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APPEAL
BEFORE THE NMI SETTLEMENT FUND
HEARING OFFICER

IN RE ADMINISTRATIVE APPEAL OF **VALRICK A. WELCH,** Appellant.	NMISF Case No. 19-003 **LIMITED DECISION AND ORDER ON CONSTITUTIONAL AND STATUTORY MEANING**

Appellant Valrick A. Welch ("Mr. Welch") appeared by his counsel, Attorney Mark A. Scoggins, to appeal the adverse decision of the Northern Mariana Islands Settlement Fund ("NMISF") that denied his request for a 60-day retirement benefit for fiscal year 2019. *See* "60-Day Benefit Payment Adverse Decision Letter," ("Denial Letter") Administrative Hearing Record ("Record") at 19-003-005, 006. Mr. Welch filed a Notice of Review on March 19, 2022, appealing the Denial Letter. Record at 19-003-003 to 009. The Trustee of the NMISF, Attorney Joyce Tang ("Trustee"), appeared by NMISF in-house counsel, Attorney Nicole M. Torres-Ripple (singly a "Party," all together with Mr. Welch, the "Parties").

JURISDICTION AND STANDARD OF REVIEW

This Appeal is governed by the NMISF Appeal Rules and Procedures ("NMISF Rules"). *See* ECF Document 731-14 in *Johnson v. Torres*, Civ. Case. No. 09-00023, United States District Court for the Northern Mariana Islands, Hon. Frances M. Tydingco-Gatewood, Designated

Judge, Rule 4, Rule 6. This Appeal was assigned to Hearing Officer Deborah E. Fisher ("Hearing Officer").[1]

The aggrieved party has the burden of proof by a preponderance of the evidence. NMISF Rules, 6.6(e). Findings of fact will be made based on the evidence. NMISF Rules, 6.8 (h). All findings of fact and conclusions of law will be appropriately decided on the record. NMISF Rule 6.7(d).

Typically, a question of statutory interpretation is reviewed de novo. *Castro v. Telesource CNMI, Inc.*, No. 2021-SCC-0023-CIV, 2022 WL 17257593, at *1 (N. Mar. I. Nov. 29, 2022), *citing N. Mariana Islands v. Guerrero*, 2014 MP 15 ¶ 21, No. 2013-SCC-0045-CRM, 2014 WL 6485747, at *2 (N. Mar. I. Nov. 18, 2014). Here, the NMISF Rules provide for only one type of standard for the Hearing Officer: a preponderance of the evidence. *See* NMISF Rules, Rule 6. For a consideration of a legal finding, whether characterized as de novo or a preponderance, the Hearing Officer's finding will encompass what is most persuasive considering the law presented and reviewed, and therefore will at a minimum meet a preponderance standard.

RELEVANT FACTS

Mr. Welch is a classroom teacher who was initially employed by the Commonwealth of the Northern Mariana Islands ("CNMI") Public School System ("PSS") from July 29, 1990, until December 19, 2008. *See* "Stipulation of Facts and Bifurcation of Issues," filed Feb. 3, 2023 ("Stipulation"), ¶ 1. Mr. Welch retired from government service on December 20, 2008. Stipulation, ¶ 3. His retirement was pursuant to the five-year credit provided by Article III, § 20(b) of the CNMI Constitution. NMISF Response Brief, filed Nov. 7, 2022 ("NMISF Response"), p. 2; Record at 19-003-068; Stipulation ¶¶ 2-4. In the first two years of his retirement, Mr.

[1] The Trustee's selection of the Hearing Officer was approved pursuant to an Order dated July 11, 2022, filed as ECF Document 840 in *Johnson v. Torres*, Civ. Case. No. 09-00023, United States District Court for the Northern Mariana Islands, Hon. Frances M. Tydingco-Gatewood, Designated Judge.

Welch received annuity payments of [redacted] in 2009 and [redacted] in 2010. Stipulation, ¶ 8.

Mr. Welch returned from retirement and was reemployed to teach in the CNMI PSS starting May 9, 2011. Stipulation, ¶ 7. After he returned to PSS, he received annuity payments of [redacted] in 2011 and [redacted] in 2012, along with his regular salary. *Id.* These payments, made in 2011 and 2012, represented full retirement benefits. Stipulation ¶ 9. Starting in 2013, Mr. Welch's benefit payments were reduced, and he was paid [redacted] in 2013; [redacted] in 2014; [redacted] in 2015; [redacted] in 2016; and [redacted] in 2017. Stipulation ¶ 8.[2] Payments made to Mr. Welch after the first two years of his reemployment were based on a 60-day per year benefit calculation. Stipulation ¶ 10. Mr. Welch continues to this day to teach students in the CNMI. Stipulation, ¶ 7.

