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

EDWARD M. DELEON GUERRERO,
Plaintiff-Appellant,

v.

DEPARMENT OF PUBLIC LANDS, COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Defendant-Appellee.

SUPREME COURT NO. 2007-SCC-0025-CIV
SUPERIOR COURT NO. 06-0313C

Cite as: 2011 MP 3

Decided March 31, 2011

Brian Sers Nicholas, Saipan, Northern Mariana Islands, for Plaintiff-Appellant.
Gregory Baka, Saipan, Northern Mariana Islands, for Defendant-Appellee.
BEFORE: ALEXANDRO C. CASTRO, Associate Justice; HERBERT D. SOLL, Justice Pro Tem; EDWARD MANIBUSAN,[1] Justice Pro Tem.

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[1] Oral argument occurred on September 28, 2008. Chief Justice Miguel S. Demapan recused himself on December 20, 2010. Justice Pro Tem Manibusan was appointed to the panel on January 20, 2011.

CASTRO, J.:

¶ 1 Plaintiff -Appellant Edward M. Deleon Guerrero ("Guerrero") appeals the trial court's denial of his claim for damages arising from an alleged breach of contract. The trial court found that the Department of Public Lands' ("DPL") predecessor, the Marianas Public Lands Authority ("MPLA"), exceeded its statutory authority when it entered into a four-year employment contract ("Contract") with him. Guerrero argues that the trial court erred because Public Law 12-71 gave the MPLA Board of Directors ("MPLA Board" or "Board") plenary statutory power to enter into contracts with its employees. He additionally argues that his termination complied with the CNMI Open Government Act ("OGA"), and in the alternative, that passage of P.L. 15-2 terminated his employment obligations to the MPLA as a matter of law. For the reasons set forth herein, we hold that 1) DPL was not liable for breach of contract because the MPLA Board, DPL's predecessor in interest, exceeded its statutory authority when it entered into an employment contract with Guerrero; 2) Guerrero's purported termination by the MPLA Board was null and void for failing to comply with the OGA; and 3) P.L. 15-2 did not terminate Guerrero's employment as a matter law on February 22, 2006. The judgment of the trial court is AFFIRMED.

I

¶ 2 On October 8, 2004, the Chair of the MPLA Board of Directors, Ana Demapan-Castro ("Castro"), entered into a four-year Contract with Guerrero to employ him as the Commissioner of Public Lands ("Commissioner").[2] Under the Contract, Guerrero was to serve until October 7, 2008, receive $80,000 base salary in biweekly payments for a term of four years, and receive five-percent yearly raises subject to availability of funds to cover the increase. Section 10 of the Contract provided several methods of termination; Guerrero could resign or be discharged, with or without cause. If Guerrero was terminated without cause, the Contract provided that Guerrero was entitled to "a lump sum for the remaining duration of the Contract or twelve months, whichever period is longer." Excerpts of Record ("ER") at 25.

¶ 3 On February 22, 2006, the Commonwealth Legislature enacted the Public Lands Act of 2006 ("Act"), designated P.L. 15-2. The Act dissolved the MPLA and transferred its authority to the newly-created DPL. The same day, Governor Benigno R. Fitial appointed John S. Del Rosario, Jr. to serve as Acting Secretary for DPL.

¶ 4 Just before the passage of P.L. 15-2, several Board members agreed to terminate Guerrero "without cause" such that he would be due the lump sum benefit provided in section 10(a) of the

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[2] Castro was acting pursuant to a purported delegation of authority from two former and one then-current MPLA Board member. The Contract was signed by Castro and Guerrero and was certified by Acting Commissioner Vincent T. Castro, Comptroller David S. Demapan, and the Board's legal counsel, Matthew T. Gregory.

