

PORT AUTHORITY OF GUAM

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NEWS RELEASE

Port GM addresses legislative concerns

Piti, Guam, July 6, 2023: The General Manager of the Port Authority of Guam during the monthly board of directors meeting held today addressed issues recently brought up by senators at a confirmation hearing for two potential board members.

A legislative confirmation hearing was held on May 3, 2023 for the Governor's re-appointment of Mr. Frank Santos, and appointment of Mr. Luis Baza, to serve on the Port Authority Board. Legislative action on the confirmation has yet to be determined.

"During the recent Legislative Confirmation Hearing for our two Board of Directors nominees, numerous misstatements and allegations were made by a few lawmakers regarding the Port," said Port Authority of Guam General Manager Rory J. Respicio. "I was not provided the opportunity to properly respond during the hearing so I would like to take this time to clear up the issues that were raised."

Respicio provided members of the Port Board of Directors with clarifications on misstatements and allegations regarding numerous matters including the two nominees, the Port 7 issue, YTK, the Port debt service ratio, the number of Port employees, the storage of the GPA generators, the Port's work to interdict drugs and the training assignment of the Port's Procurement and Supply Manager. The complete response of Mr. Respicio is contained at the bottom of this news release.

Meanwhile, the Port Board of Directors today approved the hiring of Pacifico Martir as the Deputy General Manager for Administration and Finance of the Port Authority of Guam. The Board also adopted Resolution No. 2023-06 *"Relative to approving a stipulated dismissal in Civil Service Commission Adverse Action Appeal Case No. 13-AA06T SP, Jeffrey Q. Cruz v. Port Authority of Guam, based on Guam Supreme Court Rulings in the Cases of 2015 Guam 14 (Susuico I) and 2019 Guam 15 (Susuico II), and authorizing General Manager Rory J. Respicio to execute the agreement and use up to \$126,000.00 in Port funds to satisfy the stipulated dismissal, thus realizing a cost avoidance of approximately \$210,128.43 in back wages, and to herein provide the finalized agreement to the Honorable Benjamin J.F. Cruz, Guam Public Auditor in the interest of transparency and accountability."*

Cargo and fuel processed since reopening

The following fuel and cargo commodities have been processed and released into our island community since reopening the Port on Sunday, May 28, 2023:

- 3,465 containers with dry goods and 501 refrigerated containers ("reefers");
- 2,204 bundles of rebar; 2 boxed steel pipes; 75 bundle steel plates; 6 bundle of chassis;
- 1,377 vehicles and 254 units of general cargo;
- 2 excavators, 34 backhoe, 4 trucks, 7 tractors; 2 dump trucks, 3 fuel trucks, 1 drill rig; 3 school bus; 1 bucket truck, 1 flatbed truck, 2 office trailers, 4 trailer, 1 air burner, 5 water tankers, 1 truck screener; 1 modified container; 1 boom lift; 1 fork lift; 1 telehandler; 1 boom truck; 1 water truck; 1 boat with trailer; and

- 10 barges – fuel operations.

The following is General Manager Respicio's statement to the Port Authority of Guam Board of Directors regarding numerous misstatements and allegations made by a few lawmakers regarding the Port:

Allegation regarding Mr. Luis Baza having a conflict at the CSC but not at the Port to settle the Port 7 cases:

ANSWER: The conflict that Mr. Baza had at the Civil Service Commission was with his then-employer and Mr. Phillips. Once he went to work at the Port, those two conflicts no longer existed.

