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**FOR PUBLICATION**

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

**THE BOARD OF TRUSTEES OF THE  
NORTHERN MARIANA ISLANDS  
RETIREMENT FUND,**  
  
**Petitioner,**  
  
**vs.**  
  
**MARTIN B. ADA,**  
  
**Respondent.**

**CIVIL ACTION NO. 09-0308A**  
  
**ORDER GRANTING RESPONDENT’S  
MOTION FOR SUMMARY JUDGMENT  
DENYING IN PART PETITIONER’S  
REQUEST FOR DECLARATORY  
JUDGMENT**

**I. INTRODUCTION**

The Board of Trustees of the Northern Mariana Islands Retirement Fund (“Petitioner”) brings this action pursuant to 7 CMC § 2421 for letters of instruction and declaratory judgment regarding the correct amount of Mr. Martin Ada’s (“Respondent”) retirement benefits.<sup>1</sup> Presently before the Court is Respondent’s cross-motion for summary judgment.<sup>2</sup>

<sup>1</sup> (Petitioner’s Opening Brief Re. Joint Petition for Letters of Instruction/Complaint for a Declaratory Judgment, hereafter, “Petition.”)

<sup>2</sup> (Respondent’s Opening Brief in Opposition to Petitioner’s Opening Brief and in Support of Cross Motion for Summary Judgment, hereafter, “Motion.”)

1 The Court conducted a hearing on July 14, 2010 at 9:30 a.m. in Courtroom 202. The  
2 Petitioner was represented by Carolyn M. Kern. The Respondent was represented by Michael W.  
3 Dotts. At the hearing, the Court granted leave to the Petitioner to file a supplemental brief to  
4 address the Court's concerns regarding some of Petitioner's contentions.<sup>3</sup>

5 Based on the papers submitted to date and oral arguments of counsel, the Court GRANTS  
6 Respondent's Motion for Summary Judgment and DENIES Petitioner's request for Declaratory  
7 Judgment with respect to the remaining issues.

## 8 II. BACKGROUND

10 In March of 1978, Respondent began work as a CNMI employee for the Public School  
11 System. (Declaration of Martin B. Ada, hereafter, "Ada Decl.") Between March 1978 and  
12 September 1997, Respondent held various public employment positions. *Ada Decl.* Respondent  
13 made contributions to the Northern Mariana Islands Retirement Fund ("Fund") during his  
14 employment. *Id.* In September of 1997, Respondent retired for the first time, taking advantage of  
15 an "early out" provision in article III, section 20 of the NMI Constitution. *Id.* Subsequently,  
16 Respondent began receiving retirement benefits from the Fund. *Id.*

17 In January 2000, Respondent left retirement to take a position as an elected member of the  
18 CNMI Legislature. *Ada Decl.* Beginning in January 2000, Respondent resumed making  
19 contributions to the Fund. *Id.* Also in January 2000, Respondent's retirement benefits were  
20 discontinued. *Id.*

21 When Respondent ran for office in 1999, a 3% retirement bonus was in place for all elected  
22 officials pursuant to Public Law 6-41. *Ada Decl.* In 2003, the 3% bonus was repealed effective  
23 December 5, 2003, pursuant to Public Law 13-60.

24 In January 2008, Respondent retired a second time after having lost reelection. *Ada Decl.*  
25 In February 2008, the Administrator for the Fund wrote a letter to Respondent outlining his benefits.

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26  
27 <sup>3</sup> In their supplemental brief, Petitioner included new arguments which were not previously raised,  
28 including arguments regarding the constitutionality of the 3% bonus. The Court did not grant petitioner leave to  
brief new issues regarding the instant motion for summary judgment. The Court will therefore not consider these  
arguments.

1 *Ada Decl.* The benefits as outlined in this letter did not take into account Respondent’s time spent  
2 as an elected legislator nor any part of the 3% statutory retirement bonus. *Id.*

3 Petitioner seeks judicial review in this Court pursuant to 7 CMC §§ 2421 regarding several  
4 provisions of the Retirement Act. Presently before the Court is Respondent’s cross-motion for  
5 summary judgment.