ISSUE FOR LIMITED DECISION AND ORDER

This issue on appeal concerns the interpretation of the laws in the CNMI that provide that a government employee can return to work after retirement and still receive some amount of their retirement benefits. *See* "60-Day Benefit Payment Adverse Decision Letter," ("Denial Letter") Administrative Hearing Record ("Record") at 19-003-005, 006. Because the NMISF is the successor in interest of the CNMI Retirement Fund, having accepted its rights and liabilities, the constitutional and statutory provisions the former Retirement Fund was bound by will apply here. *See* "Settlement Agreement," §§ 1.1, 1.24, 8.0(b), *Johnson v. Inos*, Civil Action No. 09-00023, District Court for the N.M.I., ECF No. 468-1 at 4-5, 8, and 17; Final Judgment Approving Class Action Settlement, ECF No. 561; NMISF Response, p. 3, and Declaration of Nicole M. Torres-Ripple in Support ¶3, filed on Nov. 7, 2022.

[2] Payment years referred to are based on a Fiscal Year calculation that may not correspond to the actual calendar year. Stipulation ¶ 10.

Mr. Welch argues that he was entitled to work post-retirement without losing his benefits for two full years under 1 C.M.C. § 8392(d) and then continue working after he retired while receiving the 1 C.M.C. § 8392(c) sixty-day per year retirement benefit indefinitely, starting in year three of his reemployment after retirement. *See* Appellant's Opening Brief, filed October 21, 2022, Reply Brief, filed Nov. 21, 2022 and Brief on Constitutional and Statutory Construction, filed March 17, 2023. Mr. Welch claims he has not received but is entitled to the sixty-day per year retirement benefit from fiscal year 2019 forward. The NMISF argues that under the CNMI Constitution Art. III, Section 20(b) ("Constitution" or § 20(b)) and 1 C.M.C. § 8392(d), as well as the codification in NMIAC § 110-10-130, retired classroom teachers can return to work and receive full benefit payments for up to two full years but deserve no more benefits if they continue their post-retirement employment after the initial two years. *See* NMISF Response and NMISF Supplemental Brief filed March 17, 2023 ("NMISF Supplemental"). The NMISF sees the two types of benefits as an "either-or," as two separate possibilities that cannot coexist for any retiree. *See* NMISF PowerPoint Presentation, March 10, 2023. In addition, while not set forth in the Denial Letter, the NMISF now also argues that it has its own claim for overpayments of the 60-day benefit every year from FY 2013 to FY 2018 as well as underpayment of employee contributions during various periods of reemployment. *See* NMISF Response, p. 4.

These post-retirement benefits, the parameters of which the Parties dispute, are also called "double-dipping." The term "double-dipping" is not itself defined by the Constitution or by statute, though it forms part of the title of 1 C.M.C. § 8392 "Reemployment and Double Dipping," and therefore appears to relate to all retirement benefits received by a retiree after post-retirement employment. CNMI caselaw refers to the provision of Article III, Sec. 20(b) that allows a retiree to return to government service and draw a regular salary as well as retirement benefits for up to 60 days per year as "double-dipping benefits." *Bd. of Trustees of N. Mariana*

Islands Ret. Fund v. Ada, 2012 MP 10, ¶ 4, FN2, No. 2010-SCC-0033-CIV, 2012 WL 3779318, at *1 (N. Mar. I. Aug. 30, 2012). Generally, the term "double-dipping" refers to accepting the same benefit twice. *Pangelinan v. N. Mariana Islands Ret. Fund*, 2009 MP 12, FN 7, No. 06-0030-GA, 2009 WL 2854434, at *4 (N. Mar. I. Sept. 2, 2009). It appears that both the annual 60-day benefit and the two-year exemption benefit would constitute double-dipping, but to keep these concepts clear, the benefits at issue will be referred to separately as the "60-day Annual Benefit" and the "Two-Year Exemption."

The Parties have stipulated to the Hearing Officer making an initial determination on the plain language of Article III, Section 20(b) of the N.M.I. Constitution and 1 C.M.C. § 8392, with a reservation of further analysis or decision on issues that may implicate an interpretation of the status of the NMISF, including, but not limited to, issues of Chevron deference and Mr. Welch's affirmative defense of estoppel. *See* "Stipulation of Facts and Bifurcation of Issues," filed February 3, 2023. Accordingly, the Hearing Officer will address the CNMI laws that pertain to post-retirement benefits upon reemployment, and make an initial, limited determination of how those laws apply to Mr. Welch.

CONTROLLING CNMI LAWS

The parameters of post-retirement benefits upon reemployment relevant to Mr. Welch are found in N.M.I. Const. Art. III, § 20(b), and 1 C.M.C. § 8392. The Commonwealth Constitution provides in pertinent part:

> (b) An employee who has acquired not less than twenty years of creditable service under the Commonwealth retirement system shall be credited an additional five years and shall be eligible to retire. An employee who elects to retire under this provision may not be reemployed by the Commonwealth Government or any of its instrumentalities or agencies, for more than 60 days in any fiscal year without losing his or her retirement benefits for the remainder of that fiscal year, except that the legislature may by law exempt reemployment of retirees as classroom teachers, doctors, nurses, and other medical professionals from this limitation, for reemployment not exceeding two (2) years. No retiree may have their retirement benefits recomputed based on any

> reemployment during which retirement benefits are drawn, but every such reemployed retiree shall nevertheless be required to contribute to the retirement fund during the period of reemployment, at the same rate as other government employees. The legislature may prohibit recomputation of retirement benefits based on reemployment after retirement in any event or under any circumstances. N.M.I. Const. Art. III, § 20(b).