Allegation regarding OPA report on alleged Port 7 overpayment:

ANSWER: With regard to the OPA audits, we truly appreciated the OPA acknowledgement that we handled the appeals of these employees properly. In fact, the conclusion states that the OPA found that the reinstatements "were generally made in accordance with administrative and judicial review judgments and orders. The legal remedies stipulated in the Agreement to Satisfy Judgment and Settlement Agreement were likewise generally complied by the Port." We are grateful for this acknowledgement of how we handled these very complicated settlement agreements regarding the wrongful terminations of these employees. We do, however, remain in disagreement over the acceptance of the personnel evaluations which were neither approved or disapproved by the former General Manager. However, one thing remains certain and that is that when the analysis was conducted on the methodology we utilized for the reconstruction of these salaries, it was determined that we had in fact underpaid two reinstated employees. As such, this would mean there were no overpayment made, so far to any of the audits conducted. Regarding the pay raise freeze mandate and potential violation on retroactive pay raises, the Port has been informed that Public Law 34-116 does not apply to the autonomous agencies since they do not receive general fund appropriations. Additionally, we were also being guided by a policy issued by the Consolidated Commission on Utilities (CCU), dated October 2, 2018, which determined that Public Law 34-116 does not apply to the agencies under the CCU's purview, as well as, an email from Mr. Lester Carlson, Director of Bureau of Budget & Management Research dated September 18, 2020 who validated that the law did not cover autonomous agencies.

Allegation that the Port settled the Port 7 cases "without court orders:"

ANSWER: During December 2019, February 2020, June 2020, and July 2020, the Port Authority of Guam, as directed by its Board of Directors, entered into settlements to satisfy judgments and orders, involving seven wrongfully terminated Port employees. For 7½ years, the Port's former General Manager pursued this costly litigation, which was all ultimately determined to be wrongful terminations of these seven Port employees, as the history and facts show that these Port employees prevailed at every juncture by winning on merit and then again winning on the 60-day rule in both the Supreme court and in the Civil Service Commission. The former General Manager and former Port legal counsel continued to pursue repeated appeals of these cases, which led to significant financial damage to the Port through continued legal losses and that liability continued to grow daily and consumed a great deal of ratepayer money, the Port's time and resources, resulting in millions of dollars in legal fees to the former Port legal counsel, as well as payouts ordered by the Supreme Court and the Civil Service Commission. The former in-house Port Staff Attorney, through Board direction, as well as the former Deputy General Manager also through Board direction, entered into settlement agreements with the wrongfully terminated employees which allowed the Port and these Port employees to agree upon a payment plan for back wages spreading over a year or two-year period which had a benefit to the Port by not impacting cash flow with immediate, one-time payments and also mitigating the actual back wages at a significant cost savings to the Port. Because the Port was successfully able to mitigate these settlements, we were able to realize total savings to the Port of more than \$1.5 Million.

Here are factual, documented events from 2013 to June 2020 which occurred involving the appeals of the employees:

1. On May 1 and June 6, 2013, in separate hearings, CSC Commissioners granted Mr. Guevara's and Mrs. Cepeda's motions to null and void. Consequently, the CSC voided their final notices of adverse action of termination because the Port violated the 60-day rule.
2. Merit hearings were held for Mrs. Leon Guerrero on June/July 2014, Mrs. Javelosa in August/September 2014 and Mrs. Rocio in October 2014 which CSC Commissioners ruled the Port failed to meet its burden of proof that action taken against the employees and ordered they be reinstated to their prior employment.
3. From 2014 to 2015, CSC rescheduled Mrs. Leon and Mrs. Meno's status call hearings and merit hearings on numerous occasions and eventually informed them that their future hearings would be canceled because the Commissioners' calendar was booked for the next few years until at least 2017.
4. Port appealed CSC's decisions, and judgments in Superior Court rendered for Mr. Guevara in September 2013, Mrs. Javelosa on October 4, 2014, Mrs. Leon Guerrero on October 30, 2014, Mrs. Rocio on April 21, 2015, and Mrs. Cepeda on June 15, 2015.
5. On July 2, 2015 and June 24, 2016, Superior Court affirmed CSC's decision and judgement rendered to Mr. Guevara that the Port violated the 60-day rule and ordered to reinstate the employee to his prior position, which Port appealed to Supreme Court on October 26, 2016.
6. In September 5, 2015, Superior Court reversed CSC decision and judgment for Mrs. Javelosa and remanded the matter to CSC, who shall determine, based upon substantial evidence, whether or not a criminal act or acts were committed, which the employee appealed to Supreme Court on October 5, 2015.
7. On March 15, 2016, in their regular meeting, CSC Commissioners decided to remove the status call conference and merit hearings for Mrs. Meno and Mrs. Leon indefinitely until Supreme Court issues a decision on Mrs. Javelosa's case.
8. On February 7, 2018, Supreme Court rendered a decision in favor of Mr. Guevara, and the Port requested for reconsideration on March 26, 2018, which the Court denied on April 17, 2018, and ordered the employee be reinstated to his prior position with the Port.
9. At their Board of Directors meeting of July 25, 2018, management was authorized to reinstate Mr. Guevara to his position as Financial Affairs Controller effective July 30, 2018, in compliance with Superior Court's decisions of 2015 and 2016.
10. On July 26, 2018, Supreme Court affirmed Superior Court's decision and order for Mrs. Javelosa and remanded the case to Superior Court so it may return the matter to CSC for a threshold determination of the proper standard of review in her case.
11. On August 24, 2018, Superior Court issued a decision and order to award Mr. Guevara full back pay and benefits, which the Port appealed on September 2, 2018.
12. On January 16, 2019, the General Manager formed a task force, which was chaired by the then-Deputy General Manager of Administration and Finance to review eighteen (18) adverse action appeal cases under litigation. This task force revealed that because