### 6 7 **III. STANDARDS**

8 Summary judgment is appropriate where the materials submitted to the Court demonstrate  
9 “that there is no genuine issue of material fact and that the moving party is entitled to judgment as  
10 a matter of law.” NMI R. Civ. P. 56(c); e.g. *In re Estate of Roberto*, 2002 MP 23 ¶14. The purpose  
11 of summary judgment “is to isolate and dispose of factually unsupported claims or defenses.”  
12 *Celotex v. Catrett*, 477 U.S. 317, 323-24 (1986).

13 The moving party always bears the initial burden of informing the court of the basis for its  
14 motion, and identifying the evidence which it believes demonstrates the absence of a genuine issue  
15 of material fact. *Id.* at 323. The non-moving party must then identify specific facts “that might  
16 affect the outcome of the suit under the governing law,” thus establishing that there is a genuine  
17 issue for trial. NMI R. Civ. P. 56(e).

18 “In deciding a summary judgment motion, a court will construe the evidence and inferences  
19 drawn therefrom in favor of the non-moving party.” *Santos v. Santos*, 4 NMI 206, 209 (1995)  
20 (*citing Rios v. Marianas Pub. Land Corp.*, 3 NMI 512, 518 (1993)).

21 Here, there are no material facts in dispute between the parties. Summary adjudication is  
22 appropriate as to the amount of retirement benefits Respondent is entitled.

### 23 24 **IV. DISCUSSION**

25 In its opening brief, Petitioner raised four issues to be addressed: (1) applicability and extent  
26 thereof of the *void ab initio* doctrine to the 3% bonus statute; (2) applicability and extent thereof of  
27 Public Law 13-60's repealer provisions; (3) applicability and extent thereof of Article III, Section  
28 20(b) of the NMI Constitution; and (4) applicability and extent thereof of Public Law 15-70's bar

1 on recomputation of benefits for re-employed retirees. (Petition at 1.)

2 Respondent moved for summary judgment on the grounds that (1) the 3% bonus provision  
3 was constitutional and that he is entitled to the 3% bonus for the years 2000 through 2003 and (2)  
4 he is entitled to 60 days of retirement benefits for every year that he was reemployed by the  
5 government under the *Pangelinan* Decision. (Motion at 5-8.)

6 During the hearing, the parties agreed that only one issue remained in dispute between the  
7 parties: whether Respondent was entitled to the 3% bonus pursuant to Public Law 6-41. Despite  
8 this, Petitioner seeks judicial review and declaratory judgment of the remaining three issues pursuant  
9 to 7 CMC § 2421. Petitioner contends that because it has standing in this case, judicial review of  
10 the remaining three issues is proper. The Court first considers the issue of justiciability.

#### 11 12 **A. Ripeness and Mootness**

13 Declaratory judgment actions must present an actual case in controversy within the meaning  
14 of the Constitution. 7 CMC § 2421. The Supreme Court has explained that for a case to be  
15 justiciable and ripe, it must present facts that establish that there is a "substantial controversy,  
16 between parties having adverse legal interests, of sufficient *immediacy and reality to warrant the*  
17 *issuance of a declaratory judgment.*" See *Maryland Casualty Co. v. Pacific Coal & Oil Co.*, 312  
18 U.S. 270, 273 (emphasis added). Furthermore, the Court's duty is to decide actual controversies by  
19 a judgment which can be carried into effect, and not to give opinions upon moot questions or  
20 abstract propositions, or to declare principles or rules of law which cannot affect the matter at issue  
21 in the case at bar. *Bank of Saipan, Inc. v. Superior Court*, 2004 MP 15 ¶ 8 (citing *In re Seman*, 3  
22 NMI 57, 64 (1992)). Where no actual controversy exists, Commonwealth courts "lack jurisdiction  
23 to decide moot issues." *Govendo v. Micronesian Garment Mfg., Inc.*, 2 NMI 270, 281 (1991).

