



By the order of the court, Judge David A Wiseman

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**CNMI SUPERIOR COURT**  
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**FOR PUBLICATION**

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

**ROYAL CROWN INSURANCE  
CORPORATION [Bond No. 28788, issued  
to Ruth P. Reyes],**

**Petitioner,**

**v.**

**DIRECTOR OF LABOR, GIL M. SAN  
NICOLAS, DOL SECRETARY, AND  
THE DEPARTMENT OF LABOR,  
COMMONWEALTH OF THE  
NORTHERN MARIANA ISLANDS,**

**Respondents.**

**Civil Action No. 10-0102**

**ORDER AFFIRMING THE  
SECRETARY OF LABOR'S  
ORDER ON APPEAL**

**I. INTRODUCTION**

**THIS MATTER** came before the Court for a hearing on December 15, 2011 at 1:30 p.m. in Courtroom 223A. Joe Hill, Esq. represented Royal Crown Insurance Corporation (“Petitioner”) and Meredith Callan, Esq. represented CNMI Department of Labor, *et al* (“Respondents”). At the hearing, the parties presented oral arguments regarding the Secretary of Labor’s April 14, 2010 Order on Appeal. After considering the oral and written arguments of the parties the Court **AFFIRMS** the Order on Appeal.

1 **II. FACTUAL AND PROCEDURAL BACKGROUND**<sup>1</sup>

2 Lucila G. Aquino (“Aquino”) was a nonresident worker employed by Ruth P. Reyes (“Reyes”).  
3 Reyes secured a performance bond pursuant to 3 CMC § 4924, which requires an employer to obtain  
4 a performance bond as a prerequisite for employment of nonresident workers. On November 17, 2003,  
5 Petitioner issued Bond No. 28788 securing the performance of Reyes regarding the employment of  
6 Aquino

7 On or about March 30, 2005, Aquino filed a labor complaint (L.C. No. 05-1112) against Reyes.  
8 Petitioner was not a named party to the labor case, but Notice of Potential Claim was served upon  
9 Petitioner by the Department of Labor (“DOL”) on May 18, 2005. The labor complaint was heard by  
10 a DOL Administrative Hearing Officer (“AHO”) who issued an Administrative Order dated March 7,  
11 2008 awarding \$4,673.84 in unpaid wages to Aquino.

12 Reyes subsequently failed to pay the award to Aquino as ordered by the AHO and, as a result,  
13 the DOL issued a Notice of Claim under Bonding Case No. 09-084 which was served upon Petitioner  
14 on November 27, 2009. The Notice instructed Petitioner to either pay the award up to the bond limits  
15 or to file written objections.

16 On January 26, 2010, an Administrative Order re Notice of Claim was issued by the AHO  
17 ordering Petitioner to pay under the bond.

18 On February 10, 2010, Petitioner filed an appeal with the Secretary of Labor (“SOL”). No  
19 decision was issued from the SOL within the 30-day statutory period, and thus, Petitioner filed a  
20 Petition for Judicial Review on April 11, 2010. The SOL, thereafter, affirmed the AHO’s  
21 Administrative Order re Notice of Claim in all aspects through its April 14, 2010 Order on Appeal.

22 On April 19, 2009, Petitioner filed a supplemental Petition for Judicial review attaching  
23 therewith a copy of the SOL’s Order on Appeal before this Court.

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<sup>1</sup> The facts are taken from the AHO’s April 14, 2008 Administrative Order and January 26, 2010 Administrative Order re Notice of Claim and are undisputed for purposes of this Review.