Supreme Court mandated the Port to pay Messrs. Guevara and Kevin Susuico the back wages, attorney fees, and associated costs, the Port could not enter into settlement discussions with the employees and had no choice but to comply with the higher Court's orders resulting in the Port paying Mr. Guevara in three (3) staggered payments within ten (10) months a total amount of \$381,381.61 and to Mr. Susuico a one-time payment of \$99,000.16 without any mitigation.

13. On March 6, 2019, the Superior Court remanded the cases of Mrs. Javelosa, Mrs. Leon Guerrero, and Mrs. Rocio to CSC for a threshold determination of the proper standard of review in their cases as concluded in the Supreme Court decision of July 26, 2018.
14. On March 29, 2019, the Board of Directors authorized Port Legal Counsel to proceed in settlement discussions with Mr. Guevara's attorney.
15. On July 25, 2019, Supreme Court affirmed in part and reversed in part the Superior Court's judgment for Mrs. Cepeda and remanded the matter to CSC for consideration of the merits of the allegation that Mrs. Cepeda backdated a memo to file and for other proceedings not inconsistent with this opinion.
16. In accordance with Superior Court's decision, the CSC scheduled hearings for Mrs. Rocio for August 2019 and for the calendar year 2020 for Mrs. Leon Guerrero, Mrs. Javelosa, Mrs. Meno, Mrs. Cepeda, and Mrs. Leon.
17. On August 27, 2019, CSC Administrative Law Judge held a motion hearing to null and void the personnel action of termination for Mrs. Rocio, and on September 30, 2019, he rendered a recommendation that Mrs. Rocio's motions to dismiss be granted.
18. In August of 2019, Mr. Joe McDonald, former Port Staff Attorney held discussions with the attorneys of Mrs. Javelosa, Mrs. Cepeda, Mrs. Leon Guerrero, Mrs. Meno and Mrs. Leon regarding settlement proposals and initial settlement proposals were submitted.
19. On October 10, 2019, CSC Commissioners voted on Mrs. Rocio's motions that the Port did not notify her of adverse action within 60 days as mandated by law at the time, the Port's final notice of adverse action lacked specificity, and burden of proof was clear and convincing.
20. The Port filed with CSC a motion to reconsider its decision for Mrs. Rocio and CSC Commissioners on November 21, 2019, denied the Port's motion.
21. On November 26, 2019, the Port reinstated Mrs. Rocio to her position as a Personnel Services Administrator and finalized the settlement agreement on December 13, 2019.
22. On December 19, 2019, the Board of Directors approved Resolution No. 2019-20, approving an offer to settle adverse action appeal between the Port and Mrs. Leon Guerrero.
23. On December 19, 2019, the Board of Directors passed Resolution 2019-22, authorizing Port Legal Counsel to enter into settlement agreements with Mrs. Javelosa and Mrs. Cepeda.
24. On December 23, 2019, the Port finalized the settlement agreement and reinstated Mrs. Leon Guerrero to her position of Planner-Work Coordinator on January 6, 2020.
25. On February 28, 2020, the Port Staff Attorney resigned with the Port and the settlement agreements for Mrs. Javelosa and Mrs. Cepeda were not yet finalized.