24 When determining whether a dispute rises to the level of a justiciable controversy, the court  
25 must determine whether the issues presented are currently ripe for judicial intervention. In the  
26 present case, the Court discerns four distinguishable disputes raised by the pleadings.

27 In reference to the first dispute, the Court has little difficulty finding that the issue raised is  
28 ripe for judicial determination. Petitioner has raised a constitutional question with respect to the

1 validity of the 3% bonus and Respondent has asserted his right to be paid that bonus. These facts  
2 give rise to an actual and present controversy concerning the validity of the 3% bonus. Since  
3 Respondent has actually asserted a right to a statutory benefit and Petitioner has opposed it, the  
4 matter is ripe for judicial determination.

5 Turning to the other three questions before the Court, the posture of the Petition is  
6 distinguishable. As noted, the issues relate to applicability of Public Law 13-60's repealer provisions,  
7 of article III, section 20(b) of the NMI Constitution, and of Public Law 15-70's bar on recomputation  
8 of benefits for reemployed retirees. After reviewing the undisputed facts and other pleadings in this  
9 matter, the Court finds that the parties have agreed as to the outcome in this case with respect to  
10 those issues, rendering the issues moot as to the current parties.

11 Petitioner raises the fact that other retirees or beneficiaries have challenged Petitioner's  
12 interpretation of the law with respect to those issues and thus Petitioner anticipates future claims.  
13 However, those parties are not now before this Court. In the event that these parties take some  
14 affirmative action in the future to assert those rights, then a justiciable controversy would arise.

15 Based on the foregoing, the court finds that the only issue ripe for determination is the nature  
16 and extent of the 3% bonus under Public Law 6-41.

### 17 18 **B. Validity of the 3% Bonus**

19 Petitioner contends that the provisions of 6-41 that created the 3% bonus for certain elected  
20 officials is unconstitutional when enacted and thus *void ab initio*. (Petition at 4.) Petitioner contends  
21 that members of the Sixth Legislature had a conflict of interest at the time the 3% bonus provision  
22 was debated and voted on rendering it null and void from its inception. *Id.*

23 When analyzing the constitutionality of a statute, a court must adhere to the presumption that  
24 properly enacted legislation is constitutional. *See Ada v. Sablan*, 1 NMI 415, 419 fn 18 (1990).  
25 Therefore, the court must narrowly construe a statute's provisions to only void those parts which are  
26 unconstitutional and leave those parts which conform to constitutional principles unharmed. "A  
27 statute should not be construed to be unconstitutional where it is open to a constitutional  
28 interpretation." *Estate of Faisao v. Tenorio*, 4 NMI 260 (1995). Moreover, a "court will not impute

1 to the legislature an intent to pass unconstitutional legislation.” *Id.* “In testing the constitutionality  
2 of a statute, the language must receive a constriction that will conform it to a constitutional  
3 limitation, if it is susceptible of such an interpretation. This principle comports with the strong,  
4 widely recognized judicial policy of preserving statutes in the face of constitutional challenges  
5 whenever possible.” *In re Seman*, 3 NMI 57 (1992).

6 The doctrine of *void ab initio* stems from the principal that an unconstitutional statute is a  
7 nullity, void from the date of its enactment. *Norton v. Shelby County*, 188 U.S. 245, 6 (1886).  
8 However, “there exists a rebuttable presumption in favor of the validity of a statute or regulation,  
9 unless a clear constitutional violation is shown.” *Tenorio v. Superior Court*, 1 NMI 1, 17 (1989).  
10 Furthermore, an unconstitutional statute may be given some effect, especially where “questions of  
11 rights claimed to have become vested, of status, of prior determinations deemed to have finality and  
12 acted upon accordingly, of public policy in the light of the nature of both the statute and of its  
13 previous application, demand examination.” *Chicot County Drainage Dist. v. Baxter State Bank*, 308  
14 U.S. 371, 374 (1940).