1 **III. ISSUES FOR REVIEW**

- 2 1. Whether the incomplete record provided by the DOL requires a remand.  
3 2. Whether representation by the Attorney General’s Office is proper in this case.  
4 3. Whether the application of PL 15-108 by the AHO was proper.  
5 4. Whether the DOL has statutory authority to hear bonding cases.  
6 5. Whether Petitioner was denied its right to due process.  
7 6. Whether the March 7, 2008 Administrative Order amounted to a settlement, compromise,  
8 novation or material alteration of the surety bond.  
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10 **IV. STANDARD OF REVIEW**

11 The standard of review the Superior Court must apply when reviewing agency actions within  
12 the Administrative Procedure Act (“APA”) is set forth in 1 CMC § 9112(f).<sup>2</sup> *Camacho v. Northern*  
13 *Marianas Retirement Fund*, 1 NMI 362 (1990). Section 9112(f) requires a reviewing court to decide  
14 all relevant questions of law, interpret constitutional and statutory provisions, and determine the  
15 meaning or applicability of an agency action. *Tenorio v. Superior Ct.*, 1 NMI 1 (1989). Specifically,  
16 § 9112(f)(2) mandates that a court set aside agency action if it finds the action is found to be:

- 17 (i) Arbitrary, capricious, an abuse of discretion, or otherwise not in  
18 accordance with law; (ii) Contrary to constitutional right, power, privilege,  
19 or immunity; (iii) In excess of statutory jurisdiction, authority, or limitations,  
20 or short of statutory rights; (iv) Without observance of procedure required by  
21 law; (v) Unsupported by substantial evidence in a case subject to 1 CMC §§  
22 9108 and 9109 or otherwise reviewed on the record of an agency hearing  
23 provided by statute or (vi) unwarranted by facts to the extent that the facts are  
24 subject to trial de novo by the reviewing court.

25 The standard of review for an appeal alleging an arbitrary and capricious action is similar to the  
26 abuse of discretion standard. *In re Blankenship*, 3 NMI 209 ¶ 16 (1992). “A court will review an  
27 action or decision alleged to be arbitrary and capricious to determine whether the action was reasonable  
28 and based on information sufficient to support the decision at the time it was made.” *Id.*

Factual determinations from administrative hearings are reviewed under the substantial evidence

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<sup>2</sup> The APA is found in 1 CMC §§ 9110 *et seq.*

1 standard of review. 1 CMC § 9112(f)(2)(v); *see Limon v. Camacho*, 1996 MP 18 ¶ 22; *Barte v. Saipan*  
2 *Ice, Inc.*, 1997 MP 17. In applying the substantial evidence standard, a court must determine whether  
3 agency action was reasonable based on the information before the agency, however, the reviewing court  
4 is to uphold the agency determination even if supported by something less than the weight of evidence  
5 if the agency’s conclusions are reasonable. *In re Hafadai Beach Hotel Extension*, 4 NMI 37, 44 (1993).

6 Issues of law arising from administrative hearings are reviewed *de novo*. *Tenorio v. Superior*  
7 *Court*, 1 NMI 4, 9 (1989).

8 In judicial review of agency action, a petitioner seeking an order setting aside an agency  
9 decision bears the burden of proof. *In re Hafadai Beach Hotel Extension*, 4 NMI at 45.

## 11 **V. DISCUSSION**

### 12 **A. Petitioner Has Not Alleged Specific Prejudice Resulting from The Incomplete Record on** 13 **Appeal**

14 Petitioner asserts Respondents failed to provide a complete record of the proceedings in this  
15 matter. Petitioner claims it is prejudiced by the deficient record, and as such, requests the Court to  
16 compel Respondents to produce the complete administrative records or this matter should be remanded  
17 back to the agency for further consideration.

18 In making a determination on appeal the court is confined to “the record or those parts of it cited  
19 by a party.” 1 CMC § 9112(f)(2)(vi); *see also* 3 CMC § 4949(2) (Judicial review shall be confined to  
20 the record). What constitutes the record on review is laid out in 1 CMC § 9109(j). “On payment of  
21 lawfully prescribed costs, the record shall be made available to the parties within a reasonable time.”  
22 1 CMC § 9109(k)

23 Here, a record was provided by Respondents. It does appear, as Respondents concede, there are  
24 some pages missing. Further, it appears that a tape recording of the transcript is not available despite  
25 the efforts of Respondents to produce.