Contract.[3] On February 7, 2006 the Board drafted a memorandum of termination which stated that Guerrero was terminated "without cause." The memorandum gave Guerrero a sixty-day termination notice as was required by the Contract and directed that the lump sum severance due under section 10(a) be "processed immediately." ER at 30. Four of five Board members signed the memorandum the same day, and Guerrero waived the sixty-day notice. The following day, Guerrero instructed Margarita Salas, then Chief of Human Resources at the MPLA, to prepare a Request for Personnel Action memorializing his change in employment status. Guerrero obtained three of four necessary signatures, but MPLA Comptroller David S. Demapan ("Demapan") did not certify the request.[4]

¶ 5 The Board held three public meetings in February to resolve certain matters before P.L. 15-2 abolished the MPLA. The agendas for these meetings listed a number of matters pertinent to MPLA operations, but did not otherwise indicate that Guerrero's termination was on the agenda or that it was publicly discussed at any of the special meetings. Guerrero testified at trial, as did Castro, that his termination was discussed during the first meeting under the "miscellaneous" section on the meeting agenda and during "executive sessions" at the last two meetings.

¶ 6 Guerrero, believing he had been terminated by the MPLA Board, did not report to work after February 22. In April 2006, Acting Secretary Del Rosario issued a memorandum to Guerrero purporting to terminate him "for cause" for failing to "report to the Governor or his designee" as required by P.L. 15-2, § 5. Guerrero later demanded payment under section 10(a) of the Contract, and DPL refused.

¶ 7 Guerrero filed suit against DPL on June 26, 2006, alleging that he was due $252,000 under the Contract. The trial court found that although the Contract between Guerrero and the Board was valid on its face, the Board lacked statutory authority to contract with Guerrero for terms that converted the "at will" position of Commissioner into "for cause" employment. The trial court invalidated sections 10(a) and 10(b) of the Contract as well as the four-year term of employment. Guerrero timely filed a Notice of Appeal, and we exercise jurisdiction pursuant to 1 CMC § 3102(a).

II

A. *Guerrero's Contract with the MPLA Board*

¶ 8 Guerrero and the trial court agree that Guerrero and the MPLA Board executed a valid employment contract. Despite this conclusion, the trial court found that the Board exceeded the scope of its statutory authority based on the language of P.L. 12-71, § 2(a), which reads in part: "The Commissioner shall serve *at the pleasure of* the Board of Directors." (Emphasis added). The trial court

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[3] Section 10(a) provides that "[t]he Employer may terminate the Employee without cause upon sixty (60) days advance written notice of termination of employment. In such event, Employer shall pay the Employee a lump sum for the remaining duration of the Contract or twelve months, whichever is longer."

[4] Demapan stated that the MPLA did not have the funds required to process the lump sum payment and that Guerrero's "without cause" termination was politically provocative.

concluded that the phrase "at the pleasure of" in P.L. 12-71, § 2(a) indicated that Guerrero was an "at will" employee. Consequently, the trial court invalidated portions of the Contract, specifically sections 10(a)-(b) and the four-year term of employment, finding that the MPLA Board exceeded its statutory authority when it authorized contractual terms that converted the "at will" position of Commissioner into a "for cause" position.

¶ 9 To determine whether the MPLA Board exceeded its statutory authority, we now examine the MPLA's enabling legislation. Statutory interpretation is an issue of law, and thus, our standard of review is de novo. *Reubenog v. Aldan*, 2010 MP 1 ¶ 15 (Slip Opinion, Jan 29, 2010). The 12th Commonwealth Legislature created the MPLA when it enacted P.L. 12-71 on November 13, 2001.[5] The Legislature intended that "the Board of Public Lands be given broad powers over its operations[] and the leasing of public lands." P.L. 12-71, § 1. In this vein, the Legislature granted the MPLA Board authority to "select, employ, promote and terminate employees, employ contractors and consultants, employ legal counsels, sue and be sued in its own name, [and] make contracts . . . as necessary for the management or disposition of . . . public lands." P.L. 12-71, § 2(b). Public Law 12-71, § 2(a) specifically provided for the position of Commissioner. It stated that "[t]he Commissioner shall serve *at the pleasure of* the Board of Directors." P.L. 12-71, § 2(a) (emphasis added).

