FOR PUBLICATION

IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

NORTHERN MARIANAS COLLEGE,
Petitioner/Appellant,

v.

CIVIL SERVICE COMMISSION

and

JACK ANGELLO,
Respondents/Appellees.

Supreme Court Appeal No. 03-0031-GA
Superior Court Civil Case Action No. 03-0092D

OPINION

Cite as: ***Northern Marianas College v. Civil Serv. Comm'n, 2006 MP 4***

Argued and submitted on May 13, 2004
Saipan, Northern Mariana Islands

Attorney for Appellant:
Jesus C. Borja, Esq.
Attorney at Law
P.O. Box 505889
Saipan, MP 96950

Attorney for Respondent-Appellee Jack Angello:
Danilo T. Aguilar, Esq.
Attorney at Law
PMB 886, Box 10001
Saipan, MP 96950

Attorney for Respondent-Appellee Civil Service Commission:
John F. Cool, Esq.
Attorney at Law
1211 Capitol Hill Road
P.O. Box 5011
Saipan, MP 96950

BEFORE: MIGUEL S. DEMAPAN, Chief Justice; ALEXANDRO C. CASTRO, Associate Justice; JOHN A. MANGLONA, Associate Justice

PER CURIAM.

¶1 Northern Marianas College appeals the Superior Court's summary judgment against it. The Superior Court found that Northern Marianas College lacked standing to seek judicial review of an administrative decision by the Civil Service Commission. We find that 1 CMC § 9112(b) (1984) does not preclude Northern Marianas College from seeking judicial review. Accordingly, we REVERSE the decision of the Superior Court and REMAND this case for further proceedings consistent with this opinion.

I.

¶2 The facts of this case are uncontested. Jack Angello was an employee of Northern Marianas College (NMC) until September 24, 2002 when he was notified of his immediate termination, salary and benefits to be paid for another two months. Angello appealed his termination to the NMC Employment Appeals Committee on October 9, 2002. On November 26, 2002 the Committee upheld NMC's decision to fire Angello. Angello then appealed the NMC Employment Appeals Committee's decision to the Civil Service Commission (CSC) on December 20, 2002. In his appeal to the CSC, Angello argued that NMC's decision to fire him without cause violated the provisions of the Personnel Service System Rules and Regulations. NMC responded by filing a motion with the CSC to dismiss Angello's appeal because the CSC had no jurisdiction over NMC's employment decisions. The CSC held otherwise and denied NMC's motion to dismiss, noting "[there] is no provision in the law which exempts the employees of the Northern Marianas College from the civil service system." *In re Angello and Northern*

Marianas College, Case No. CSC 02-010, (Office of the Civil Service Commission, Feb. 5, 2003).

¶3 On March 4, 2003, NMC appealed the CSC's denial of its motion to dismiss for lack of jurisdiction to the Superior Court. In response CSC filed a motion for summary judgment claiming NMC lacked standing to appeal CSC's decision. After a hearing on the matter, the Superior Court determined that NMC is an agency within the Commonwealth government and therefore lacks standing to seek judicial review of an administrative decision. *Northern Marianas College v. Civil Service Commission*, Civ. No. 03-0092-D, (Order Granting Respondent's Motion for Summary Judgment, Sep. 3, 2003).

¶4 The Superior Court reasoned that since the operative statute, 1 CMC § 9112(b), gives standing to seek judicial review only to "persons," and since the definition of "person" found at 1 CMC § 9101(j) expressly excepts agencies from its meaning, then NMC did not have the requisite statutory standing to challenge the CSC's decision. *Id*. at 2-3. The Superior Court also held that 1 CMC § 9112(d), which makes "final agency action for which there is no other adequate remedy in a court" subject to judicial review, does not operate to expand the right to appeal beyond this limited class of "persons." *Id*. at 3. Finally, the court reasoned that since agencies were specifically excluded from the definition of "persons," and since "persons" were the only group who enjoyed the statutory standing to appeal administrative decisions, the legislature "clearly intended to prevent one agency from seeking judicial review of another agency's decisions." *Id*. at 4.