The Legislature, under N.M.I. Const. Art. III, § 20(b) ("§20(b) or the "Constitution"), then provided retirement benefit provisions for retirees returning to employment. These are found in 1 C.M.C. § 8392 (the "Statute"), which is set forth in pertinent part:

> (a) A person who has retired and received retirement benefits from the government of the Northern Mariana Islands shall not be employed by or under an employment or consulting contract with the government of the Northern Mariana Islands or its public corporations, boards or commissions unless the person is:
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> (1) Appointed by the Governor to a position requiring the advice and con- sent of the Senate or House of Representatives or both.
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> (2) Hired in a position for which professionals are not readily available in the local labor market, including, for example, **teachers for the Public School System**….
>
> (3) Elected to public office.
>
> (4) A Title V employee under the federal Older Americans Act….
>
> (5) Specifically exempted by the Governor, with the concurrence of the Retirement Board.
>
> (b) A person who has retired and received a retirement benefit shall not be eligible to receive prior service credit if the person continues to receive retirement benefits from the government while accruing service that is eligible for credit as prior service credit upon reemployment with the government.
>
> (c) Provided, however, that any person who elected to retire pursuant to the provisions of N.M.I. Const. art. III, § 20(b) may be employed by the Commonwealth for no more than 60 calendar days in any fiscal year without forfeiting any retirement benefits.
>
> (d) Retirees are allowed to return to government employment as classroom teachers, nurses, doctors and other medical professionals for a period not to exceed two years without losing their retirement benefits. However, no such re- employed retiree shall have their retirement benefits recomputed based on any re- employment during which retirement benefits are drawn, but every

> such re- employed retiree shall nevertheless be required to contribute to the retirement fund during the period of re-employment, at the same rate as other government employees.
>
> As authorized under the provisions of N.M.I. Const. art. III, § 20(b), and as permitted by law, all retirees who are re-employed by the Commonwealth following the effective date of this act shall not, in any event or under any circumstances, have their retirement benefits re-computed based on their reemployment services.

Because the NMISF regulations, as contained in NMIAC § 110-10-130, adopt this language, which is controlling, they will not be separately analyzed.

CONSTITUTIONAL AND STATUTORY CONSTRUCTION STANDARD

Both constitutional and statutory interpretation begin with examining the text and looking at its plain meaning. *In re Decision of Off. of the Pub. Auditor on the Admin. Appeal of GPPC, Inc.*, 2021 MP 13, ¶ 15, No. 2021-SCC-0009-CIV, 2021 WL 6194656, at *3 (N. Mar. I. Dec. 30, 2021). *See Camacho v. Northern Marianas Ret. Fund*, 1 N.M.I. 131 (1990), 1990 WL 291962, *2; *Peter-Palican v. N. Mariana Islands*, 2012 MP 7 ¶ 6, No. 2012-SCC-0010-CQU, 2012 WL 2564359, at *2 (N. Mar. I. June 29, 2012). It is especially important in a constitutional analysis to consider all words to avoid making any part of a provision superfluous. *Matter Torres*, 2020 MP 2, ¶ 13, No. 2018-SCC-0021-CQU, 2020 WL 242488, at *5 (N. Mar. I. Jan. 14, 2020)(citation omitted). A statute should be read in conjunction, not in conflict, with the Constitution. *Pangelinan v. N. Mariana Islands Ret. Fund*, 2009 MP 12, ¶ 12, No. 06-0030-GA, 2009 WL 2854434, at *4 (N. Mar. I. Sept. 2, 2009), citing *Estate of Faisao v. Tenorio*, 4 N.M.I. 260, 265 (1995). In any review, the Constitution is paramount. *See Dep't of Pub. Lands v. N. Mariana Islands*, 2010 MP 4, ¶ 29, No. 2009-SCC-0041, 2010 WL 3945463, at *10 (N. Mar. I. Oct. 4, 2010).

If a constitutional provision is ambiguous, the intent of the drafters must be ascertained and given effect. *Peter-Palican v. N. Mariana Islands*, 2012 MP 7 ¶ 6. Constitutional language should not be interpreted to deviate from the common law unless there is a clear indication of

intent. *Id.* at ¶ 6. Similarly, if the meaning of a statute is unclear, the legislative intent may be examined through a statute's history, context, relevant caselaw, and statutory construction. *Commonwealth v. Camacho*, 2019 MP 2, ¶ 10, No. 2017-SCC-0018-CRM, 2019 WL 2093268, at *3 (N. Mar. I. May 10, 2019). If statutory terms are ambiguous, then courts may look beyond the text. *Castro v. Telesource CNMI, Inc.*, No. 2021-SCC-0023-CIV, 2022 WL 17257593, at *3 (N. Mar. I. Nov. 29, 2022). "A statute is ambiguous if it is susceptible to more than one reasonable interpretation." *Arizona v. Tohono O'odham Nation*, 818 F.3d 549, 556 (9th Cir. 2016) (citation omitted); *Peter-Palican v. N. Mariana Islands*, 2012 MP 7 ¶ 7.

