

Vicente T. ATTAO, et al.
vs.
Rex I. PALACIOS, et al.

Court would exercise its discretion in abstaining from considering the complaint.

Civil Action No. 87-0001
District Court NMI

Decided April 9, 1987

1. Jurisdiction - District Court

The District Court of the NMI has jurisdiction over suits brought under 42 U.S.C. §1983 if the cause or causes of action involve federal questions, and the court also has the power to consider non-federal claims which are pendent to §1983 claims.

2. Constitutional Law - Due Process - Post Deprivation Remedies

The due process clause is not violated by negligent deprivation of property where an adequate state post-deprivation remedy exists.

3. Constitutional Law - Due Process - Post Deprivation Remedies

Where a post-deprivation remedy exists for the enforcement of contractual rights, even where the defendant-employer is the Commonwealth government or persons or agencies representative thereof, due process is not violated.

4. Jurisdiction - District Court - Abstention

Allegations that the government's failure to rehire certain government employees and to fund their positions was contrary to and violative of the provisions of a Commonwealth statute are allegations best left to the Commonwealth Trial Court for initial resolution and District

APR 09 1987

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS

For The Northern Mariana Islands

By [Signature]

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4	VICENTE T. ATTAO, et al.,)	CIVIL ACTION NO. 87-0001
5	Plaintiffs,)	
6	vs.)	<u>DECISION AND ORDER</u>
7	REX I. PALACIOS, et al.,)	
8	Defendants.)	
9	_____		

11 Plaintiffs are former employees of the Commonwealth
 12 House of Representatives whose employment was terminated in 1986.
 13 They allege that their terminations failed to comport with
 14 fundamental due process and equal protection requirements of the
 15 United States Constitution, in violation of 42 U.S.C. §1983. The
 16 Court sua sponte invited briefing and oral arguments on the issue
 17 of subject matter jurisdiction. This suit is dismissed for the
 18 reasons set out herein.

FACTS

20 Plaintiffs Vicente T. Attao, Jesus SN. Lizama, Frances
 21 P. Hernandez, Oscar M. Babauta, Pedro P. Castro, Antonio S.
 22 Wabol, Martin M. Sablan, and Jose S. Terlaje were employees of
 23 the minority members of the Commonwealth House of
 24 Representatives. They were terminated in 1986 and filed suit
 25 against Rex I. Palacios, individually and as Director of Finance,
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1 Jose Lifoifoi, individually and as Speaker of the House of
2 Representatives, and the Government of the Northern Mariana
3 Islands. The suit alleges that: (1) they were not paid in full
4 for their services and, (2) they were unlawfully terminated in
5 violation of Public Law 5-13, §6(c), which they contend requires
6 that they be re-hired.

7 Plaintiffs allege that the acts complained of violate
8 CNMI law as well as their rights to due process and equal
9 protection under the laws of the United States Constitution.
10 Plaintiffs further allege that these acts were committed under
11 color of law and, therefore, based federal jurisdiction on 42
12 U.S.C. §1983 (hereinafter §1983).

13 ANALYSIS

14
15 [1] This Court has jurisdiction over suits brought under
16 §1983 if the cause or causes of action involve federal questions.
17 This Court also has the power to consider non-federal claims
18 which are pendent to §1983 claims. Thompkins v. Stuttgart School
19 District No. 22, 787 F.2d 439, 441 (8th Cir. 1986).

20 [2.3] A close review of the complaint herein indicates that
21 the Plaintiffs are seeking redress for what is essentially a
22 breach of contract and for constitutional violations stemming
23 from breach of contract claims. The difficulty facing this Court
24 is its inability to accept Plaintiffs' claim that a §1983 cause
25 of action has been factually pleaded. Rather, this is a breach
26 of contract suit couched in terms of §1983 for which adequate

1 judicial relief is available in the Commonwealth Trial Court.
2 The due process clause is not violated by negligent deprivation
3 of property where an adequate state post-deprivation remedy
4 exists. Hudson v. Palmer, 104 S.Ct. 3194, 3204 (1984). This
5 Court holds that where a post-deprivation remedy exists for the
6 enforcement of contractual rights, due process, as in this case,
7 is similarly not violated.