II.

¶5 This Court has jurisdiction over this appeal pursuant to 1 CMC § 9113's granting "aggrieved parties" standing to appeal Superior Court decisions reviewing administrative matters.

III.

¶6 The issue before us is whether, and under what circumstances, an agency has standing to seek judicial review of an administrative proceeding. This matter being one of statutory interpretation, we review it de novo. *Commonwealth v. Taisacan*, 1999 MP 8 ¶ 18.

IV.

The Legislature's Authority to Define the Court's Jurisdiction Over Administrative Proceedings

¶7 We start by noting the foundational difference between pure judicial proceedings and administrative proceedings, such as the one we deal with here. The Commonwealth judiciary derives its power from the CNMI Constitution Article IV. Specifically, Article IV Section 2 grants the Superior Court "original jurisdiction in all cases in equity and law … [and] in all criminal actions," and Section 3 vests appellate jurisdiction in the Supreme Court. Additionally, both Courts are granted the "inherent powers" necessary to fulfill their Constitutional mandate. Since the Commonwealth judiciary is granted original jurisdiction over these areas, this Court's latitude to fashion equitable rules for adjudication and appeal is broad.

¶8 This Court does not enjoy the same degree of independence when called upon to review administrative decisions.[1] Whereas the legal rules and doctrines upon which pure judicial proceedings are based arose principally in an atmosphere of autonomous actors disputing their rights and obligations, administrative law deals with non-autonomous agencies that exercise limited discretion through a predefined process. Such agencies have no inherent rights, and may only exercise that authority vested in them by constitution or statute. *See Arrow-Hart & Hegeman Elec. Co. v. Federal Trade Commission,* 291 U.S. 587, 598, 54 S.Ct. 532, 537, 78 L.Ed. 1007 (1934); *Union Pacific Resources Co. v. State,* 839 P.2d 356, 370 (Wyo. 1992); *Northwestern Bell Telephone Co. v. Iowa Utilities Bd.*, 477 N.W.2d 678, 682 (Iowa, 1991); *Matador Pipelines, Inc. v. Oklahoma Water Resources Bd.*, 742 P.2d 15, 16 (Okl. 1987); *Stauffer v. City of San Antonio,* 344 S.W. 2d 158, 160 (Tex. 1961).

¶9 Nevertheless, this court does retain some leeway when dealing with administrative decisions. Although the contours of the court's jurisdiction are provided by statute, that does not necessitate a uniform approach to all cases. *See Floyd v. Department of Labor and Industries,* 269 P.2d 563, 569 (Wash. 1954) ("it is apparent both from the decided cases and from the text books that the scope of judicial review of the actions of administrative agencies *does* vary with the subject matter of the review or the function of the agency") (citation omitted). Such variations are best left to a case-by-case analysis.

¶10 Agencies are given the authority to make discretionary decisions over a limited range of matters. As such, agencies often possess and exercise some degree of executive,

[1] Of course nothing precludes or limits the Court's ability to hear matters brought before it based on an agencies denial of a Constitutionally or statutorily protected right. No administrative procedure may limit the jurisdiction of this Court arising under the NMI Constitution.

legislative, and judicial power. *See Mitchell v. Wright*, 154 F.2d 924, 929 (5th Cir. 1946) (Lee, concurring); *Handlon v. Town of Belleville*, 71 A.2d 624, 626 (N.J. 1950). That power is conferred by legislation or executive or judicial order and is properly viewed as a means of facilitating the exercise of the governmental power vested in that body which created the agency. *See e.g. Crowell v. Benson*, 285 U.S. 22, 50-51, 52 S.Ct. 285, 292, 76 L.Ed. 598 (1932) (citing "interstate and foreign commerce, taxation, immigration, the public lands, public health, the facility of the post office, pensions, and payments to veterans" as examples where "Congress, in exercising the powers confided to it, may establish 'legislative' courts (as distinguished from 'constitutional courts …') … or to serve as special tribunals 'to examine and determine various matters, arising between the government and others, which from their nature do not require judicial determination and yet are susceptible of it") (citations omitted).