¶ 10 The trial court correctly found that the phrase "at the pleasure of" as provided in P.L. 12-71, § 2(a) was a synonym for "at will," thereby defining the Commissioner as an "at will" position. *See, e.g.*, *Covell v. Menkis*, 595 F.3d 673, 677 (7th Cir. 2010); *Mele v. Fed. Reserve Bank*, 359 F.3d 251, 254 (3d Cir. 2004); *Clark v. Head* 526 S.E.2d 859, 861 (Ga. 2000); *Carlson v. Bratton*, 681 P.2d 1333, 1339 (Wyo. 1984). Our interpretation of "at the pleasure of" is underscored by hundreds of Federal Courts of Appeals decisions interpreting this phrase.[6]

¶ 11 Guerrero urges us that P.L. 12-71, § 2(a) does not limit the broad grant of authority given to the MPLA Board by P.L. 12-71, § 2(b). He suggests that "no where [sic] in P.L. 12-71 can one find any limitations being imposed on the ability of the Board to define the employment of [Guerrero] at its pleasure." Appellant's Opening Br. at 7. In interpreting P.L. 12-71, § 2(a), we are mindful of the basic canon of statutory interpretation that "all parts of an enactment should be harmonized with each other as

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[5] Public Law 12-71 was codified at 1 CMC §§ 2801-06 until it was repealed by P.L. 15-2, the Public Lands Act of 2006. Public Law 15-2 is currently codified starting at 1 CMC § 2801.

[6] We offer a mere fraction of the published opinions defining "at the pleasure of" as "at will." *See Winder v. Erste*, 566 F.3d 209, 216 (D.C. Cir. 2009); *Darr v. Town of Telluride*, 495 F.3d 1243, 1252 (10th Cir. 2007); *Lane v. City of Lafollette*, 490 F.3d 410, 420 (6th Cir. 2007); *Hill v. Borough of Kutztown*, 455 F.3d 225, 235 (3d Cir. 2006); *Elmore v. Cleary*, 399 F.3d 279, 282 (3d Cir. 2005); *Mannix v. County of Monroe*, 348 F.3d 526, 533 (6th Cir. 2003); *Ulrich v. City & County of San Francisco*, 308 F.3d 968, 975 fn.4 (9th Cir. 2002); *Julian v. City of Houston*, 314 F.3d 721, 729 (5th Cir. 2002); *Pleva v. Norquist*, 195 F.3d 905, 915 (7th Cir. 1999); *Spriggs v. Diamond Auto Glass*, 165 F.3d 1015, 1018 (4th Cir. 1999); *Chabal v. Reagan*, 841 F.2d 1216, 1223 (3d Cir. 1988); *Witte v. Justices of N.H. Super. Ct.*, 831 F.2d 362, 363 (1st Cir. 1987).

well as with the general intent of the whole enactment, [with] meaning and effect given to all provisions." *Reubenog*, 2010 MP 1 ¶ 35 (citing *Carrols Dev. Corp. v. Ross*, 85 A.D.2d 104, 108 (N.Y. App. Div. 1982)). We must "give effect, if possible, to every clause and word of a statute." *United States v. Menasche*, 348 U.S. 528, 538-39 (1955) (citing *Labor Board* v. *Jones & Laughlin Steel Corp*., 301 U.S. 1, 30 (1937)).

¶ 12 These principles require us to harmonize the language of P.L. 12-71, § 2(a) with § 2(b): P.L. 12-71, § 2(a) states that "[t]he Commissioner *shall* serve at the pleasure of" while P.L. 12-71, § 2(b) states that "[t]he Board of Directors *may* select, employ, promote and terminate employees." (Emphases added). The word "shall" as used in P.L. 12-71, § 2(a) is mandatory language that indicates what *must* be done. *Aquino v. Tinian Cockfighting Bd.*, 3 NMI 284, 292-93 (1992); *see also Lopez v. Davis*, 531 U.S. 230, 241 (2001) (noting that Congress uses "shall" to indicate "discretionless obligations"); *accord Doyle v. City of Medford*, 606 F.3d 667, 673 (9th Cir. 2010) (affirming that "shall" indicates restricted discretion). In contrast, the word "may" in P.L. 12-71, § 2(b) is permissive. *N. Marianas Coll. v. Civil Serv. Comm'n*, 2007 MP 8 ¶ 9 (citing *In re Rofag*, 2 NMI 18, 26 n.6 (1991)) (holding that use of the word "may" denotes permissive statutory language). When we interpret P.L. 12-71, § 2(a) together with section 2(b), the full statutory scheme emerges. Public Law 12-71, § 2 granted the Board discretion to conduct its business as it chose, *except* for the position of Commissioner, which was statutorily defined as "at will." To hold otherwise would render the language defining the position of Commissioner in P.L. 12-71, § 2(a) superfluous because it would create no grant or restriction of authority above what was already allocated by P.L. 12-71, § 2(b).

