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For Publication

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

NORTHERN MARIANAS COLLEGE,)
)
Petitioner,)
)
v.)
)
CIVIL SERVICE COMMISSION and JACK)
ANGELLO,)
)
Respondents.)
_____)

CIVIL ACTION NO. 03-0092-D

**ORDER GRANTING RESPONDENTS'
MOTION FOR SUMMARY JUDGMENT**

THIS MATTER came on for hearing on cross motions for summary judgment on July 29, 2003. Present were Jesus C. Borja for Northern Marianas College, John F. Cool for the Civil Service Commission and Danilo T. Aguilar for Dr. Jack Angello. After carefully considering the pleadings and the arguments made during the hearing, the Court is prepared to rule.

FACTUAL BACKGROUND

Respondent and movant herein Dr. Jack Angello was formerly an employee of Petitioner, Northern Marianas College (“NMC”). On Sept. 24, 2002, he received written notice of his immediate termination, with salary and benefits to be paid through Nov. 23, 2002. On December 20, 2002, Dr. Angello appealed the decision of the Employee Appeals Committee to the Civil Service Commission (“the Commission”). NMC responded on Jan. 10, 2003 by filing a motion with the Commission to dismiss Dr. Angello’s appeal on the grounds that the Commission lacked jurisdiction over personnel decisions at NMC. On Feb. 5, 2003, the Commission denied NMC’s motion to dismiss, holding that “[there] is no provision in the law

1 which exempts the employees of the Northern Mariana’s College from the civil service system.” *In re*
2 *Angello and Northern Marianas College*, Case No. CSC 02-010, (Office of the Civil Service
3 Commission Feb. 5, 2003). On March 4, 2003, NMC filed suit in this Court, seeking declaratory and
4 injunctive relief.

5 **LEGAL CONCLUSIONS**

6 This petition is brought under 1 CMC § 9112(b), a portion of the Commonwealth Administrative
7 Procedure Act, 1 CMC §§ 9101, *et seq.* (“APA”), that allows a court to review an agency action under
8 certain circumstances. In deciding such a case, a court must first look to whether the petitioner (NMC in
9 this case) has standing to bring it - whether or not the petitioner is a “person suffering legal wrong because
10 of agency action, or adversely affected or aggrieved by agency action.” 1 CMC § 9112(b). If the
11 petitioner does not have standing, then the Court lacks jurisdiction over the subject matter of the suit, the
12 agency action, and it cannot intervene. Instead, it must dismiss the petition. In the instant matter, the
13 Commission contends that the Court lacks subject matter jurisdiction because NMC is not a “person” as
14 that term is defined in the APA at 1 CMC § 9101(j)¹. This argument seems to have merit, because the
15 definition of “person” specifically excludes government agencies. The Court must therefore begin by
16 considering whether NMC is an “agency.”

17 **I. NMC is an Agency.**

18 The APA provides that an agency is “each authority of the Commonwealth government, whether
19 or not it is within or subject to review by another agency” except for the courts and the legislature. 1 CMC
20 § 9101(b). NMC is a creation of the government, via N.M.I. Const. art XV, § 2 and 3 CMC § 1304.
21 It is governed by a Board of Regents, who are appointed by the Governor with the advice and consent of
22 the Senate, 3 CMC § 1311, and is funded in large part by appropriations from the Commonwealth
23 Legislature, 3 CMC § 1331. There is little doubt that NMC is an “authority of the Commonwealth
24 government” and NMC does not contest the point in its briefs. As such, NMC appears to lack standing
25 to challenge the decision of the Commission to assert jurisdiction over Dr. Angello’s appeal of his

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27 ¹ Section 9101(j) provides: “[p]erson’ means an individual, partnership, corporation, association, clan, lineage,
28 governmental subdivision or public or private organization of any character *other than an agency.*” 1 CMC § 9101(j)
(emphasis added).

1 termination. Unless there is some other basis for standing besides 1 CMC § 9112(b), NMC’s petition
2 must be dismissed.

3 **II. There Are No Exceptions to the Requirement That the Petitioner Be a “Person.”**

4 Perhaps recognizing that it cannot qualify as a “person” under 1 CMC § 9112(b), NMC presents
5 the Court with the rather novel argument that standing may also be based on Section 9112(d). In pertinent
6 part, Section 9112(d) provides that a court may review “[agency] action made reviewable by statute and
7 final agency action for which there is no other adequate remedy in a court.” 1 CMC § 9112(d). NMC
8 argues that the Commission’s decision to exert jurisdiction over employment practices at NMC is precisely
9 the sort of action “for which there is no other adequate remedy in a court.” This may well be true, but
10 NMC misinterprets the intent of this subsection of the statute. Section 9112(d) does not expand the range
11 of *who* can bring a petition challenging an agency action beyond the aggrieved person described in §
12 9112(b). Instead, it simply expands the range of agency decisions for which such an aggrieved person can
13 seek judicial review. If NMC is not a “person” under the terms of the statute, then the fact that they lack
14 an adequate remedy in Court is of no legal consequence.