26. On March 11, 2020, the CSC Administrative Law Judge filed his "Recommendations of Administrative Law Judge on Motion to Void Based on Violation of the 60 Day Rule" in Mrs. Meno's case and found in his analysis "undisputed facts" that identified at least three dates management knew or should have known which were September 10, 2012, September 17, 2012 and October 16, 2012 which, according to the ALJ were 100 days, 93 days and 63 days and therefore stated that the adverse action taken against Mrs. Meno should be revoked; she should be reinstated immediately until such time the decision is overturned by judicial review; and that Mrs. Meno should be awarded back pay, reasonable attorney fees and costs.
27. On June 8, 2020, CSC Administrative Law Judge issued recommendations that the CSC grant Mrs. Javelosa's motion to void as to allegations of processing and conspiracy to process an allegedly fraudulent Worker Commission Claim because the final notice of adverse action violated the 60-day rule and stated with regards to the memo she was accused of backdating to file "There is no conceivable way to conclude that this memo in any way aided the process of the original approval of work related injury leave. Moreover, there is no way to conclude that the memo was an effort to cover up fraudulent acts. The undersigned concludes that the memo cannot support or justify the adverse action" and thus recommended that Mrs. Javelosa be awarded back pay, reasonable attorney fees and costs; and be reinstated immediately until such time the decision is overturned by judicial review.
28. On June 25, 2020, the Board of Directors passed Resolution No. 2020-04 which provided Mr. Luis R. Baza, Deputy General Manager for Administration & Finance the latitude to negotiate the final settlement agreements.

Did the Board authorize funding for mediation in the YTK case:

ANSWER: There was no formal mediation in place or formal offer made. Due to the fact that there was a \$17 Million dispute looming over the Port, I felt I had a duty to reach out and potentially mitigate any \$17 Million judgement. A \$17 million judgment would increase tariffs, and that would cause all other costs to go up. There were no formal discussions in place.

At the February 19, 2019 Board meeting, I explained that management was looking at on-going litigation that would give the Port opportunities for mitigation. I indicated that with respect to YTK matter, when this matter was before the then-Board of Directors, there was an opportunity to settle at \$800,000, however, the decision back then was to proceed with litigation. Because the matter was before Supreme Court at that time, the community was facing a \$17.1 million judgment which presented a concern. If the ruling did not favor the Port, then tariffs would need to be raised which will impact every single commodity that comes through the Port. I explained that I did not have any interest in YTK and that I approached the principal owner of YTK on my own volition and that no formal discussions or commitments were made.

Allegation regarding Port debt service ratio:

ANSWER: The financial report in February mentioned that based on the year-to-date numbers for February (5 months of Fiscal Year 2023), the debt service ratio is 1.20, which is below the DSCR requirement of 1.25. This is due to low revenue numbers in February and increase in divisional expenses. This is just a projection based on the financial results as of February. As of March, the projected DSCR is now **1.38**. This is higher than the debt service requirement. Finance is working with the Maintenance team to ensure that all expenses are properly classified. This is to report the correct DSCR after the numbers have been properly reviewed.

In FY 2022 the DSCR is 1.58, in FY21 the DSCR is 1.35 and in FY20 the DSCR is 1.26. These results are all above the debt service ratio requirement.