Interpretations of a statute that would defy common sense or lead to absurd results should be avoided. *N. Mariana Islands v. Minto*, No. 2008-SCC-0034-CRM, 2011 WL 6412087, at *9 (N. Mar. I. Dec. 16, 2011); *Manglona v. Baza*, No. 2009-SCC-0033-CIV, 2012 WL 1192770, at *11 (N. Mar. I. Apr. 5, 2012). Interpreting a statutory provision in a way that would render another provision either inconsistent or meaningless should also be avoided. *Commonwealth of N. Mariana Islands v. Camacho*, No. 98-0175, 2002 WL 32983888, at *5 (N. Mar. I. Apr. 8, 2002), *aff'd in part, dismissed in part sub nom. N. Mariana Islands v. Camacho*, 66 F. App'x 707 (9th Cir. 2003). All parts of the statute should be harmonized, not only with each other, but with the general intent of the whole enactment. *DeLeon Guerrero v. Dep't of Pub. Lands, Commonwealth of N. Mariana Islands*, No. 06-0313C, 2011 WL 1316819, at *3 (N. Mar. I. Mar. 31, 2011), ¶ 11. If possible, every clause and word should be given effect. *Id.*

ANALYSIS

1. Plain Language Analysis.

First, it is necessary to determine whether the plain meaning of these laws is ambiguous. If the language is not ambiguous, there is no further need for analysis. *Commonwealth v. Camacho*, 2019 MP 2, ¶ 10, No. 2017-SCC-0018-CRM, 2019 WL 2093268, at *3 (N. Mar. I. May 10,

2019)("if the statute's meaning is clear, our analysis ends there."). But if a constitutional provision is ambiguous, there will be a further analysis. *See Pangelinan v. N. Mariana Islands Ret. Fund*, 2009 MP 12, ¶ 17, No. 06-0030-GA, 2009 WL 2854434, at *7 (N. Mar. I. Sept. 2, 2009) (ambiguity in Section 20(b) resolved by examining intent of framers).

The plain language of § 20(b) gives the Legislature the power to "exempt" some retirees "from this limitation." N.M.I. Const. art. III, § 20(b) as follows:

> **An employee** who elects to retire under this provision may not be reemployed by the Commonwealth Government or any of its instrumentalities or agencies, for more than 60 days in any fiscal year without losing his or her retirement benefits for the remainder of that fiscal year, **except** that the legislature may by law **exempt** reemployment of retirees as classroom teachers, doctors, nurses, and other medical professionals **from this limitation**, for reemployment not exceeding two (2) years. N.M.I. Const. art. III, § 20(b) (emphasis added).

The Black's Law Dictionary definition of "limitation" applicable here is: "1. The act of limiting; the quality, state, or condition of being limited. 2. A restriction.…" LIMITATION, Black's Law Dictionary (11th ed. 2019).[3] Courts interpret the language of the § 20(b) "limitation" (from the beginning of the excerpt above until the word "except") to allow a retiree to draw both a salary and retirement benefits for up to 60 days per year of reemployment. *Bd. of Trustees of N. Mariana Islands Ret. Fund v. Ada*, 2012 MP 10, FN2, No. 2010-SCC-0033-CIV, 2012 WL 3779318, at *1 (N. Mar. I. Aug. 30, 2012), *citing Pangelinan v. N. Mariana Islands Ret. Fund*, 2009 MP 12 ¶ 9. In other words, the limitation means that all employees granted the five-year credit under § 20(b) are restricted from receiving full retirement benefits after they return to work. Any employee reemployed by the CNMI government after retirement with the credit is limited to receive retirement benefits for 60 days each year before they are lost for the rest of the year. *Pangelinan v. N. Mariana Islands Ret. Fund*, 2009 MP 12, ¶¶16-20. That is the "limitation."

[3] Black's Law Dictionary is commonly consulted by the CNMI Supreme Court to ascertain plain meaning. *See, e.g.*, *Matter Torres*, 2020 MP 2, ¶ 13, No. 2018-SCC-0021-CQU, 2020 WL 242488, at *5 (N. Mar. I. Jan. 14, 2020).