¶ 13 The legal effect of our interpretation of P.L. 12-71, § 2(a) on Guerrero's Contract is unambiguous. Our statutes and laws are a part of every contract in the Commonwealth. *Ehco Ranch, Inc. v. State ex rel. Evans*, 693 P.2d 454, 457 (Idaho 1984); *see also* ER at 27.[7] Statutes controlling employment status cannot be superseded by language in a contract. *Portman v. County of Santa Clara*, 995 F.2d 898, 905 (9th Cir. 1993) ("Under California law, the terms of *public* employment are governed entirely by statute, not by contract, and hence as a matter of law, there can be no express or implied-in-fact contract between plaintiff and [the County] which restricts the manner or reasons for termination of his employment.") (alteration in original) (citation omitted). Governmental bodies are not bound by contracts that exceed statutory grants of authority. *Id.*; *United States v. San Francisco*, 310 U.S. 16, 32 (1940) (citation omitted). A person contracting with a public entity is charged with knowledge of the statutes governing employment with that entity. *Kelly v. Ogata*, 120 F. Supp. 1233, 1250 (D. Haw. 2001).

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[7] Guerrero's Contract is reproduced in the record at pages twenty-one to twenty-eight. Section 12 on page twenty-seven sets forth the applicable law governing the contract: "This Contract shall be governed by and subject to the laws of the Commonwealth, both as to performance and interpretation therein."

Here, Guerrero should have known that he was an "at will" employee. While the MPLA Board had broad authority to enter into contracts with employees, including Guerrero, the MPLA Board had no discretion to alter the nature of the statutorily defined position of Commissioner.

¶ 14 It follows that the four-year term of employment in the Contract is void *ab initio*, being utterly in conflict with the "at-will" nature of the Commissioner's employment. *See, e.g., Shoemaker v. City of Lock Haven*, 906 F. Supp. 230, 236 (M.D. Pa. 1995) (finding that City of Lock Haven was only authorized to hire a police chief on an "at-will" basis, and the term fixing duration of employment was void *ab initio*). So too is section 10(b) which contains grounds for which Guerrero could be terminated "for cause."[8] Section 10(b) contradicts P.L. 12-71, § 2(a) because it places a substantial burden on the Board's ability to remove Guerrero.[9] Finally, we hold that section 10(a), whether intended or otherwise, places an impermissible restriction on the Board's ability to terminate Guerrero through imposition of a large financial disincentive. The severance terms in section 10(a) provide Guerrero with a minimum of $80,000. If Guerrero had been terminated without cause shortly after he signed the Contract, Guerrero would have been entitled to well over $300,000. When faced with a payout of this magnitude, it is obvious that the Board would think twice before discharging Guerrero. *See, e.g., Figuly v. City of Douglas*, 853 F.Supp. 381, 388 (D. Wyo. 1994) (finding that a contract providing eighteen-month's severance pay provided "great disincentive" to terminate a city administrator and was therefore voidable); *Shows v. Morehouse Gen. Hosp.*, 463 So. 2d 884, 886 (La. Ct. App. 1985) (finding that the employment contract between a hospital administrator and a city was void because the contract clause requiring two years' notice or two years' severance pay contravened a Louisiana statute). Thus, this provision is void because it impairs the Board's discretion to discharge Guerrero for any reason or no reason.[10]

