



Executive Summary
Port Authority of Guam Back Wages Series, Part A
OPA Report No. 21-03, February 2021

Our performance audit of the back wages of the first of nine reinstated Port Authority of Guam (Port) employees – “Employee Q” – found significant deficiencies in the basis of Port’s calculations for back wages, Medicare tax, retirement contribution, and interest charge that resulted in overpayments of at least \$96 thousand (K) in back wages and \$18K in interest for a total of \$114K. While Port’s legal remedies with Employee Q were generally made in accordance with administrative and judicial review judgments and orders, we found instances of potential noncompliance with applicable laws, regulations, and internal policies, as well as lapses in Port’s internal processes.

Specifically, we found:

- Port adhered to certain terms and conditions of Employee Q’s that were not required by the Civil Service Commission (CSC) or the courts’ judgments, such that:
 - The highest number of incremental sub-steps were granted based partly on two (2) prior years’ “Outstanding” performance evaluation ratings that were not approved by the former (or any) General Manager (GM); and
 - A 6% interest charge was paid to Employee Q without any court order requirement, negotiated terms, and proper calculation.
- Successor management approved salary increments that their predecessors did not approve of themselves;
- Legal remedies were executed without seeking the Board of Directors’ (Board) ratification by resolution and without a formal agreement and liability release until after the final payment in May 2020; and
- Different legal opinions resulted in delay and certain unorganized remedial actions.

Port Adhered to Certain Terms & Conditions of Employee Q’s Not Required by CSC or the Courts’ Judgments

Port calculated Employee Q’s back wages based on CSC and the courts’ judgments, as well as on certain terms and conditions requested by the employee. Employee Q’s additional terms included: (a) granting him the highest number of sub-steps for the annual salary increments within the termination period, based on prior “outstanding” performance evaluation ratings; and (b) paying him a 6% interest charge.

Highest Number of Incremental Sub-Steps Granted Based Partly on Prior “Outstanding” Performance Evaluation Ratings Not Approved by Any GM. Under Port’s Personnel Rules and Regulations (PRR) and salary increment point system, an approved performance evaluation report serves as the basis for whether an employee receives a salary increment or not and for how high

the salary increment shall be. On performance evaluation alone, a Port employee can earn zero (0) to five sub-steps (or 5%) on their annual salary increment. For the termination period (December 19, 2012 through July 29, 2018), Port granted Employee Q with salary increments at five sub-steps each for 2013 through 2017. According to the incumbent GM, Port determined the five sub-step salary increments by averaging the overall performance ratings of Employee Q's last three years actively employed at Port, or in 2010, 2011, and 2012.

While all three performance evaluations indicated overall ratings of "outstanding" (which correspond to five sub-steps), two of the evaluations (for the 2011 and 2012 annual increments) did not bear the former (or any) GM's signature to indicate approval of the overall performance rating, as required by Port's PRR (PRR 6.302, 7.008, and 7.010). Therefore, Employee Q was not eligible to receive salary increments for 2011 and 2012, as evident by the absence of the former (or any) GM's signatures on the evaluation documents. When averaging the sub-steps allowable under Port's PRR and salary increment point system, Employee Q would be eligible for only two sub-steps, as opposed to the five sub-steps Port granted.

In line with the existing PRR for annual increments, we recommend that the GM and the Board standardize a salary increment process for back wages to include a required performance evaluation report (of the sort) accountable to the incumbent GM who approves the number of sub-steps on the personnel action forms.

A 6% Interest Charge (\$95K) Was Paid to Employee Q Without Any Court Order Requirement, Negotiated Terms, and Proper Calculation. Port paid Employee Q \$95K in interest for the period of December 19, 2012 through September 15, 2018. Neither CSC nor the courts ordered Port to pay the 6% interest charge per day requested by Employee Q in his "remedy request letter," which was addressed to and approved by Port's Deputy GM of Administration and Finance (DGMA). Yet, Port did not exercise its option to negotiate an interest rate lower than 6%, as allowable by Title 18 Guam Code Annotated (GCA) Chapter 47 §47106.