Structurally, the plain language of the "limitation" includes "[A]n employee." An employee would be any one of the group of all retirees that have returned to work under § 20(b). The "limitation" therefore applies to everyone in the group that could be said to be "an employee." This is also reflected by the plain language in § 20(b) that does not allow any retirees to have their benefits recomputed. ("No retiree may have their retirement benefits recomputed based on any reemployment during which retirement benefits are drawn, but every such reemployed retiree shall nevertheless be required to contribute to the retirement fund during the period of reemployment, at the same rate as other government employees."). Nobody in this entire group of employees may have their retirement benefits recomputed based on their reemployment after retirement. The plain language of the Constitution has created one bucket of retirees, and everyone in the bucket has the same status of being a retiree that returned to work under § 20(b). None of the retirees may receive more than 60 days of benefits after they return to work, or have their benefits recomputed based on their reemployment.

The Constitution did not provide for a different group of § 20(b) retirees. Rather, it offered a possibility for the Legislature to enact an exemption from this group. The word "exempt" means "free or released from a duty or liability to which others are held." EXEMPT, Black's Law Dictionary (11th ed. 2019). So when the Constitution states that the Legislature may "exempt" certain professions "from this limitation," the plain meaning is that those certain professions can be released from the limitation to which everyone else in the group is held. But they are all in the same group, even though certain professions are free from the limitation of the group for two years.

Tellingly, and clear by the plain language, if the Legislature had never enacted the Statute to exempt classroom teachers, doctors, nurses, and other medical professionals, then these particular professionals would have never been able to claim any exemption from the group that

§ 20(b) created: the plain language of the Constitution is clear that the limitation applies to all returning retirees under § 20(b). There is no other language that would change a reemployed retiree from the "limitation" group they are already part of in § 20(b) to a limitation that included no double-dipping benefits at all. Nowhere in the Constitution does it say that if a retiree is exempted from the "limitation" group for some period, they are then put into another group that gets no benefits. Without any other plain language direction or definition, a retiree that received the exemption that has always been part of the "limitation" group would necessarily remain part of the § 20(b) "limitation" group after they were no longer exempted from the "limitation" group (i.e., released from the limitation duty or liability). In other words, the release is temporal- it is for two years. But after two years, once the release has expired, the exemption is gone, and there is no other place for a § 20(b) retiree to go (in the absence of further direction) but back to their original group.

Looking further to the statutory Two-Year Exemption from the "limitation," which the Legislature did enact under 1 C.M.C. § 8392, it tracks the language of the Constitution. 1 C.M.C. § 8392(a) provides that in general, a retired person receiving benefits from the government of the Northern Mariana Islands shall not be reemployed, unless that person was one of a group of people with certain characteristics outlined by Par. (a), including:

> (2) Hired in a position for which professionals are not readily available in the local labor market, including, for example, teachers for the Public School System….

1 C.M.C. § 8392(a)(2); *See* NMISF Response Brief Appendix, filed Nov. 7, 2022 ("NMISF Appendix,") p. 048. But 1 C.M.C. § 8392(a) does not specify whether a retiree retired pursuant to § 20(b). Rather, that entire § 20(b) group is defined by 1 C.M.C. § 8392(c), which provides that **any person** who is reemployed pursuant to the Constitution is entitled to work and on their return receive the 60-day Annual Benefit. In other words, the Statute defines the group at issue

just like the Constitution does: as a separate all-encompassing group. A classroom teacher subject to a § 20(b) reemployment after retirement is merely a subset of all kinds of government retirees that might be allowed back to work by the Constitution and Statute (together, the "Laws").

Retirement benefit provisions for returning retirees being reemployed are found in 1 C.M.C. § 8392(d):

> (d) Retirees are allowed to return to government employment as classroom Teachers … for a period not to exceed two years without losing their retirement benefits. However, no such reemployed retiree shall have their retirement benefits recomputed based on any reemployment during which retirement benefits are drawn, but every such reemployed retiree shall nevertheless be required to contribute to the retirement fund during the period of re-employment, at the same rate as other government employees.
>
> As authorized under the provisions of N.M.I. Const. art. III, § 20(b), and as permitted by law, all retirees who are re-employed by the Commonwealth following the effective date of this act shall not, in any event or under any circumstances, have their retirement benefits re-computed based on their reemployment services.

1 C.M.C. § 8392(d); *See* NMISF Appendix, Nov. 7, 2022 ("Appendix,") p. 048. The plain language of the Statute, like the Constitution, provides that a classroom teacher could return to service for two years while receiving full retirement benefits. It does not allow a classroom teacher to have their benefits recomputed. But this merely specifies the post-retirement benefit scheme. And the Statute provides the same scheme for all retirees that return to work: nobody gets to have their retirement benefits recomputed based on their reemployment services.

Therefore, a reading of the plain language suggests that after a classroom teacher that was subject to §20(b) reemployment exercised the exemption provided by the Legislature, in the absence of other language to change their belonging to the group of all retirees returning to work, their original status as a government retiree that returned to work under § 20(b) would remain the same. Therefore, a plain reading of the Laws would provide Mr. Welch with an initial

two-year retirement benefit, followed by a 60-day per year retirement benefit for his post-retirement employment as a classroom teacher.