15 Consequently, the Court, in analyzing the constitutionality of Public Law 6-41, shall refrain  
16 from declaring such statute unconstitutional unless the statute cannot operate without violating  
17 constitutional tenets. Furthermore, the Court will begin its analysis of Public Law 6-41 on the  
18 premise that it is a valid law.

19 Public Law 6-41 that created the 3% bonus became effective in January 19, 1990. 1 CMC  
20 § 8331(d). The provision granted certain government officials an additional 3% service credit for  
21 each year they were employed so long as it did not exceed the public servant’s highest annual salary.  
22 *Id.* The 3% bonus was applicable to the Governor, Judge of the Commonwealth Government,  
23 Lieutenant Governor, Mayor, Member of the Legislature, and Resident Representative of the United  
24 States (hereafter, the “Group”). *Id.* This 3% bonus was repealed by Public Law 13-60, effective  
25 December 5, 2003.

26 Respondent was elected in November 1999 and served until January 7, 2008. Respondent  
27 maintains the 3% bonus was applicable to him from when he first took office in 2000 to the date the  
28 statute was repealed in 2003, a total of four years.

1  
2 ***I. Constitutional Challenge under Article II Section 15***

3 Petitioner first challenges the 3% bonus under article II, section 15 of the NMI Constitution  
4 entitled “*Conduct of Members.*” This section provides in relevant part that “a member of the  
5 legislature who has a financial or personal interest in a bill before the legislature shall disclose that  
6 interest and may not debate on or vote on the bill.” NMI Const. art. II, § 15.

7 A basic principle of constitutional construction is language must be given its plain meaning.  
8 *Camacho v. Northern Marianas Retirement Fund*, 1 NMI 362, 368 (1990). However, where there  
9 is evidence that an alternative meaning in the constitutional language was intended, effect must be  
10 given to the intent of the framers. *Id.* The interpretation of that language is the responsibility of the  
11 Court. *Pangelinan v. CNMI*, 2 CR 1148, 1161 (D.N.M.I. App. Div. 1987). Here, the key issue is  
12 the interpretation of the phrase “financial or personal interest.”

13 Petitioner urges a textual interpretation of section 15 arguing that because the members of  
14 the Legislature had a financial interest in Public Law 6-41, all members were prohibited from voting  
15 on the bill, making the provision unconstitutional and *void ab initio*. When the Legislature’s 3%  
16 bonus was passed, members of the Sixth Legislature were by definition either Class I or Class II  
17 members of the Fund. Thus, the 3% bonus was made applicable to the members of the Legislature  
18 who voted on it. However, the bonus was not only applicable to the legislature, but also to other  
19 government officials including judges, the Governor, the Resident Representative to the United  
20 States, and others. Thus, contrary to Petitioner’s contentions, the Legislature was not the only body  
21 benefitted by the 3% bonus.

22 It is well recognized that the literal language in the constitution may be disregarded to avoid  
23 absurd results and to fulfill the apparent intent of the framers. *In re Lance W.*, 37 Cal. 3d 873, 903  
24 (1985). The language in section 15, if literally taken, involves an absurdity; it would prevent the  
25 Legislature from voting on any bill that its members have any financial interest in. Under such an  
26 interpretation properly enacted laws would be deemed unconstitutional including laws regarding  
27 legislative salary or even the statutory creation of the Retirement Fund itself. Clearly this was not  
28 the framers’ intent. A review of the legislative history of the 1985 Constitutional Convention, when

1 section 15 was last visited, reveals that the framers were concerned with conflicts of interest in the  
2 legislature when a member had a *private* personal or financial interest. That is, the section was  
3 aimed at interests particular to an individual member, rather than those common to all law makers,  
4 as would be the case during the enactment of Public Law 6-41.

5 A broad interpretation of the terms “financial or personal interest,” as Petitioner suggests,  
6 would prohibitively tie the hands of the Legislature to enact necessary laws. Such effect was not  
7 intended by the framers. Accordingly, the Court declines to interpret section 15 as limiting the  
8 Legislature’s authority to enact the challenged 3% bonus provision in Public Law 6-41 rendering  
9 it unconstitutional.