By approving the remedy request letter, the DGMA accepted the following issues surrounding this interest charge: (a) a daily 6% interest rate that translates into interest of 2,190% per year, which is exceptionally above the legal rate; (b) the principal amount to be charged with interest was not stated and fixed; and (c) the time, or period (start and end date), in which interest was to be charged was not stated and fixed. Port applied and paid the 6% interest on, generally, an annual basis.

For the same period Port calculated the \$95K interest charge, our audit calculated only \$77K in interest. Just as Port's \$95K interest charge was calculated based on the five sub-step annual salary increments Port granted for the termination period, so was our \$77K interest calculation, as opposed to basing interest on the two sub-steps our audit determined. Port's \$18K overpayment was due primarily to Port not considering time in its interest calculation. Compared to the simple interest formula in which Principal x Rate x Time = Interest, Port's \$95K interest payment resulted from calculating only Principal x Rate. For the same period, Port agreed they overpaid Employee Q by \$18K.

Successor Management Approved Salary Increments That Their Predecessors Did Not Approve Themselves

We found that both Port's prior and incumbent management prepared *identical* Notifications of Personnel Action (NPA) forms for Employee Q's 2011 and 2012 salary increments, despite the GM as of the performance rating period ending being different from the GM's name stated on the evaluation report, and different from the GM whose Deputy authorized the salary increment NPA.

As of November 25, 2020, both the 2011 and 2012 performance evaluation reports themselves remain unsigned by any GM, despite the requirements of Port's PRR. The NPAs for the 2011 and 2012 salary increments (of five sub-steps each) had a domino effect on the subsequent years' pay ranges and salaries. These NPAs became the basis for subsequent salary increases – salary increments for 2013 through 2017, pay adjustments in 2016 and 2018, and the 2019 salary increment.

Legal Remedies Without Seeking Board Ratification by Resolution and Executed Without a Formal Agreement and Liability Release Until After the Final Payment in May 2020

Despite the significant financial impact brought on by the differing legal opinions, this did not motivate Port management to seek and secure Board ratification and execute a formal agreement with a liability release provision before final payments were made. Considering the significant financial impacts of legal remedies paid to Employee Q, we recommend the GM seek the Board's ratification, via board resolution, specifying the composition of total back wages and interest paid to Employee Q.

Furthermore, Port risked the possibility of Employee Q, or his beneficiaries, pursuing further financial demands and litigation on the same termination lawsuit. After we brought up our concern to Port during our July 14, 2020 virtual meeting, Employee Q prepared and signed a liability release letter dated July 23, 2020. However, we found several deficiencies in the liability release letter that we referred to Port management for review and consideration. Therefore, we recommend the GM execute a comprehensive formal agreement that includes (1) the purpose, amounts, and terms of what Port paid for Employee Q's back wages, benefits, attorney fees, and interest charge; (2) a liability release provision; and (3) the signatures of the relevant parties and witness.

Different Legal Opinions Resulted in Delay and Certain Unorganized Remedial Actions

Port received significantly different legal opinions on whether Employee Q's back wages included annual salary increments for the termination period, which resulted in delay and certain unorganized remedial actions. Port's former contracted Legal Counsel advised that any payout to Employee Q would be based on the same pay range as when he was terminated ("base salary") and *without* any salary increments. As such, Employee Q was reinstated at his base salary without any salary increments factored in, then paid back wages (in June 2019) that did not include salary increments. Later, when former "in-house" Staff Attorney advised that back wages should include salary increments, Port granted and paid an annual salary increment to take effect in October 2012 (which was months before Employee Q's termination), annual salary increments for the termination period (for 2013 through 2017), and a pay adjustment (for 2016).

Other Matters

We became aware of other matters not related to our audit objective that warrant Port’s, and possibly the Guam Legislature’s, attention – i.e., the uniformity of existing employees’ anniversary dates and no caps on Port’s salary increments. For these other matters, we made the following additional recommendations: (a) the GM and the Board reconsider their practice of unifying employees’ increment anniversary dates moving forward; and (b) the Board comply with Guam Code and provide parity to ratepayers and taxpayers by incorporating in its PRR the relative (or similar) provisions of 4 GCA Chapter 6 §6202 regarding caps on Port’s salary increments.

Port Management Response and Office of Public Accountability Reply

In Port’s official management response, the GM disagreed with the majority of our audit findings and recommendations. In reply, generally, our audit findings and recommendations remained the same.



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