8 The fact that the defendant-employer is the
9 Commonwealth government or persons or agencies representative
10 thereof, does not necessarily, in this case particularly,
11 transform a breach of contract suit into a case of constitutional
12 magnitude. Braden v. Texas A & M University, 636 F.2d 90, 93
13 (5th Cir. 1981).

14 If the state had merely breached a
15 contract with Braden he would have had no
16 cause of action under Section 1983. Relief
17 is predicated on a denial of a constitutional
18 right. Baker v. McCollan, 443 U.S. 137,
19 138-140, 99 S.Ct. 2689, 2692, 61 L.Ed.2d 433
20 (1979). Just as Section 1983 does not create
21 a cause of action for every state-action
22 tort, Baker v. McCollan, 443 U.S. 137, 99
23 S.Ct. 2689, 61 L.Ed.2d 433 (1979);
24 Shillingford v. Holmes, 634 F.2d 263 (5th
25 Cir. 1980), it does not make a federal case
26 out of every breach of contract by a state
agency. Id.

27 To characterize this dispute as a constitutional
28 violation could open the floodgates to §1983 suits against the
29 Commonwealth anytime a government employee is not paid for his
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1 service or labor.^{1/} A federal cause of action would be possible
2 every time a government employee was not paid in a timely manner.
3 This is not the purpose of §1983. Braden, 636 F.2d at 93.

4 [4] Plaintiffs also allege that the government's
5 failure to re-hire them and to fund their positions is contrary
6 to and violative of the provisions of P.L. 5-13, §6(c).
7 Resolution of this controversy may call for an interpretation or
8 judicial construction of statutory language, or a finding that
9 there has been a violation of a completely unambiguous statute.
10 The government's argument, based on Railroad Commissioner of
11 Texas v. Pullman Co., 312 U.S. 496 (1941) that the Legislature's
12 employment practices involve purely Commonwealth law and are,
13 therefore, best left to the Commonwealth Trial Court for initial
14 resolution is persuasive.

15 Few public interests have a higher claim
16 upon the discretion of a federal chancellor
17 than the avoidance of needless friction with
18 state policies, whether the policy relates to
19 the enforcement of the criminal law, Fenner
20 v. Boykin, 271 U.S. 240, 46 S.Ct. 492, 70
21 L.Ed. 927; Spielman Motor Co. v. Dodge, 295
22 U.S. 89, 55 S.Ct. 678, 79 L.Ed. 1322; or the
23 administration of a specialized scheme for
24 liquidating embarrassed business enterprises,
25 Pennsylvania v. Williams, 294 U.S. 176, 55
26 S.Ct. 380, 79 L.Ed. 841, 96 A.L.R. 1166; or
the final authority of a state court to
interpret doubtful regulatory laws of the

1/ Overall Economic Development Strategy: 1987, published by the
CNMI Budget and Planning Office, shows that 3028 persons in
the Marianas are employed by government (2959 by the CNMI, 69
by the Trust Territory) which represents twenty three percent
of the workforce of the Northern Mariana Islands.

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state, Gilchrist v. Interborough Co., 279 U.S. 159, 49 S.Ct. 282, 73 L.Ed. 652, cf. Hawks v. Hamill, 288 U.S. 52, 61, 53 S.Ct. 240, 243, 77 L.Ed. 610. These cases reflect a doctrine of abstention appropriate to our federal system whereby the federal courts, "exercising a wise discretion", restrain their authority because of "scrupulous regard for the rightful independence of state governments" and for the smooth working of the federal judiciary. Id. at 500-501.

For failure to state a justiciable cause of action on constitutional grounds and exercising the dictates of discretion in the application of the doctrine of abstention, the complaint is hereby DISMISSED.

IT IS SO ORDERED.

DATED this 9th day of April, 1987.



JUDGE ALFRED LAURETA