¶11 Courts have long recognized that although review of administrative proceedings takes on many of the trappings of legal procedure, it is not an exercise of judicial authority derived from, and subject to, the same constitutional restrictions as are judicial courts. As Justice Frankfurter noted:

> A review by a federal court of the action of a lower court is only one phase of a single unified process. But to the extent that a federal court is authorized to review an administrative act, there is superimposed upon the enforcement of legislative policy through administrative control a different process from that out of which the administrative action under review ensued. The technical rules derived from the interrelationship of judicial tribunals forming a hierarchical system are taken out of their environment when mechanically applied to determine the extent to which Congressional power, exercised through a delegated agency, can be controlled within the limited scope of 'judicial power' conferred by Congress under the Constitution.
> *Federal Communications Commission v. Pottsville Broadcasting Co.*, 309 U.S. 134, 142, 60 S.Ct. 437, 441, 84 L.Ed. 656 (1940).

Of course Justice Frankfurter was speaking specifically of the exercise of administrative authority in relation to the federal Constitution, but the rationale he espoused also forms the legal underpinnings of the administrative-judicial dichotomy in the Commonwealth. We do not mean our decision to attempt a dispositive list of such differences. Rather, we briefly highlight the pedigree of administrative law as a backdrop for the sole issue we address today: whether, and under what circumstances, an agency might seek judicial review of an administrative decision to the Superior Court.

¶12 Commonwealth administrative decisions are not reviewable by the Commonwealth judiciary as a matter of right. Instead, judicial review, like all aspects of administrative procedure in the CNMI, is governed by the Commonwealth Administrative Procedure Act (CAPA). Thus, NMC may seek judicial review of the CSC's administrative decision only if authorized to do so under CAPA.

Presumption of Judicial Review Not Overcome by CAPA

¶13 Within the Commonwealth, as within federal jurisdictions, there is a "strong presumption that [the legislature] intends judicial review of administrative action." *Bowen v. Michigan Academy of Family Physicians*, 476 U.S. 667, 670, 106 S.Ct. 2133, 2135, 90 L.Ed.2d 623 (1986). As such, the U.S. Supreme Court has stated, "[t]he presumption in favor of judicial review may be overcome 'only upon a showing of "clear and convincing evidence" of a contrary legislative intent.'" *Traynor v. Turnage*, 485 U.S. 535, 542, 108 S.Ct. 1372, 1378, 99 L.Ed.2d 618 (1988) (citations omitted). Given the potential for abuse when agencies assume the quasi-judicial power granted them through CAPA, and given the strong policy concerns of proving effective redress when

such abuses occur, we feel that this "clear and convincing" standard is appropriate for the Commonwealth. We adopt it here today.

¶14 Although the presumption favoring judicial review is a heavy one, it is not insurmountable. Since the legislature is empowered to define the means by which administrative matters are decided, the legislature is likewise empowered to define the entities that may seek review of such decisions by the judicial branch. Following the lead of the U.S. Supreme Court, in order to overcome the presumption of judicial review, we look for evidence – specific language in the statute or in the legislative history or implied by the statutory scheme – tending to show clear legislative intent to bar judicial review. *Id.* Further, in keeping with this heightened evidentiary standard, any prohibitions against review are to be construed narrowly. *See Marble Mountain Audubon Soc. V. Rice*, 914 F.2d 179, 181 (9th Cir. 1990).

¶15 1 CMC § 9112 defines the process by which judicial review of administrative decisions may be brought before the Superior Court. Subsection (a) states that the "section applies … except to the extent that statutes enacted by the Commonwealth Legislature explicitly preclude judicial review." The parties have not cited, and the Court has not found, any such statute – external to 1 CMC § 9112 – expressly precluding judicial review in this case. However, CSC argues, and the trial court agreed, that subsection (b) of 1 CMC § 9112 bars NMC from seeking judicial review of CSC's decision by the Superior Court. Subsection (b) provides: "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action, is entitled to judicial review of the action within 30 days thereafter in the Commonwealth

Superior Court." Thus, by its very language, subsection (b) provides standing to seek judicial review of agency actions only to "a person."