We would like to point out that S&P Global Ratings maintained its outlook for the Port at stable and affirmed its "A" long-term rating on the Port's outstanding series of 2018 Port Revenue Bonds. They considered the Port's management and governance strong, reflected their view of the Port's strategic positioning, risk and financial management and organizational effectiveness. They stated the Port has operated in a fiscally prudent manner, implemented tariff increases as needed, built and maintained cash reserves and minimally relied on debt issuance to meet capital needs.

We also like to point out that in 2019 when this management came into office, we were in debt \$103,000 for 2018. Through austerity measures that management put in place the Port realized a positive net income of \$5 million irrespective of the fact that the initial FY 2018 Budget did not include: (1) the cost of the 2018 compensation plan was not calculated; and (2) expenditures incurred during the preparation and post Typhoons Yutu and Wutip and (3) OSHA certification inspection. Despite these unfunded expenses, the Port continue to operate within the total approved budget expenses for 2019 and met the requirements of its bond indenture.

Allegation by Senator Brown of an Administrative Personnel increase:

ANSWER: The employee count for Fiscal Year 2012 was 382 when Senator Brown was placed in charge of the Port. When this administration came on board in 2019, the employee count was 365—despite the number of 116 Senator Brown indicated in the hearing. Also when I came into office, there were personnel documents authorizing the hiring of 20 additional individuals which would have brought up the number of employees on board to 385. Such recruitment was placed on hold until a manpower assessment was provided identifying the division's baseline needs, take into consideration the number of employees who were eligible to retire and provide recommendations on what type of in-house training can be implemented to enhance skill sets of employees to ensure the mission of the Port is not jeopardized. Based on this assessment, we increased the number of employees to 377—an additional of 12 employees and not 30 as alleged since 2018. The majority of the recruitment was for Maintenance and Operations divisions which are revenue generating.

Questions regarding the Port's waiver of fees for the GPA generator storage:

ANSWER: In the October 27, 2022 Board of Directors meeting, I reported on the arrival of 12 generator modules for the new Ukudo Power Plant. I stated the revenue tons for the modules range between 135.70 to 173.90 tons. Because of the special type of cargoes to be unloaded, the Port authorized the contractor to conduct "under the hook" operation which will allow the crew ship to operate the winches to off load the modules onto specialized trailers and transport such modules at a staging area in the terminal yard. To ensure that the container yard was not impacted as a result of the weight of the cargoes, the modules were staged on jacks and remained at the Port until permit was issued by Department of Public Works to transport the cargoes to the Dededo project site. I also stated at the board meeting that one of the biggest concerns regarding this cargo was the storage fees. According to the Port Terminal Tariff, the cargo has a free storage period of 5 days and afterwards storage fees will be assessed. If the Port qualified the storage fees, the Port may be collecting \$3.5 to \$4 million. However, if the Port were to collect such fees, it would have to be paid by GPA who in turn will likely transfer it to the rate payers. The decision to extend the free-time storage of the cargoes in the terminal yard was made in the best interest of all ratepayers of Guam.

Questions regarding the Port's work to interdict drugs at the Port:

ANSWER: Guam Customs is the agency tasked with drug interdiction and they are assisted by numerous agencies. The Port continues to work hard to ensure our borders are protected at all

entries that fall within the jurisdiction of the island's only commercial port. The work has been non-stop in all areas, including the new security systems, enhanced regulations for those wanting to conduct commercial cargo operations at the marinas, meeting with Port users, and bringing together local and federal law enforcement to address the safety issues of our borders. Through Port's efforts to secure our borders from any potential drug and human trafficking and to provide for the safety of everyone who uses the Port marinas, the Port acquired and installed surveillance cameras at the Gregorio D. Perez marina. Additionally, we installed a temporary container for Port Police and other law enforcement use at the GDP marina. Port Police officers can now monitor the activity at the marina through Port Command Center located at the Cabras Island. We are doing whatever is necessary to advance the interdiction of illicit drugs, invasive species, and counter-terrorism at our island's entry ports. We have worked diligently in improving the working relationship with Guam Customs through the following:

- Entered into a memorandum of understanding with Customs regarding the new office space at the Port. Customs will occupy 2,700 square feet of office space located at the former Horizon Building and vacate their current office in the Port Administration Building.
- Granted Customs Officers an all-access pass within the Port terminal facilities to carry out its mandates.
- Included in our Master Plan Update a Customs Inspection Feasibility Study, which was recently completed and will be used to assist the Agency in obtaining funding for such construction of the building.
- Our consultants worked with Customs to validate their requirements and confirmed the planned facilities would integrate with the current traffic flow.
- Ensured Customs is directly involved in discussions to its initiative for Systems Integration that will provide an improved information sharing/reporting between stakeholders involved in the cargo supply chain.
- Dedicated a gated secured area in CFS warehouse for Customs inspection.
- Dedicated area at Seaplane Ramp for marine interdiction task force office and boathouse.
- Allowed shared use for Port's equipment wash down station.
- Provided an office space at the GDP marina to be co-shared with Port Police and access to Port's surveillance cameras at the marina and terminal yard.
- The Port and Department of Public Works executed a memorandum of agreement for the use of the remaining Federal Highway Administration seawall project funds. The funds will be used to expand the automobile lot expansion and paving of the shared entrance for Customs & Quarantine and the Port chassis staging lots.

Concerns regarding increments for Port employees:

ANSWER: The annual increments of our employees is called for in our Personnel Rules and Regulations which are codified in law. They are all budget for and are based on performance evaluations.

Concerns about compensation of the General Manager:

When management came on board in 2019, the Board did not migrate the General Manager and Deputy General Managers to the step and allocated pay grade they should have been slotted to base on their experience, education, certifications, and performance with their prior employers. The Board instead approved their salaries based on what their former counterparts were earning. As a matter of fact, the Board as a whole accepted the performance evaluations for the General Manager and Deputy General Manager in 2019, 2020 and 2021 without corresponding salary increments. It should be noted that the Board as a whole approved the performance evaluations, however, did not approve a corresponding salary increments that the former General Manager and former Deputy General Manager received from 2012 to 2018.

In December 2022, the Board was advised of what the salaries of the General Manager and Deputy General Manager would have been had the correct methodology been used when they were initially employed and salary increments as a result of the annual performances. When the Board re-appointed the General Manager and Deputy General Manager, they were hired at their initial salary should have been in 2019 to be effective 2023. Future compensation increases for the General Manager and Deputy General Managers should be based on the results of the performance evaluations, which must be accepted and approved by the Board as a whole in accordance with Board Policy and such salary increments are not to be retroactive in accordance with Title 4, GCA Section 6218.1.

Questions regarding the Training Assignment of the Port's Procurement & Supply Manager:

ANSWER: The Port's Procurement & Supply Manager was sent to the General Services Agency (GSA) of the Department of Administration to receive procurement training in order for her to be able to efficiently perform her duties and responsibilities as the Port's Procurement & Supply Manager. It was agreed that the Chief Procurement Officer of the General Services Agency of the Department of Administration would supervise her work performance and attendance, and provide her with expertise training in the Guam Procurement Rules and Regulations, policies and procedures. We also agreed that her assignment will end once the Chief Procurement Officer is of the opinion that her job performance satisfies her expectations that she is proficient in the Guam Procurement law and effectively able to perform her duties and responsibilities as the Procurement & Supply Manager for the Port.

This type of Training Assignment is not unusual as the former General Manager assigned procurement staff to GSA for training as well and often their Training Assignments spanned a period of more than one year.

Allegation that the Port paid legal fees to the Port's former legal counsel for the Port 7 settlement case:

Attorney Joseph McDonald was not an associate at the McDonald Law Firm when Attorney Charles McDonald was representing Mrs. Cepeda in her settlement discussions.

Criticism that Mr. Baza wants to be a board member after serving as a deputy general manager of the Port:

We welcome Mr. Baza to the Board as he brings a wealth of institutional knowledge of the Port due to his service as deputy general manager. In fact, the senator who brought this issue up knows what a benefit this can be as her previous deputy general manager also left active service and then was appointed as one of her board members during her tenure.