¶ 15 Guerrero argues that the trial court erroneously relied on the District Court of the Northern Mariana Islands case *Hofschneider v. Demapan-Castro*, No. CV-04-0022 (D. N. Mar. I., April 11, 2005) (Order on Motion to Dismiss), in determining that the MPLA Board exceeded its statutory authority. He

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[8] Section 10(b) begins: "The employer may terminate this Contract at any time *for cause* . . . . should any of the following occur . . . ." ER at 26 (emphasis added). Although the trial court did not explicitly mention section 10(b) in its decision, it did specify that "the provisions at Section 10 of the plaintiff's written employment contract that provide for 'termination with cause,' and that impose procedural preconditions upon the effectiveness of the board's decision to terminate the plaintiff's employment, work to transform the contract from an 'at-will' employment agreement into a 'for-cause' agreement." *Commonwealth v. Department of Public Lands*, Civ. No. 06-0313C (NMI Super. Ct. July 25, 2007) (Findings of Fact and Conclusions of Law at 16) Although the reference to section 10(b) is indirect, section 10(b) is the only provision in section 10 which mentions "for cause" grounds for termination.

[9] Section 10(b) includes a notice procedure clause, an entitlement to administrative review with pay clause, and a reinstatement clause among others.

[10] We do not reach a public policy discussion in this case because the Legislature unequivocally spoke when it specified that the position of Commissioner of the Board was "at will." Therefore, will not address Guerrero's public policy argument that the current board only intended to bind itself and not its successors.

charges that *Hofschneider* relied on two inapposite cases; specifically, *Berstein v. Lopez*, 321 F.3d 903 (9th Cir. 2003) and *Kelly v. Ogata*, 120 F. Supp. 2d 1244 (D. Haw. 2000).

¶ 16 In *Lopez*, a group of school administrators argued that administrative procedures adopted by the school district created a property right in their continuing employment with the school district. *Lopez*, 321 F.3d at 905. The *Lopez* Court relied on the principal that public employment in California was controlled by statute and that "no employee [had] a vested contractual right to continue employment beyond the time or contrary to the terms and conditions fixed by law." *Id.* (citing *Miller v. State*, 557 P.2d 970, 973 (Cal. 1977)). The Ninth Circuit Court of Appeals held that in the absence of statutory language to the contrary, the school administrators were not exempt from provisions making their public employment "at will." *Id.* at 906-07. Here, Guerrero's employment was subject to P.L. 12-71, § 2(a), a provision which was then part of CNMI statutory law.[11] Like the school administrators in *Lopez* who were not exempt from California civil service statutes, no statutory provisions exempted Guerrero from the "at will" employment clause in P.L. 12-71, § 2(a). *Lopez* is on point.

¶ 17 Guerrero also assigns error to the trial court's and *Hofschneider's* reliance on *Kelly v. Ogata*. He argues that while *Ogata* "involves a Hawai'i statute similar to the one here . . . , there was more. Specifically, the employment application acknowledged by the employee [in *Ogata*] clearly stated that [the plaintiff] was 'at will.'" Plaintiff's Opening Br. at 7. In *Ogata*, a Hawai'i statute provided that "officers and employees of the administrator serve on an at will basis." 120 F. Supp. at 1250. The *Ogata* plaintiff contended that despite the language of the statute, he was no longer an "at will" employee because of oral representations made by the plaintiff's supervisor. *Id.* at 1251. The *Ogata* judge rejected this argument, finding that the plaintiff's employment contract indicated that the plaintiff was "at will" unless there was a "specifically acknowledged" writing to the contrary. *Id.* Guerrero relies on these facts to argue that *Ogata* signifies that a "specifically acknowledged" writing could convert an employee's status to "for cause" employment despite the presence of a contrary statute. Guerrero reasons that because his Contract specified that he was a "for cause" employee, P.L. 12-71, § 2(a) should not apply. This argument fails because *Ogata* found that "any contractual modifications of plaintiff's term of [at will] employment would have been contrary to law, and therefore invalid." *Id.* at 1250 n.6. Thus, *Ogata* indicates that the plaintiff's employment contract would have been invalid if it had specified "for cause" employment terms in contravention of the Hawai'i statute. *Ogata* recognizes, as do we, that a governmental body cannot contract around express statutory language. *Lopez* and *Ogata* stand for the propositions cited. The trial court was justified in relying on them and on *Hofschneider*.