26 Petitioners, however, have not alleged how the deficiencies in the record are specifically  
27 prejudicial to them. The doctrine of harmless error is applicable to review of administrative decisions.  
28 *See Camacho v. Northern Marianas Retirement Fund*, 1 NMI 362, 376 (1990); *In re San Nicolas*, 1 NMI

1 329 (1990). It is always incumbent upon an aggrieved party to demonstrate the prejudicial effect of  
2 procedural irregularities in administrative proceedings. *Camacho*, 1 NMI at 376. In *Camacho*, the court  
3 found that the appellant had not demonstrated any prejudice to him by the procedural errors alleged  
4 against the administrative body and thus found the doctrine of harmless error prevented appellants  
5 recovery. *Id.*

6 The Petition for Review has proceeded thus far and Petitioner has been able to put forth  
7 numerous arguments in support of its position. While it is regrettable that the DOL has not provided  
8 a complete record here, it is not in the interests of judicial economy for the Court to remand the case at  
9 this time, especially where the case has progressed so far seeming unhindered by issues with the record.

10 Petitioner has not articulated any specific prejudice to it from the missing portions of the record,  
11 and therefore, this Court is reluctant to remand this matter on the basis of Petitioners claim of missing  
12 portions of the record.

### 13 **B. The AGO's Representation in the Case is Proper**

14 Petitioner asserts the Attorney General's Office ("AGO") should be disqualified in this case  
15 because its involvement is in conflict with the Supreme Court decision in *Pacific Saipan Technical*  
16 *Contractors v. Rahman*, 2000 MP 14, ¶¶ 7-10. Alternatively, Petitioner asks the Court to order  
17 Respondents to show cause why they should not be withdrawn from the case.

18 Petitioner asserts the caption of the underlying Bonding Case No. 09-084 reading: "Director of  
19 Labor ex rel., Aquino, Lucila G." amounts to representation of a private party by the AGO.

20 The AGO clearly represents the DOL along with its secretary and director in their capacities as  
21 government agency officials. Any benefit to Aquino as an individual is incidental as she is the  
22 beneficiary of the bond that Reyes secured for Aquino's employment. The thrust of this Petition is  
23 challenging the decisions of the AHO and SOL, and thus, the requirement that the AGO not represent  
24 private individuals is not in conflict with the decision in *Pacific Saipan Technical Contractors v.*  
25 *Rahman*, 2000 MP 14, ¶¶ 7-10.

### 26 **C. The AHO's Decision to Apply the PL 15-108 Was Not Improper**

27 Petitioner asserts the AHO erred in applying Public Law ("PL") 15-108 to this case.

28 The bond in question was issued by Petitioner on November 17, 2003 and the labor case was

1 filed in 2005 but heard in 2008. All other relevant events occurred in 2008 or beyond. PL 15-108  
2 enacted the Commonwealth Employment Act of 2007 and was approved on November 9, 2007. While  
3 PL 15-108's effective date was January 1, 2008, the Court finds Petitioner has not met their burden in  
4 demonstrating why it is improper for this matter to be decided under the Commonwealth Employment  
5 Act of 2007.

6 The provisions of the Nonresident Workers Act (the predecessor to the Commonwealth  
7 Employment Act of 2007) contained substantially similar sections applicable to this case. Petitioner  
8 cites the Contracts Clause, Article I § 10 of the United States Constitution, which prohibits substantial  
9 impairment of a contractual relationship; however, Petitioner has not shown why the outcome of this  
10 case would differ regardless of which version of the code is applied. The doctrine of harmless error is  
11 applicable to review of administrative decisions. *See Camacho v. Northern Marianas Retirement Fund*,  
12 1 NMI 362, 376 (1990); *In re San Nicolas*, 1 NMI 329 (1990). It is always incumbent upon an  
13 aggrieved party to demonstrate the prejudicial effect of procedural irregularities in administrative  
14 proceedings. *Camacho*, 1 NMI at 376. Petitioner has not asserted any prejudice and has not shown why  
15 the application of PL 15-108 substantially impairs a contractual right versus the application of the  
16 Nonresident Workers Act.

