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SUPERIOR COURT
OF GUAM

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CLERK OF COURT

By: _____


IN THE SUPERIOR COURT OF GUAM

PORT AUTHORITY OF GUAM,

Petitioner,

v.

CIVIL SERVICE COMMISSION,

Respondent,

and

JOYJEAN R. ARCEO,

Real Party
In Interest.

SPECIAL PROCEEDINGS NO. SP0119-24

DECISION AND ORDER

INTRODUCTION

This case turns on who bore the burden of proof—and what the law requires when that burden is not met. After the Port Authority of Guam discharged a classified employee, the Civil Service Commission heard the appeal, applied the governing standard, and deliberated. The Commission split evenly specifically two commissioners voted to sustain the Port’s adverse action and two commissioners voted to revoke it. Under Guam law, that division did not preserve the adverse action or render the decision void; it meant the Port failed to persuade the four commissioners required to prevail. The Port now asks this Court to declare the Commission’s decision void. The law does not permit that result. The burden remained on management, the burden was not met, and the Commission acted within its authority in granting

1 relief. Attorney James Canto represents the Port Authority of Guam and Attorney Jacqueline
2 Terlaje represents Real Party in Interest Joyjean R. Arceo.

3
4 **BACKGROUND**

5 The Port Authority of Guam (“Port”) petitions for judicial review of a Civil Service
6 Commission (“CSC”) *Decision and Judgment* dated August 6, 2024 concerning the termination
7 of Port employee JoyJean R. Arceo (Arceo). The Port terminated Arceo, a classified employee
8 serving as Port Procurement and Supply Manager, by Final Notice of Adverse Action effective
9 October 30, 2023, citing refusal to perform prescribed duties, insubordination, and unsatisfactory
10 performance. *See*, Verified Pet. (Sep. 5, 2024). Arceo appealed the termination to the CSC on
11 November 20, 2023. *Id.* at 2.
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14 Before the merits hearing, the CSC determined that the Port’s allegations could constitute
15 Official Misconduct under 9 GCA § 49.90 if charged and reduced the Port’s burden of proof to
16 substantial evidence pursuant to 4 GCA § 4407(c). *Id.* at 6–10. Following deliberations on June
17 12, 2024, the Commission split evenly, with two commissioners voting to sustain the Port’s
18 adverse action and two voting to revoke it. *Id.* at 4–5. The CSC stated that because Management
19 failed to obtain four votes to sustain the termination, the Employee prevailed. *Id.* The Port
20 objected on the record, asserting that the Commission lacked authority to revoke the adverse
21 action absent the “affirmative vote of four (4) members” required by 4 GCA § 4402. *Id.* at 13.
22

23 On August 6, 2024, the CSC issued a written *Decision and Judgment* awarding relief in
24 Arceo’s favor, including back pay and benefits, restoration of leave, retirement contributions,
25 and attorney’s fees and costs pursuant to 4 GCA § 4406.1. *Id.* at 2–3. The Port moved for
26 reconsideration on August 9, 2024, arguing the CSC could not lawfully take action without four
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1 affirmative votes. *Id.* at 17. The CSC denied reconsideration by a 4–0 vote on August 27, 2024.

2 *Id.*

3 The Port filed this petition for judicial review on September 5, 2024 and the Court took
4 this matter under advisement on January 9, 2026.

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6 **DISCUSSION**

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8 The Court proceeds in four steps. First, the Court addresses the statutory “Rule of Four”
9 in 4 GCA § 4402 and its consistent interpretation by reviewing courts. Second, the Court
10 explains how that rule operates in adverse action appeals, where management bears the burden of
11 proof, and why a split vote means that burden was not met. Third, the Court rejects the Port’s
12 assertion that a divided Commission acts without authority, explaining why that theory is both
13 legally incorrect and practically untenable. Finally, the Court considers legislative intent,
14 including Public Law 26-88, which confirms that the statutory scheme was designed to
15 increase—rather than dilute—management’s burden in adverse action proceedings.

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18 **I. The Rule of Four Governs Civil Service Commission Action.**

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20 This case turns on the meaning and operation of 4 GCA § 4402. The statute provides that
21 “[t]he quorum of the Commission shall be four (4) members” and that “[t]he affirmative vote of
22 four (4) members shall be required for any action of the Commission.” The Appellate Division
23 has squarely construed this language to require the concurrence of four votes, not merely the
24 participation of four members. In *Government of Guam, Department of Public Health and Social*
25 *Services v. Civil Service Commission, Dennis Quinones*, and the Commission voted 3–1 to
26 uphold an employee’s termination but reinstated the employee because the government failed to
27 persuade four commissioners. 1987 WL 109892, 1–3 (D. Guam App. Div. Aug. 27, 1987). The
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1 court affirmed, holding that § 4402 does not permit action by a simple majority of a quorum and
2 that failure to obtain four concurring votes means the party bearing the burden has not prevailed.