¶ 18 Guerrero nominally argues that "the drafters of P.L. 15-2 appeared to have recognized . . . that [Guerrero] was not an 'at will' employee," Appellant's Opening Br. at 8, because P.L. 15-2, § 7 states that

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[11] This provision was codified at 1 CMC § 2801 until P.L. 15-2 repealed it.

enactment of P.L. 15-2 should not be "construed as effecting any lawful existing right acquired under contract or acquired under statutes repealed." While we recognize that P.L. 15-2, § 7 is a savings clause designed to protect previously acquired contractual rights, Guerrero's Contract did not provide him with an expectation of continued employment. Public Law 12-71, § 2(a) made Guerrero an "at will" employee; "at will" employees have no property interest in continued employment. *Haddle v. Garrision*, 525 U.S. 121, 125-27 (1998) (citing *Bishop v. Wood*, 426 U.S. 341, 345-47 (1976)). Guerrero's Contract gave him no expectation of continued employment as the MPLA Commissioner.

B. *Termination under the Open Government Act*

¶ 19 We now address whether the MPLA Board complied with the provisions of the OGA when it purportedly terminated Guerrero's employment with a memorandum of termination signed by the MPLA Board on February 7, 2006. In order to determine whether this termination was proper, we look to the OGA, which provides specific requirements for termination of government employees. Statutory interpretation is an issue of law which we review de novo. *Reubenog*, 2010 MP 1 ¶ 15. We review findings of fact for clear error. *In re Estate of Deleon Castro*, 2009 MP 3 ¶ 28.

¶ 20 The OGA applies to "governing bodies," and "public agencies" as defined by 1 CMC §§ 9902(c) and (e). Pursuant to 1 CMC § 9912(a)(4), a governing body may evaluate "the qualifications of an applicant for public employment" and "review the performance of a public employee" in a closed executive session. In contrast, final action such as "hiring, setting the salary of . . . employees, or discharging an employee shall be taken in a meeting open to the public." 1 CMC § 9912(a)(4). "Meeting" is defined as "a meeting at which action is taken." 1 CMC § 9902(d). "Final action" is "a collective positive or negative decision, or an actual vote by a majority of the members of a governing body . . . , upon motion, proposal, resolution, order, or ordinance." 1 CMC § 9902(b). A public agency or governing body may hold special meetings that may be called at any time, as long as notice is proper. 1 CMC §§ 9910-11. Actions taken by a governing body that do not comply with the above-referenced provisions of the OGA "shall be null and void." 1 CMC § 9907.

¶ 21 The trial court made a number of undisputed findings of fact relevant to this discussion: the MPLA Board was a "governing body" under 1 CMC § 9902(c); Guerrero's termination was a "final action" as defined by 1 CMC § 9902(b); the MPLA Board held special meetings on February 7, 13, and 21, 2006, that complied with 1 CMC § 9902(d); and the MPLA properly called and noticed the special meetings pursuant to 1 CMC §§ 9910-11. The only remaining issue is whether the MPLA Board took "final action" on Guerrero's putative termination at a "meeting open to the public" as required by 1 CMC § 9912(a)(4). Guerrero asserts that his termination complied with 1 CMC § 9912(a)(4); the trial court made numerous findings to the contrary:

> There is no indication in the meeting agenda published in the newspapers or distributed to board members that the MPLA Board intended to discuss or act upon any pending employment matters at its February meetings. There is clearly no reference to the matter of the plaintiff's termination as MPLA Commissioner. Moreover, the public record of these meetings that was presented to the Court, including the board's executive session held on February 22, 2006, fails to show that plaintiff's termination was ever discussed. Although plaintiff testified that the board discussed his termination at nearly every meeting, and the former Chairwoman testified that the matter was raised either "off-the-record," or in executive sessions under the agenda item labeled "miscellaneous," the Court finds based upon the written documents and recorded proceedings that the MPLA Board actually made no decision and took no action regarding the termination of the plaintiff's employment at any of its February meetings.