17 Thus, the DOL did not act improperly by applying PL 15-108 as the applicable law.<sup>3</sup>

18 **D. The DOL Has Statutory Authority to Determine the Issues under the Bond**

19 Petitioners next assert that the DOL lacked jurisdiction and authority to determine issues of  
20 liability and damages under the subject bond.

21 Bonding requirements are set out as a prerequisite to entry by a foreign worker in 3 CMC § 4924.  
22 Further, 3 CMC § 4942 states:

23 The Administrative Hearing Office shall have original jurisdiction to resolve  
24 all actions involving alleged violations of the labor and wage laws of the  
25 Commonwealth, including but not limited to any violation of this chapter and  
26 regulations promulgated thereunder. The Commonwealth Superior Court  
shall have concurrent jurisdiction to resolve all labor and wage violations  
that are criminal in nature.

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27 <sup>3</sup> All statutory references in this Order are to the Commonwealth Employment Act of 2007 unless otherwise noted.  
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1 The Superior Court, faced with similar questions regarding the DOL’s authority over bonding  
2 issues, found that the “authority for the enforcement of bond obligations has been legislatively vested  
3 with the Director of Labor and that procedures regarding the issuance, content, and enforcement of such  
4 bonds are supplied by an extensive statutory and regulatory scheme.” *Smith & Williams v. Royal*  
5 *Crown Ins. Co.*, Small Claims Nos. 06-0676,06- 1677, 06-0678 (NMI Super. Ct. Feb. 5 2007) (Findings  
6 of Fact and Conclusions of Law)<sup>4</sup>; *See also Ren Zhou v. Oceania Ins. Copr., et al.*, Small Claim Nos.  
7 08-0452 *et seq.*, (NMI Super. Ct. Feb. 5 2009) (Order Granting Motion to Dismiss).

8 Bonding requirements are set forth by the Commonwealth Employment Act of 2007, and the  
9 DOL has power pursuant to 3 CMC § 4942 to resolve all actions and violations involving labor and  
10 wage laws. As such, the DOL has been legislatively vested with the power of bond issuance, content,  
11 and enforcement.

12 Petitioner argues that the DOL is judicially estopped from making an argument that the DOL has  
13 legislative authority due to its position in the case of *In re the Class of Nonresident Worker, Members*  
14 *001-127 v. CNMI DOL*, Civil Case No. 08-0454 (NMI Super. Ct. August 28, 2009) (Amended Answer  
15 at 7.) where it asserts that the Department of Commerce has the duty to regulate and license bonding  
16 companies. The DOL position in the previous case that the Department of Commerce has licensing and  
17 regulatory authority is not at odds with its position here that the DOL has legislative power to hear  
18 bonding cases that arise out of the Commonwealth Employment Act rules requiring bonding.

19 The DOL, thus, had the legislative authority to hear the bonding case and decide the issues  
20 presented to the AHO and SOL that resulted in the various administrative orders below.

21 **E. Petitioner Was Not Denied its Right to Due Process**

22 1. Notice was not deficient and did not violate due process

23 Petitioner argues the notice given was improper and violated 1 § CMC 9109(a)(1), which  
24 requires that “[p]ersons entitled to notice of an agency hearing shall be timely informed of: The time,  
25 place, and nature of the hearing. . . .” As a result, Petitioner claims its due process rights have been  
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28 <sup>4</sup> *Smith & Williams v. Royal Crown Ins. Co.* was decided under the Nonresident Workers Act (the predecessor to the Commonwealth Employment Act of 2007).

1 violated. Petitioner specifically claims it was not a named party in the labor case, Respondents did not  
2 serve it with a copy of the Complaint in the labor case, and the Administrative Order does not provide  
3 for Petitioner’s liability as surety.

4 “In an administrative proceeding where a person's life, liberty, or property is at stake, Article I,  
5 § 5 of the Commonwealth Constitution requires, at a minimum, that the person be accorded meaningful  
6 notice and a meaningful opportunity to a hearing, appropriate to the nature of the case.” *In Office of the*  
7 *Attorney General v. Deala*, 3 NMI 110, 116 (1992); *see also* 1 § CMC 9108(a) (“[A]ll parties shall be  
8 afforded an opportunity for a hearing after reasonable notice.”). Claims stemming from unpaid wages  
9 in an employment case are a property interest for the purposes of due process. *See Office of the AG v.*  
10 *Rivera*, 3 NMI 436, 445 (1993).