## 10 11 **2. *Constitutional Challenge under Article II Section 10 part 1***

12 Petitioner next challenges the 3% bonus under article II, section 10 of the NMI Constitution  
13 entitled “*Compensation.*” The first part of this section prohibits the legislature from giving itself a  
14 salary increase unless specific procedures are followed. NMI Const. art. II, § 10. Specifically,  
15 “[t]he salary of members may be changed no more than once every four years and only upon the  
16 recommendation of an advisory commission established by law to make recommendations  
17 concerning the compensation of Commonwealth executive, legislative and judicial officers.” *Id.*

18 Petitioner contends that a bonus of 3% in retirement benefits is equivalent to a salary  
19 increase and that this salary increase was unconstitutional because the legislature did not follow  
20 provisions requiring an advisory commission established by law who reviews the compensation of  
21 the executive, legislative, and judicial branches. To support its argument, Petitioner points to  
22 Respondent’s claim that he relied on the additional 3% bonus in retirement benefits to offset the  
23 lower legislative salary when he ran for office. (Motion at 7.)

24 Although both salary and retirement pensions are a part of the compensation package for  
25 government employees, the retirement pension is not a part of the salary. “Salary” is defined in  
26 various sections of the Commonwealth Code. For instance, under the Compensation Adjustment  
27 Act, “Wages and Salaries” is defined as “the total amount of money or the value of other  
28 consideration received by an employee to the extent that such money or other consideration is



1 received for services sourced within the Commonwealth.” 1 CMC § 8243. The section further  
2 provides that “[w]ages and salaries shall not include: . . . Payments made to or on behalf of an  
3 employee or to his beneficiary from the CNMI Retirement program . . .” *Id.* This same definition  
4 is used under the section entitled Revenue and Taxation. 4 CMC § 1103. Under the provision  
5 governing the retirement fund itself, “salary” is defined as the “base salary paid to an employee for  
6 services including payment for annual leave, sick leave, administrative leave, holiday pay, but  
7 excluding lump sum payment for annual leave, or standby, hazardous, night time differential,  
8 typhoon pay differential or overtime pay, or any kind of bonus salary” 1 CMC § 8313 (o). No where  
9 in the code is salary defined as including pension benefits.

10 Notwithstanding, Petitioner argues that the 3% bonus should be viewed as a salary increase  
11 for the legislature in this case because the bonus was only given to certain elected officials and had  
12 the effect of increasing the compensation for members of the legislature. Petitioner maintains that  
13 had the legislature voted for the same 3% bonus in retirement benefits for all government  
14 employees, there would not be a challenge under this section.

15 The Legislature’s power to legislate is limited only by the constitution. *County of Riverside*  
16 *v. Superior Court* 30 Cal. 4th 278, 284-85 (2003). Constitutional restrictions or limitations are to  
17 be construed strictly, and are not to be extended to include matters not covered by the language used.  
18 *Id.* First, although the 3% bonus did not apply to all government employees, it did apply to more  
19 than the legislature alone.<sup>4</sup> Petitioner cites no authority that indicates legislative pensions fall under  
20 this section. Under a plain reading of the constitutional provision, Section 10 specifically governs  
21 the change in the “salary of members” and not other forms of compensation. Section 10 does not  
22 include pension benefits or other compensation in the definition of “salary.” At the time the law was  
23 passed, there were no constitutional provisions limiting the legislature’s ability to change the  
24 retirement benefits for public employees.

25 Accordingly, the first part of Section 10 does not apply in rendering the enactment of the 3%  
26 bonus unconstitutional.

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<sup>4</sup> The 3% bonus was applicable to the Governor, Judge of the Commonwealth Government, Lieutenant  
Governor, Mayor, Member of the Legislature, and Resident Representative of the United States. 1CMC § 8331(d).