Commonwealth v. Department of Public Lands, Civ. No. 06-0313C (NMI Super. Ct. July 25, 2007) (Findings of Fact and Conclusions of Law at 7). The record contains meeting agendas and public notices for each of the February meetings. Neither the meeting agendas nor the public notices contradict the trial court's findings. They contain no suggestion that the Board took final action as required by 1 CMC § 9912(a)(4). Guerrero directs us to trial testimony of Chairperson Castro, arguing that her testimony shows that the Board took final action on his employment. The portions of the record that Guerrero cites prove otherwise. Castro's testimony indicates that on February 7, 2010 the Board discussed both Guerrero's termination and the availability of funds to pay employees, but does not indicate that the Board took final action on Guerrero's employment via a public vote.[12] Castro's testimony also shows that the memorandum of termination was discussed in a closed executive session on February 17.[13] The record

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[12] PLAINTIFF'S COUNSEL: So, going back then to your – the sequences of this meeting and it's important for the court to know – on February 7, is it your testimony that, you know, the termination was discussed and all the board members present agreed to it?

CASTRO: Yes. Yes, we did. We discussed that. We also discussed about the amount of compensation that we need to satisfy the contract.

ER at 56.

JUDGE MANGLONA: So February 6 was a called for board meeting. February 7th in the morning termination memo was signed by the board members. And then the notice hearing or the called meeting for February 7, 2006 at 9 a.m. addressed it?

CASTRO: Let me just, let me just clarify. The February 7 meeting, the board were [sic] discussing availability with funds [INAUDIBLE] employees. Okay.

JUDGE MANGLONA: Including Mr. Deleon Guerrero.

CASTRO: Correct.

ER at 65-66.

[13] PLAINTIFF'S COUNSEL: Without getting to the, you know, cause as you know, the Executive Sessions are of a private nature.

CASTRO: Yes. It is not open to public.

ER at 59.

JUDGE MANGLONA: So I guess the question I have is, was the termination memo dated February 6, 2006, [INAUDIBLE] exhibit before or after the board meeting, the notice of February 7?

does not contain clear indications of what was discussed at the February 22 meeting. While Castro's testimony as to what transpired at the three February meetings is not conclusive, the standard for overturning the trial court's findings of fact is whether we have a "a firm conviction" that the trial court's findings were clearly erroneous. *Rogolofoi v. Guerrero*, 2 NMI 468, 476 (1992). In this case, we are compelled to give due deference to the trial court.

¶ 22 Based on its findings of fact, the trial court properly applied the OGA. The OGA requires that any final action regarding "hiring, setting the salary of an individual employee or class of employees, or *discharging* an employee . . . shall be taken in a meeting open to the public." 1 CMC § 9912(a)(4) (emphasis added). This language appears in 1 CMC § 9912, titled "Executive Sessions," which sets forth the conditions under which a governing body is permitted to conduct its business in sessions closed to the public. Title 1 CMC § 9912(a)(4) lists a number of matters regarding employee status that may be discussed in an executive session, but immediately contrasts these matters with "final actions" which may not. "Final actions" involving termination of employees must be conducted in a manner that is "open to the public." 1 CMC § 9912(a)(4). In this case, the trial court found that Guerrero's termination was never voted on or otherwise ratified during portions of the February meetings that were "open to the public."[14] The result of governmental failure to comply with the OGA is that "[a]ction taken at meetings failing to comply with the provisions of this chapter shall be null and void." 1 CMC § 9907. The MPLA Board's attempt to terminate Guerrero was "null and void" for failure to comply with 1 CMC § 9912(a)(4).