15 NMC argues, however, that denying it the right to petition for judicial review is not in keeping with
16 purposes of the Administrative Procedures Act. NMC notes that there is a “basic presumption in favor
17 of the right to judicial review” and that “this right to review is not to be denied absent clear and convincing
18 evidence of contrary legislative intent,” citing *LEE MODJESKA, ADMINISTRATIVE LAW PRACTICE AND*
19 *PROCEDURE* § 6.3. However, the “right to judicial review of administrative decisions is entirely statutory,
20 and agency actions are not reviewable absent statutory authority.” *Brandt v. TCI Cablevision of Wyo.*,
21 873 P.2d 595, (Wyo. 1994);² *see also, In re Eric G.*, 649 P.2d. 1140 (Haw. 1982).³ Furthermore,
22 “appeals by state agencies of decisions made by other agencies are disfavored unless the right to such an
23 appeal is specifically conferred by statute.” *Louisiana v. La. Riverboat Gaming Commission*, 655 So.

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26 ² County assessor could not petition for judicial review of an agency action under state Administrative
27 Procedures Act because only a “person” could make such a petition and agencies, including county officials, were
excluded from the definition of person.

28 ³ Department of Education not a “person” under the state Administrative Procedure Act

1 2d 292, 301 (La. 1995).⁴ In the instant case, the Legislature specifically excluded agencies from the
2 definition of “person.” In doing so, it clearly intended to prevent one agency from seeking judicial review
3 of another agency’s decisions. Therefore, preventing NMC from petitioning for judicial review is entirely
4 in keeping with the purposes of the APA.

5 NMC also argues that preventing it from pursuing petitions such as this one will have dire
6 consequences. It contends that, absent judicial review, there would be nothing to stop the Commission
7 from asserting jurisdiction over the Commonwealth Utilities Corporation (“CUC”) or the Marianas Visitor’s
8 Authority (“MVA”), both of which are specifically exempted from the Commonwealth Civil Service Act,
9 1 CMC §§ 8101, *et seq.* It seems unlikely that the Commission would attempt such a naked power grab
10 where the legislative exemption to the CSA rules for each agency is very clearly stated. *See* 4 CMC §
11 8133(c) (“The staff of the [CUC] shall be exempt from the application of the Commonwealth Civil Service
12 Act” and 4 CMC § 2124(g) (MVA employees “shall be exempt from the application of . . . the
13 Commonwealth Civil Service Act”).⁵ In any case, it is not for this Court to decide whether NMC *ought*
14 to be allowed to seek judicial review for what it believes is an *ultra vires* act, but rather, whether it *may*.
15 In this case, it is clear that NMC may not file a petition for judicial review under the Administrative
16 Procedures Act.⁶ NMC lacks standing to bring its petition and, therefore, this Court lacks subject matter
17 jurisdiction over the substantive questions raised in the petition. NMC’s petition for judicial review must
18 be and is DISMISSED WITH PREJUDICE.

19 **CONCLUSION**

20 For the reasons stated above, the Civil Service Commission’s and Dr. Jack Angello’s joint motion
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22 ⁴ Gaming Enforcement Division of the Louisiana State Police not a “person” and so may not challenge an
23 administrative action.

24 ⁵ Compare the language of these two statutes with 3 CMC § 1316(n), which NMC contends exempts its
25 personnel from the provisions of the Commonwealth Civil Service Act, 1 CMC §§ 810, *et seq.*: the Board of Regents “has
26 the following duties . . . [t]o appoint and to terminate the president, officers, faculty employees and staff of the college,
27 and consistent with its adopted rules and regulations, to specify their responsibilities and authority, and to set
28 classifications and salaries.” NMC is not one of the government entities specifically exempted under Section 8131(a)
of the Commonwealth Civil Service Act and the language above does not appear to exempt it from the Commonwealth
Civil Service Act.

⁶ This is not to say that some other original action would necessarily be precluded.

1 for summary judgment on the grounds that Northern Marianas College lacks standing is GRANTED and
2 the petition is DISMISSED WITH PREJUDICE.

3 For the reasons stated above, Northern Marianas College's motion for summary judgment and the
4 Civil Service Commission's and Dr. Jack Angello's motion for summary judgment, insofar as they argue
5 the merits of the matter, are now MOOT.

6 In addition, there was before the Court a motion by Northern Marianas College to strike Dr.
7 Angello's July 3, 2003 Reply on the grounds that it untimely. Dr. Angello's concedes that his reply was
8 untimely. Therefore, the motion to strike is GRANTED.

9 SO ORDERED this 3rd day of September 2003.

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JUAN T. LIZAMA, Associate Judge