¶16 The term "person" for purposes of CAPA is defined at 1 CMC § 9101(j) as "an individual, partnership, corporation, association, clan, lineage, governmental subdivision, or public or private organization of any character *other than an agency*" (emphasis added). If this court were to extract these two subdivisions from CAPA and read them isolated from the rest of the statutory scheme, we would agree with CSC and the lower court. These two subdivisions, read alone, would preclude NMC from seeking judicial review of CSC's administrative decision. We have acknowledged this much before. *See e.g. Department of Pub. Safety v. Office of the Civil Serv. Comm'n & Chong*, 2005 MP 06, ¶ 13. However, this Court reads statutes in context in an effort to give a consistent meaning to all sections. *See Estate of Faisao v. Tenorio*, 4 N.M.I. 260, 265 (1995).

¶17 In *Chong*, we noted that CMC § 9112(b) cannot be understood to prohibit agencies from seeking judicial review of administrative rulings when that subsection is read in conjunction with 1 CMC § 9113. Whereas 1 CMC § 9112(b) restricts judicial review to "a person suffering legal wrong," 1 CMC § 9113 allows "[a]n aggrieved party" to appeal the Superior Court's decision to the Supreme Court. Since the definition of "party," found at 1 CMC § 9101(i), expressly includes agencies, we reasoned that it would be inconsistent to read one section as prohibiting an agency from seeking judicial review of an administrative decision, and read the next section as broadening an agency's ability to seek judicial recourse by allowing them to appeal to the Supreme Court. *Chong*, 2005 MP 06 at ¶15-16.

¶18 We determined in *Chong* that the most plausible understanding of this discrepancy was due to the legislature's desire to expand the right of judicial review to non-parties. Id. at ¶ 16. Specifically, by using the term "person" when defining the class of entities entitled to seek judicial review, the legislature meant to broaden the class beyond the real parties in interest who participated in the administrative proceeding below. Had the legislature used the term "party" in 1 CMC § 9112(b), this would have restricted judicial review only to real parties in interest or those who has successfully intervened in the administrative proceeding. By broadening this right to "persons," the legislature intended to allow those "not involved in the agency decision but … nevertheless adversely affected by the agency's action" to seek judicial review. *Id*. Thus, in *Chong* we concluded that 1 CMC § 9112(b) should be read to include agencies who were actual parties to the administrative proceeding, thereby allowing them to seek judicial review.

Non-Decision Making Agencies Who Were a Party to the Administrative Action Have Standing to Seek Judicial Review

¶19 We realize that, at first glance, our holding in *Chong* might seem inconsistent with a plain language reading of CAPA. However, we believe that principles of statutory construction and the policy considerations underlying judicial review of administrative decisions support our decision. This should become more evident as we clarify our reasoning that *Chong* did not "expand standing to agencies who were not in fact parties to the underlying administrative dispute." *Id*. at ¶ 17. This limitation captures what we believe to be the legislature's primary concern embodied in 1 CMC § 9112's provision for judicial review; to keep the courts out of intra-agency disputes.

¶20 In the typical situation, only one agency is directly involved in an administrative proceeding. As an administrative body, an agency will often initiate a proceeding in its executive capacity, and decide that matter according to its own procedures in is quasi-judicial capacity. To use a metaphor from criminal law: an agency sits as the prosecutor, judge, and jury. This is an awesome power, and one that is susceptible of abuse, hence the need for judicial review in certain instances. However, it makes little sense to allow the same agency that renders a decision to seek judicial review of that decision. If, for instance, some faction of an agency was unhappy with the decision of that agency's adjudicative body, it should not be able to circumvent that adjudicative body by looking to the Superior Court to overturn it. To hold otherwise would cause the judiciary to usurp much of the statutory authority and policy discretion given to administrative agencies. In addition to this obvious separation of powers violation, the interests of judicial economy weigh against increased involvement in intra-agency affairs.