C. *Termination under Public Law 15-2*

¶ 23 Finally, Guerrero argues that his employment with the MPLA was terminated as a matter of law when Governor Fitial appointed John S. Del Rosario, Jr. as Acting Secretary of DPL on February 22, 2006. On the one hand, Guerrero argues that he was merely required to report to "the Governor or his designee *until* the secretary of public lands [was] appointed," Appellant's Opening Br. at 11 (citing P.L. 15-2, § 5) (emphasis added), and because the Governor made an appointment, this immediately terminated his employment obligations to the MPLA. On the other hand, the trial court found that public policy dictated that "a public official may not be relieved of the obligations of [his] position through resignation until a successor is duly confirmed in the position." ER at 18 (citing *Thompson v. U.S.*, 103 U.S. 480, 481-83 (1880)). Though the trial court did not explicitly state the proposition, it found that

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> CASTRO: We signed that on February 7th, okay, [INAUDIBLE] discussed on miscellaneous on our meeting of February, on exhibit G meeting. Exhibit F meeting [INAUDIBLE] discussed on the executive meeting on February 17 the memorandum of February 7.

ER at 64.

[14] The outcome of any final action should appear in the meeting minutes as specified in 1 CMC § 9914. If there were meeting minutes verifying Guerrero's claim that his termination was taken in a final action in a meeting open to the public, those minutes should appear in the record. No meeting minutes are present in the record.

public policy required the Acting Secretary be confirmed by the Senate before Guerrero could be relieved of his responsibilities as Commissioner. The crux of the matter is clear: Guerrero argues that P.L. 15-2, § 5 only required that the Governor appoint an Acting Secretary; the trial court implicitly found that the P.L. 15-2, § 5 required appointment by the Governor *and* confirmation by the Senate.

¶ 24 While we would ordinarily proceed with statutory analysis of P.L. 15-2, § 5, we decline to do so in this case because Guerrero did not adequately brief the issue. As we have stated in other cases, "we will not consider an issue for which the proponent cites no legal authority." *In re Estate of Angel Malite*, 2010 MP 20 ¶ 27 n.27 (Slip Opinion, Dec. 28, 2010) (citing *Fitial v. Kyung Duk*, 2001 MP 9 ¶ 18); *Roberto v. De Leon Guerrero*, 4 NMI 295, 297-98 (1995). Guerrero does not cite a single case in his brief nor does he reference any public policy arguments favoring his position. We accept as a matter of course the trial court's conclusion that P.L. 15-2, § 5 did not terminate Guerrero's employment with the MPLA on February 22. Nevertheless, because both Guerrero and the trial court agree that February 22 was the cutoff date for any liability accruing between Guerrero and DPL, we will not disturb the trial court's ultimate legal conclusion.[15]

¶ 25 Guerrero contests the trial court's legal conclusion that he abandoned his position as Commissioner. The trial court reached this conclusion after it determined that Guerrero had not tendered a formal resignation. The trial court cited no legal authority for its theory of resignation or for its concomitant finding of abandonment. We decline to explore this ambiguity because we have already determined that February 22, 2006 was the cutoff date for Guerrero's duties to the MPLA. However, because Guerrero's legal status on February 22, 2006 is indeterminate, it would be unfair to Guerrero to uphold the trial court's conclusion of abandonment. We reverse the trial court on this minor point.

III

¶ 26 In conclusion, we hold that that DPL is not liable to Guerrero for breach of contract because the MPLA Board exceeded its authority when it entered into a "for cause" contract with Guerrero granting him a fixed term of employment and certain severance benefits. We further hold that the MPLA Board failed to observe the provisions of the OGA thereby rendering the Board's attempt to terminate Guerrero null and void. Finally, we hold that P.L. 15-2, § 5 did not terminate Guerrero's obligations to DPL as a matter of law and because Guerrero and the trial court agree on the cutoff date for liability between Guerrero and DPL. Accordingly, the judgment of the trial court is AFFIRMED.

SO ORDERED this 31st day of March, 2011.

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[15] The Government did not submit a brief for this appeal.

/s/
ALEXANDRO C. CASTRO
Associate Justice

/s/
HERBERT D. SOLL
Justice Pro Tem

/s/
EDWARD MANIBUSAN
Justice Pro Tem