2. Despite The Plain Language Analysis, A Degree Of Ambiguity Warrants Further Examination.

While this Hearing Officer sees the plain language analysis clearly, it is also important to consider that the Parties' arguments provide substantially different conceptions of the meaning of the language at issue. Mr. Welch's plain language argument is consistent with the review of the Hearing Officer. The NMISF, however, conceptualizes the Constitution and Statute as creating two groups of reemployed retirees: a 60-day Annual Benefit Group (1), and a Two-Year Exemption Group (2). *See* NMISF PowerPoint Presentation, March 10, 2023. In the NMISF's view, these groups do not mix with each other. The 60-day Annual Benefit Group (1), made up of retirees including, but not limited to, firemen, administrators, and special assistants, is entitled to be reemployed after retirement for no more than 60 calendar days each year while receiving retirement benefits. 1 C.M.C. § 8392 (a)(1)-(5). In other words, the NMISF believes this 60-day Annual Benefit Group (1), comprised of all the retirees that are allowed to come back to work after retirement, gets 60 days of retirement benefits every year after returning to work. This reemployment benefit is not capped: any retiree allowed to return to government employment in Group (1) can work an unlimited number of years and still receive 60 days of their retirement benefit for each year they work.

The NMISF argues that the Two-Year Exemption Group (2), including classroom teachers, gets two full years of retirement benefits, and after that they are entitled to no more retirement benefits while they are working. So essentially, the classroom teachers, doctors, nurses and other medical professionals have been put into an entirely different group entitled to two full years of retirement benefits after returning to work but nothing else- even if they retired originally under § 20(b). In other words, if a classroom teacher or nurse were to be called back

into service after retirement, they could work for two years and receive full retirement benefits while they worked. But at the beginning of year three, NMISF believes they would receive no retirement benefits, only their salary. The NMISF's conception of the plain interpretation of these Laws alone suggests that there may be some level of ambiguity in the language at issue that requires further examination.

In addition, despite the Hearing Officer's clear view of the plain language, caselaw suggests that interpretation of the Laws may not be so straightforward. In the Peter-Palican case, the District Court of the Northern Mariana Islands interpreted CNMI Const. art. III, § 22. *Peter-Palican v. Gov't of N. Mariana Islands*, No. CV 07-0022, 2010 WL 11526853, at *3–4 (D. N. Mar. I. May 26, 2010), *vacated and remanded*, 695 F.3d 918 (9th Cir. 2012). The Court found with great certainty that the plain language was clear in making a politically appointed Special Assistant removable only for cause. *Id.* at *3. The 9th Circuit sent certified questions to the Supreme Court of the CNMI, which looked at the plain meaning, and, as part of its analysis looked at the context of the entire provision at issue. *Peter-Palican v. N. Mariana Islands*, 2012 MP 7, ¶ 6, No. 2012-SCC-0010-CQU, 2012 WL 2564359, at *2 (N. Mar. I. June 29, 2012). The Supreme Court found that the Special Assistant under the Constitution could be removed only for cause- but only during the term of the appointing Governor. *Id.* ¶ 2. The Ninth Circuit reversed the District Court and remanded. *Peter-Palican v. Gov't of N. Mariana Islands*, 695 F.3d 918, 920 (9th Cir. 2012).

Accordingly, given that there are substantially divergent legal arguments that have been put forth by the Parties regarding the interpretation of these Laws, the Hearing Officer finds there is enough ambiguity that it is necessary to also examine the constitutional and statutory history, context, relevant caselaw and statutory construction, and harmonize language with its general intent, without rendering another provision either inconsistent or meaningless.

3. Constitutional And Statutory Underpinnings And Analysis To Determine Meaning.

In this section the relevant history, context, caselaw, statutory construction, general intent of the Laws, and consistency will be examined.

A. Constitutional And Legislative History To Analyze Statutory Construction.

The CNMI Constitution was initially amended by the 19th Amendment, which became N.M.I. Const. art. III, Sec. 20 after voter ratification in 1986. Second Northern Marianas Constitutional Convention, 1985, https://www.cnmilaw.org/pdf/source/1985amendments.pdf (Proposed Constitutional Amendment 19); NMISF Response Brief, p. 5; Appendix 027-028. *See Camacho v. Northern Marianas Ret. Fund*, 1 N.M.I. 131 (1990), 1990 WL 291962 (applying the 19th Amendment prospectively), NMISF Supplemental Brief Appendix, filed March 17, 2023 ("Supplemental Appendix"), p. 01-05. Upon ratification, N.M.I. Const. art. III, Sec. 20 provided for an additional five-year service credit to retirees as well as the ability for those retirees to receive the 60-day Annual Benefit. *Id.* About ten years later, the Legislature, through a Legislative Initiative passed in 1996, further sought to amend the Constitution to provide an additional benefit for certain qualified professional retirees to return to work. Senate Legislative Initiative 10-4 (1997), https://cnmilaw.org/pdf/source/SLI10-4.pdf; NMISF Response Brief, p. 5; Appendix at 028.