11 Specifically with regards to notice:

12 Service of process for any notice of any kind required for any  
13 proceeding conducted by the Administrative Hearing Office may be  
14 by personal service, by first class mail, postage prepaid, to the foreign  
15 national worker at the address supplied with the complaint or any  
16 written update provided to the Department, and to the employer at the  
17 address supplied with the application for the approved employment  
18 contract or any written update provided to the Department, or by  
19 publication in any English-language newspaper of general circulation  
20 in the Commonwealth, at the discretion of the Administrative  
21 Hearing Office.

22 3 CMC § 4945 (emphasis added).

23 On or about March 30, 2005, Aquino filed the labor case against Reyes. Petitioner was not a  
24 named party to the labor case but notice of potential claim was served upon Petitioner by the DOL on  
25 May 18, 2005.<sup>5</sup> Moreover, Petitioner was given notice by publication in a newspaper of general  
26 publication within the commonwealth regarding the labor case. The notice was published twice in two  
27 successive weeks and afforded notice to Petitioner that its bond may come due if Aquino was awarded  
28 damages and Reyes later filed to pay such award. The notice by publication comports with the notice  
requirements of 3 CMC § 4945 and was not improper.

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<sup>5</sup> Petitioner further argues that by not being a party to the Labor Case between Aquino and Reyes is improper. Petitioner as the bonding company did not have a direct interest in the Labor Case as its obligations under the bond could not come due until Aquino was awarded damages and Reyes, later, failed to pay such award. Petitioner was served notice of the Labor Case, and the fact that it was not a named party is not improper.



1            *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950) allows for a standard of  
2 notice that is “reasonably certain to inform those affected.” *Id.* at 315. Similarly, 3 CMC Section 4945  
3 allows for the discretion of the AHO in giving notice. Here, Petitioner held a bond that could have been  
4 called into question depending on the outcome of the labor case, and thus Petitioner had a contingent  
5 interest in the labor case. The notice given comported with 1 § CMC 9109(a)(1) in that it provided  
6 information regarding the nature of the case and hearing schedule. The notice was further reasonable  
7 given Petitioner’s experience in dealing with the DOL on bonding matters and given the fact that its  
8 rights at the time of the labor case were contingent on an award to Aquino and Reyes’ failure to pay any  
9 such award in the future.

10            Petitioner was also given the opportunity to be heard on the bonding issue heard before the AHO  
11 who made a reasoned determination through his January 26, 2010 Administrative Order re Notice of  
12 Claim. Further, Petitioner was given an opportunity for appeal to the SOL who issued its Order on  
13 Appeal.

14            Therefore, the due process rights of Petitioner were not violated as the notice given by the DOL  
15 was not improper.

16            2. The SOL’s delay in issuing its Order on Appeal presents no due process violations

17            Petitioner next asserts the SOL’s Order on Appeal is void for lack of proper jurisdiction since  
18 the Secretary failed to issue its order within 30 days of the AHO’s Administrative Order as required by  
19 3 CMC § 4948(c), which provides in relevant part:

20            Upon completion of review, the Secretary shall confirm or modify the  
21 finding, decision, or order in writing as soon as practicable. Any  
22 modification shall include supplemental findings. The Secretary’s decision  
23 shall constitute final action for purposes of judicial review. Failure by the  
24 Secretary to confirm or modify a finding, decision, or order within thirty (30)  
25 days shall constitute confirmation of each of the findings, decisions, or orders  
26 of the hearing officer as the final action of the Secretary for purposes of  
27 judicial review

28            The Order on Appeal was issued beyond the thirty days as required by 3 CMC § 4948(c). Per  
§ 4948(c) issuance beyond 30 days “shall constitute confirmation of each of the findings, decisions, or  
orders of the hearing officer as the final action of the Secretary for purposes of judicial review.” The  
Order on Appeal eventually issued by the SOL, in fact, did confirm the decision of the AHO in all

1 regards. Thus, there is no difference in outcome.

