III, Section 20(b) of the NMI Constitution as described in part **IV**, section **3,** subsections **b** & **c** of the above opinion.

**2.** The motion of Defendant Northern Mariana Islands Retirement Fund for summary judgment is correspondingly GRANTED IN PART, and DENIED only with respect to the payment to the Plaintiff of any such annuity amounts as have been determined due according to part **IV**, section **3,** subsections **b** & **c** of the above opinion.

**3.** Damages shall be calculated as follows: Plaintiff is entitled to receive monetary damages in the amount equal to the annuity benefits that he would have regularly received at the time for each fiscal year prior to the time he completed 60 calendar days of work in each of those fiscal years falling between January 10, 2000 and January 13, 2002, the period he served as a legislator, and also between February 11, 2002 and February 18, 2004, the period he served as DLNR Secretary.

**4.** Furthermore, Plaintiff is awarded monetary damages in the amount equal to the annuity payments he would have received for the period of January 14, 2002 through February 10, 2002, when he was simply retired from government service.

**5.** Judgment on all remaining issues is in favor of the Defendant Northern Mariana Islands Retirement Fund.

**6.** Damages may be calculated with accrued interest at 12% per annum pre-judgment, and shall accrue at 9% per annum post judgment.

**7.** Plaintiff shall serve Defendant and submit to the court a Statement of Damages within 10 days of the date of this order.

SO ORDERED this 1st day of March, 2006.

/s/
RAMONA V. MANGLONA, Associate Judge