In passing the 1996 Initiative, the Legislature found that it was important to encourage local retirees to come back and fill specific vacant positions in the CNMI government. Senate Legislative Initiative 10-4 contained findings that "the number of classroom teachers, doctors, nurses, and other medical professionals is insufficient to meet the demands of the Commonwealth." Senate Legislative Initiative 10-4 (1997), Section 1, https://cnmilaw.org/pdf/source/SLI10-4.pdf. The Legislature further found "that there are local retirees who could fill these positions who are reluctant to do so because government

reemployment would terminate their retirement benefits." *Id.* The Legislature wanted to encourage these retirees to come back "without losing their retirement benefits" and at the same time "reduce reliance on nonresident labor." *Id.* By providing that all returning classroom teacher, doctor, nurse, and other medical professional retirees (together, "Specific Qualified Professionals") under § 20(b) could be exempted by further legislation, the Legislature was further encouraging retirees to return to work as Specific Qualified Professionals. The Legislature stated in its findings that before the Amendment, there was "a 100% penalty on reemployment, a situation which would be attractive only if the pay to be earned from reemployment were very significantly greater than the retirement benefits." *Id.*, Page 1, lns. 12-19. This suggests that the Legislature was well aware of the financial calculation a retiree might do to determine whether it was worthwhile to return, and that it was important to provide the retiree with a benefit to return to work that would be attractive.

The statutory provision of 1 C.M.C. § 8392 (d) was added by P.L. 11-2, §4. *See* https://www.cnmilaw.org/pdf/public_laws/11/pl11-02.pdf, NMISF Appendix, pp. 039-040. The stated purpose of this section was "to allow retirees to return to government service as classroom teachers, doctors, nurses and other medical professionals without losing their retirement benefits." This provision was enacted by the Legislature through the "Retiree Re-employment Amendment Act of 1998," P.L. 11-2, Section 1. *See* https://www.cnmilaw.org/pdf/public_laws/11/pl11-02.pdf, NMISF Appendix at p. 049. The purpose of that Act was to "allow retirees to return to government service as classroom teachers…without losing their retirement benefits." P.L. 11-2, Section 2 (Purpose). The Legislature found that there was a need for certain positions to be filled, and there were "local retirees who could fill these positions who are reluctant to do so because government re-employment would terminate their retirement benefits." P.L. 11-2, Section 2 (Findings).

Looking at legislative floor discussions can be instructive when considering legislative history. *See Camacho*, 1 N.M.I. at 134-135 (considering floor discussions). The House of Representatives of the Eleventh Northern Marianas Commonwealth Legislature passed, without a single "no" vote, H.B. No. 11-32, entitled "A Bill for an Act to allow retirees to reenter the work force as classroom teachers, doctors, nurses and other medical professionals without losing their retirement benefits for a period not to exceed two years by amending 1 C.M.C. Section 8392 and for other purposes." *See* Supplemental Appendix, p. 71-72. The Representatives wanted to be sure that by enacting 1 C.M.C. § 8392(d), they were not exceeding what was provided by the Constitution:

> Speaker Benavente: I think what is important in discussing this bill is that we can't go beyond what the Constitution provides for under the last initiative. Minority Leader, recognized.
> Rep. Jones: Are you implying that not to exceed two years?
> Speaker Benavente: Right. And any other provision that is in the Constitution.

NMISF's position is that this exchange suggests that two years was anticipated to be a maximum not just for the exemption, but for any retirement benefit paid during reemployment. *See* NMISF Supplemental Brief, filed March 17, 2023, p. 2-3. The NMISF appears to go even farther and suggest that classroom teachers, doctors, nurses and other medical professionals cannot return to government service for a period exceeding two years. *Id.* at 3.

The Hearing Officer agrees with NMISF that this exchange suggests that the Representatives knew that they could not give an exemption that exceeded two years. But this language also suggests that the Representatives understood they could not go beyond any other provision in the Constitution. Because the Constitution § 20(b) gives the 60-day Annual Benefit to all returning retirees, whether or not they could receive an exemption, it would be going beyond the Constitutional provision for the Legislature to take that baseline benefit away after the Two-Year Exemption expired. There is nothing to suggest that the Legislature intended for

a § 20(b) retiree to be capped at two years for either their return to work or their benefits in the House legislative history.

House Communication No. 11-5 transmitted H.B. No. 11-32 to the Eleventh Northern Marianas Commonwealth Legislature. Senate Journal, Jan, 23, 1998. *See* Supplemental Appendix, p. 84-86. Senate Vice President Villagomez amended the bill to clarify that retired government employees should benefit from H.B. No. 11-32 by returning to work as classroom teachers, nurses, doctors and medical professionals (not that classroom teachers, nurses, doctors and medical professionals could get a benefit by returning to any other type of government employment). *See* Supplemental Appendix, p. 84. The Senators went on to discuss the prohibition on additional benefits during the return to work. *Id.* at 85.