¶21 Although an agency representative might present evidence and/or argue for a desired outcome at that agency's administrative proceeding, an agency is not a party to its own proceeding in the conventional sense. "As a general rule an administrative agency has no partisan interests in its decisions." *Miller v. Bureau of Unemployment Compensation,* 117 N.E.2d 427, 429 (Ohio, 1954); *see also Maryland Port Administration v. C.J.*, 438 A.2d 1374, 1378 (Md. App. 1982) ("an administrative agency is not ordinarily a party in interest with respect to the quasi-judicial proceedings it conducts or the quasi-judicial decisions it renders …").[2] Since an agency has no

[2] It should be noted that these cases address an agency's standing to appeal a court's overturning its decision. Although we deal with a different issue here, an agency's ability to seek judicial review, we believe that the legal principles are applicable. If an agency has no interest sufficient to give it standing to appeal absent a statutory grant, then quarreling factions within that agency have even lesser claim to any

cognizable interest in its administrative decision, neither does a faction within that agency enjoy any interest in the agency's decision sufficient to justify judicial review of its decision. Thus, in absence of express statutory authority to the contrary, the judiciary has no business reviewing or resolving intra-agency disputes.

¶22 The Supreme Court of Wisconsin held similarly when it determined that an agency director was not "a 'person aggrieved' and 'directly affected'" so as to be able to seek judicial review under Wisconsin's administrative procedure. *Mortensen v. Pyramid Savings & Loan Association of Milwaukee*, 191 N.W.2d 730, 731 (1971). In that case the director of Milwaukee's Savings and Loan Commission denied Pyramid's application to open an office. Upon Pyramid's request for a review of that decision, however, the Savings and Loan Review Board reversed the director. The director then sought judicial review of the Board's reversal, but the circuit court denied. In affirming that dismissal, the Wisconsin Supreme Court stated that "[a]n administrative officer is not a party for the purposes of seeking review of a reversal of his determination by a board of appeals." *Id*. Quoting 2 Am.Jur., ADMINISTRATIVE LAW, p. 397, sec. 576 in support, the Court went on to note that "'[a]n administrative officer who made an original decision which was appealed to a higher administrative authority was held to have no interest as a party which would entitle him to appeal from the overruling of his decision.'" *Id*.

¶23 It is our opinion that the legislature recognized the problems which might arise if an agency representative could persuade the courts to entertain such intra-agency disputes. Further, we believe this concern forms the basis of 1 CMC § 9112(b)'s

---

interest that would warrant judicial review. Since 1 CMC § 9113 clearly gives an agency standing to appeal the Superior Court's overturning its decision, these cases are authoritative only in that they demonstrate how other courts have similarly found that agencies have no judicially protected interest in their administrative decisions absent express statutory language to the contrary.

limitation that only "a person suffering legal wrong because of agency action" is granted standing to seek judicial review of agency decisions. Had the legislature envisioned a situation like the one before us today, where an agency was a party to an administrative proceeding *in which it was not part of the decision making process*, we believe this standing requirement would have been phrased in more lenient terms. This belief is strengthened by the fact that 1 CMC § 9113 expressly grants agencies standing to appeal decisions from Superior Court proceedings in which they are parties in the conventional sense and outside the decision making process. Further the broad language found in 1 CMC § 9112(d), "final agency action for which there is no other adequate remedy in a court are subject to judicial review," add to our confidence in today's holding.

V.

¶24 We hold that 1 CMC § 9112(b)'s language grants standing for an agency to seek judicial review when that agency was not within the administrative body which enjoyed decision making authority. As such, NMC was entitled to initiate judicial review of CSC's decision to retain Angello. The Superior Court's decision granting summary judgment is REVERSED, and the case is REMANDED for further proceedings consistent with this opinion.

SO ORDERED this 17th day of March, 2006.

/s/
MIGUEL S. DEMAPAN
Chief Justice

/s/
ALEXANDRO C. CASTRO
Associate Justice

/s/
JOHN A. MANGLONA
Associate Justice