2         Petitioners appealed this issue to the Ninth Circuit who found when the SOL issues its order after  
3 the 30 days required it can offer further guidance on a matter for a hearing officer's reference in future  
4 cases. *See notice of Ninth Circuit Ruling*, e-filed July 26, 2011.

5         Thus, the SOL's delay in issuing its Order on Appeal is of no consequence here.

6         3. There was nothing improper about the AHO who heard the labor case and the bonding case

7         Petitioner asserts its rights to due process were violated because there is an inherent conflict with  
8 the AHO hearing the case, who is an agent of the DOL and an obligee under the bond against Petitioner.

9         Petitioner has not met its burden in alleging why an AHO cannot properly sit on a bonding case.  
10 As noted above the DOL has been legislatively vested with the power of bond issuance, content, and  
11 enforcement. Petitioner argues that the DOL is the obligee of the bond and thus inherently conflicted.  
12 The bonding requirement is in place to protect the employee in the event that the employer defaults on  
13 its obligations, as Reyes here did not pay Aquino the damages the AHO awarded. *See* PL 15-108 § 2  
14 (Findings and Purpose). Petitioners argument is flawed in that the obligee of the bond is in fact the  
15 employee who benefits from the proceeds of the bond as here, where Reyes, as the employer, failed to  
16 pay Aquino, the employee.

17         The Court further notes that administrative hearing officers are generally hired by the  
18 administrative body they serve, and routinely decide matters affecting the administrative body.

19         Moreover, Petitioner has failed to allege any prejudice. As noted above, the doctrine of harmless  
20 error is applicable to review of administrative decisions. *See Camacho v. Northern Marianas*  
21 *Retirement Fund*, 1 NMI 362, 376 (1990); *In re San Nicolas*, 1 NMI 329 (1990). It is always incumbent  
22 upon an aggrieved party to demonstrate the prejudicial effect of procedural irregularities in  
23 administrative proceedings. *Camacho*, 1 NMI at 376. Petitioner has, instead, attempted to challenge  
24 the DOL administrative proceedings with little or no support and little explanation as to how the AHO  
25 presiding over this case has prejudicially affected the case in any way.

26         Petitioner's due process rights were not violated by the AHO sitting on the bonding case.

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1 **F. The March 7, 2008 Administrative Order was not a Settlement, Compromise, Novation or**  
2 **Material Alteration of the Surety Bond**

3 Petitioner argues, in the alternative, that it has been discharged as surety because Aquino and  
4 the DOL stipulated to a settlement and to change the term of the surety bond without consultation or  
5 consent of Petitioner.

6 The terms of the bond provided for three months' pay of \$1,586.00. The March 7, 2008  
7 Administrative Order found that Reyes was liable to Aquino for \$4,673.84 in unpaid wages. Petitioner  
8 argues the damages award exceeded the bond value by over \$3,000.00. While this is true, the award of  
9 the AHO to Aquino does not amount to a material alteration or amendment to the bond increasing risk  
10 to Petitioner. *See United States v. Reliance Ins. Co.*, 799 F.2d 1382 (9<sup>th</sup> Cir. 1986).

11 The fact that the award to Aquino exceeded the bond limit in no way results in a new agreement  
12 between the parties. Regardless of the award granted by the AHO, Petitioner remained liable up to the  
13 bond limits. Thus, no material alteration in Petitioner's obligation under the bond resulted.

14 Petitioner's argument that the Administrative Order was a settlement, compromise, novation or  
15 material alteration of the surety bond is without merit.

16 **VI. CONCLUSION**

17 For the foregoing reasons, the Court hereby **AFFIRMS** the Secretary of Labor's Order on  
18 Appeal.

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20 **So ORDERED this 20<sup>th</sup> day of December, 2011.**

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23 David A. Wiseman, Associate Judge  
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