> Senator Tenorio: Let me try to put in my two cents worth. If you retire as a classroom teacher at $20,000 and then come back to government employment as an engineer, you cannot double dip. If you retire as a classroom teacher at $20,000 and you come back into the classroom or as a counselor at $40,000, you can double dip. Now, you will continue to receive your pension of $20,000. When you come back in as a counselor at $40,000 salary, you will be making all the required deductions including retirement contribution. That will go back to the Retirement Fund. However, it would not alter your basic $20,000 pension once you finish the two years.
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> * * *
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> President Manglona: I think that is clear now that going back to re-employment would not effect your retirement benefits.

See Supplemental Appendix, p. 85. In other words, the Senators recognized that reemployment would not affect a retiree's original benefit or pension payment. If a retiree went back to work, when they retired for the second time, they would not end up with a higher pension payout.

What no one talks about is what happens once a § 20(b) classroom teacher, nurse, doctor or medical professional comes to the end of the Two-Year Exemption. Looking at Senator Tenorio's comment, it almost appears that no one contemplated that a classroom teacher retiree would return for more than two years. But there was no specific provision made for a scenario where a § 20(b) classroom teacher returned from retirement for more than two years. Without

any provision that would take away the remaining § 20(b) 60-day Annual Benefit, there is nothing in this legislative history that suggests a different outcome for a retiree that had retired under § 20(b).

B. Context And Intent Of The Laws.

When looking at constitutional or statutory language, the interpretation needs to reflect the context of the entire provision at issue. *Peter-Palican*, 2012 MP 7 ¶ 6. In doing this, interpretations that defy common sense or lead to absurd results should be avoided. *Id.*

Section 20 consists of a section (a) and section (b). Section (a) states as follows:

> (a) Membership in an employee retirement system of the Commonwealth shall constitute a contractual relationship. Accrued benefits of this system shall be neither diminished nor impaired.

Looking at the entire provision of § 20, including both sections, a retiree's membership is contractual and there is a strong proscription against any diminishment of benefits that have accrued. This suggests that when the Constitution provides a benefit, it cannot be taken away. For example, in *Cody*, the Court did not allow the predecessor Retirement Fund to interpret a statute retroactively to force a plan member to receive disability benefits at a lower rate because the benefits were already vested. *Cody v. N. Mariana Islands Ret. Fund*, No. 2010-SCC-0027, 2011 WL 12673476, at *10 (N. Mar. I. Dec. 29, 2011), ¶ 34. Here, the Constitution provided the 60-day Annual Benefit for about ten years before the Statute was ever enacted: this was an existing benefit. The NMISF's argument fails to take the entire provision into account. *Peter-Palican*, 2012 MP 7 ¶ 6. Mr. Welch was always subject to the 60-day Annual Benefit because it was conferred on all retirees that retired under § 20(b). The fact that Mr. Welch received the additional benefit of the Two-Year Exemption without some other limiting language cannot take him out of the original constitutional provision providing for a 60-day Annual Benefit that existed before and after the statutory exemption was provided and enacted. The 60-day Annual

Benefit cannot be taken away from an individual that retired pursuant to § 20(b) absent language directing that result.

C. Consistency And Intent.

The thread running through the legislative history and findings is that the CNMI needed to fill positions, and it did not want to have to go off island to find employees if possible. Especially critical were classroom teachers, nurses, doctors and medical professionals. The intention was to encourage retirees to come back into the workforce to help because the CNMI government could not find Specific Qualified Professionals locally. But retirees were reluctant to return because it would mean losing their retirement benefits. These Laws were enacted to encourage Specific Qualified Professionals to return. This is clear from the granting by the Constitution of the ability to give these critical positions full double-dipping benefits for two entire years when all the other employees that had retired under § 20(b) were receiving only 60 days per year. It does not make sense that these retirees with the most desired and most critical skills which were most needed by the CNMI would be deprived of their 60-day Annual Benefits after being taken out of the limitation by the Two-Year Exemption while other returning government employees that were less critical would continue to receive those benefits for as many years as they continued their reemployment.

As discussed at the hearing, if an administrative employee—an employee who is not in as high of a demand as determined by the Legislature--came back to work and received the 60-day Annual Benefit- at some point they would get more benefits than the employee deemed critical and subject to an additional enticement to return. The NMISF argues that it would take many years for this result to occur- as the critical employee would have gotten an equivalent of 12 years' worth of 60-day Annual Benefit payments compressed into their first two years. That may be the case. But the way these Laws were set up, it does not appear to make sense that there

would be any circumstance where the critical returning employee could in any circumstance get less of a benefit than a noncritical employee.

CONCLUSION

For the reasons stated above, the Hearing Officer finds that Mr. Welch was entitled to receive the Two-Year Exemption benefit on his return to employment after retirement. Mr. Welch was further entitled to receive the 60-day Annual Benefit for each year after that he remained in service as a classroom teacher or equivalent.

The Parties shall contact Hearing Coordinator Ms. Susan T. Lobo within seven (7) days to arrive at a mutually agreed date and time to meet with the Hearing Officer to discuss how to proceed.

DATE: April 13, 2023

Deborah E. Fisher
Hearing Officer