1                                   **3. Constitutional Challenge under Article II Section 10 part 2**

2                   The second part of Section 10 provides that when the salary is increased by the legislature,  
3 it cannot go into effect with respect to the legislature that enacted it. NMI Const. art. II, § 10. This  
4 provision is similarly rooted to that of the Twenty-Seventh Amendment of the United States  
5 Constitution, providing that “no law, varying the compensation for the services of the Senators and  
6 Representatives, shall take effect, until an election of Representatives shall have intervened.” The  
7 purpose of the Amendment was to eliminate the possibility that Congress will not grant itself a new  
8 pay raise during its current session. *Schaeffer v. Clinton*, 54 F. Supp. 2d 1014, 1019-20 (1999). The  
9 court in *Schaeffer* held that the Twenty-seventh Amendment does not deal with congressional  
10 pensions. *Id.* at 1019-20. Similarly, article II, section 10 of the NMI Constitution does not deal with  
11 legislative pensions.

12                   However, even if Section 10 were to apply to legislative pensions, the 3% bonus would still  
13 be applicable to any member of the Group following an intervening election. The provision was  
14 passed during the Sixth Legislature and became effective in January 1990. Thus, the 3% bonus  
15 would be valid for all those officials elected for a term of office during the Seventh Legislature and  
16 beyond. Here, Respondent did not begin service as an elected official until January 2000, nearly ten  
17 years after the 3% bonus became valid. Thus, the 3% bonus provision applies to Respondent.

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19                                   **C. Effect of Public Law 13-60's repeal of the 3% Bonus on Respondent's benefits**

20                   Public Law 13-60, effective December 5, 2003, repealed the 3% bonus provision. 1 CMC  
21 §§ 8341(d) and 8344(f). Section 13 of Public Law 13-60 contained a savings clause that provides:  
22 “[t]his Act and any repealer contained herein shall not be construed as affecting an existing right  
23 acquired under contract or acquired under statutes repealed or under any rule, regulation or order  
24 adopted under the statutes.” *Id.*

25                   Petitioner is in agreement with Respondent that if the 3% bonus is not found  
26 unconstitutional, then Respondent is entitled to receive it for the years 2000, 2001, 2002, and 2003.  
27 The Court has determined that the 3% bonus is not unconstitutional and is applicable to Respondent.

1 Accordingly, Respondent is entitled to the 3% bonus for the year 2000 through 2003.  
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4 **D. Respondent's Right to Double Dip for 60 Days Each Fiscal Year**

5 Retirees who elect the 5-year bonus are allowed to receive retirement pension in addition to  
6 salary (double dip) for 60 days each fiscal year once they are re-employed by the Commonwealth.  
7 NMI Const. art. III, § 20(b). Retirees who elect to retire under this provision and who subsequently  
8 become a member of the Legislature are entitled to receive 60 days of retirement benefits for each  
9 year they are in office. *Pangelinan v. The Northern Mariana Islands Retirement Fund*, 2009 MP  
10 12 ¶ 2.

11 When members retiring under this provision are re-employed, the Fund will cease the  
12 member's pension benefit after 60 days. *Id.* In subsequent fiscal years, the retiree can choose to  
13 either be paid 60 days pension, and have pension benefits recomputed for the remainder of the fiscal  
14 year, or they can choose not to be paid 60 days of pension benefits and have pension benefits  
15 recomputed for the entire fiscal year. *Id.* Because the retiree has a choice of whether to be paid for  
16 60 days in each fiscal year in which they are re-employed or not be paid and receive the higher  
17 recomputation, Petitioner claims that the Fund cannot make the payment automatically. In fact, it  
18 has been the Fund's practice to stop making the 60 day retirement benefits for reemployed retirees  
19 after the first year the employee returns to work.

20 Petitioner and Respondent are in agreement that for each year that Respondent worked after  
21 having retired, he is entitled to 60 days of retirement benefits. The Fund failed to pay the 60 days  
22 to Respondent from 2000, the year he began service as an elected member of the legislature, to  
23 January 2008, when he retired. Accordingly, Respondent is entitled to 60 days of benefit payments  
24 for each of these years.  
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