3 The Ninth Circuit reaffirmed this construction in *Guam Power Authority v. Civil Service*
4 *Commission*, explaining that under the “Rule of Four,” when the party with the burden of proof
5 does not receive four votes for its position, the opposing party is entitled to a decision in its
6 favor. 967 F.2d 586, 1 (9th Cir. 1992).
7

8 The Supreme Court of Guam has likewise recognized the Rule of Four, stating that while
9 it declined to reach compliance on the facts because the issue was raised for the first time on
10 appeal, it expressed “no quarrel” with the Rule of Four principle. *Limtiaco v. Guam Fire Dep’t*,
11 2007 Guam 10 ¶ 65.
12

13 The Port argues that the CSC lacked authority to grant relief because fewer than four
14 commissioners voted to revoke the adverse action. That argument mistakes both § 4402 and the
15 allocation of the burden of proof in adverse action appeals. Section 4402 does not preserve an
16 adverse action by default when the Commission is divided. Rather, it places the risk of non-
17 persuasion squarely on the party bearing the burden. Where management fails to secure the four
18 concurring votes required by statute, it has not carried that burden. In that circumstance, the
19 Commission does not exceed its authority by granting relief; it applies the statute as written.
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22 **II. A Split Vote Means the Party with the Burden Did Not Prevail.**

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24 The Rule of Four does not exist in isolation. It operates within the adverse action
25 framework, where management bears the burden of proof. When management fails to secure
26 four affirmative votes, it has not carried that burden.
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1 This principle was reaffirmed by the Ninth Circuit in *Guam Power Authority*, which
2 upheld the CSC’s Rule of Four practice and rejected a challenge materially identical to the one
3 raised here. The court explained that when the party with the burden of proof does not receive
4 four votes, “the opposing party is entitled to a decision in its favor.”

5 The Port’s position would invert this structure by allowing management to prevail by
6 stalemate. Nothing in § 4402 authorizes that outcome. To the contrary, *Quinones* and *Guam*
7 *Power Authority* make clear that a tie vote is not neutrality—it is failure of proof by the party
8 who bears the burden.
9

10 Here, the CSC deliberated and split evenly. Because sustaining the adverse action
11 required four affirmative votes, the Port failed to carry its burden. The Commission correctly
12 treated that failure as dispositive and entered judgment in favor of the employee.
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14 **III. The Port’s “Void Decision” Theory Is Impractical and Contrary to Adjudicative**
15 **Principles**

16 The Port asks this Court to declare the CSC’s Decision void whenever fewer than four
17 commissioners vote to revoke an adverse action. That remedy is neither compelled by statute nor
18 workable in practice.
19

20 The CSC may reach unanimity, a majority, or a split decision after independent
21 consideration of the evidence. The law does not—and cannot—require commissioners to vote in
22 any particular manner. A divided commission is not an anomaly; it is a foreseeable outcome of
23 adjudication.
24

25 The Port’s interpretation would convert every split vote into legal paralysis, effectively
26 forcing the Commission to reach unanimity or risk having its proceedings nullified. Nothing in
27 Title 4 suggests the Legislature intended such a result.
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1 More fundamentally, the Port conflates voting mechanics with burden of proof. A split
2 vote does not mean the Commission acted without authority. It means the party bearing the
3 burden failed to persuade the decision-makers required by law.

4 The statutory framework mirrors a familiar adjudicative principle. In a jury trial requiring
5 a unanimous verdict, a deadlocked jury does not result in judgment for the party with the burden
6 by default or a verdict void. Rather, the party with the burden has failed to obtain the verdict
7 required by law. The Rule of Four operates in the same manner. The statute does not compel four
8 commissioners to vote in any direction. It defines the number of votes required for a party to
9 prevail. When that threshold is not met, the consequence flows from failure of persuasion, not
10 from procedural defect.
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13 Accepting the Port's position would allow management to prevail not by proof, but by
14 deadlock. The Legislature did not design the civil service system to reward stalemate.

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16 **IV. The Legislature Reinforced This Result in Public Law 26-88.**

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18 The Legislature's reenactment of § 4402 in Public Law 26-88 confirms this reading. In
19 amending the statute, the Legislature expressly found that the prior law was "unacceptable in
20 meting out justice and highly unfavorable to the employees," and that the number of votes
21 required to "affirmatively carry out the decision of the Commission must be increased." P.L. 26-
22 88, § 1.
23

24 The Legislature simultaneously increased management's burden of proof and articulated
25 an intent to "level the playing field" between management and employees. Nothing in the
26 legislative findings suggests intent to allow management to prevail by default when the
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1 Commission is divided. To the contrary, the amendments were designed to make it more
2 difficult—not easier—for management to sustain adverse actions.

3 Adopting the Port’s interpretation would undermine that purpose by allowing adverse
4 actions to stand without the affirmative concurrence required by statute. The Court declines to
5 adopt a construction that conflicts with clear legislative intent.
6

7 **CONCLUSION**

8 Accordingly, the Port’s Petition for Judicial Review is DENIED.
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11 **IT IS SO ORDERED** APR 03 2026.

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16 **HONORABLE ARTHUR R. BARCINAS**
17 **Judge, Superior Court of Guam**
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21 **SERVICE VIA EMAIL**
22 I acknowledge that an electronic
23 copy of the original was e-mailed to:
24 J. CAMPO; J. TERLAVE
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26 **APR - 3 2026** Date: 5:03 pm
27 Edna M. Nego
28 Deputy Clerk, Superior Court of Guam