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IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

JOSEPH S. INOS,
Mayor of Rota in his official
capacity, for himself and on
behalf of the PEOPLE OF ROTA,

Plaintiff,

v.

FROILAN C. TENORIO,
Governor of the Commonwealth
of the Northern Mariana
Islands, et al.

Defendants.

) Civil Action No. 94-1289

) **MEMORANDUM DECISION
AND DECLARATORY
JUDGMENT**

This matter came before the Court for oral argument on April 21, 1995, on cross motions by Plaintiff Joseph S. Inos (Mayor) and Defendant Froilan C. Tenorio^{1/} (Governor) for partial summary judgment. The Mayor contends that the Governor and his Secretaries have committed unconstitutional and unlawful acts by "removing constitutional and statutory powers from the Office of the Mayor and delegating them to officers and agents of his executive branch or delegating them to the newly created 'Office of the Governor's Representative for Rota'. . ." *Plaintiff's First Amended Complaint for*

FOR PUBLICATION

^{1/} The Motions also pertain to the Mayor's complaint against the various department secretaries listed in the above caption. For the sake of simplicity, their names have only been included in the body of this opinion where necessary.

1 *Declaratory and Injunctive Relief* at 2 (Dec. 28, 1994). The Governor maintains that all executive
2 branch activities on Rota germane to this dispute have been constitutional. The Court has heard oral
3 argument and reviewed all documents relevant to Plaintiff's and Defendants' cross-motions for partial
4 summary judgment.

6 I. FACTS

7 A. PROCEDURAL HISTORY

8 On December 9, 1994, the Mayor filed an eight count Complaint for Declaratory and
9 Injunctive Relief along with a request for a temporary restraining order (TRO). That same day, the
10 Court denied the Mayor's TRO request on procedural grounds. *See Order Denying Plaintiff's Motion*
11 *for a Temporary Restraining Order* (Dec. 9, 1994). Days later, the Court denied the Mayor's second
12 TRO request on similar grounds. *See Order Denying Plaintiff's Motion for a Temporary Restraining*
13 *Order* (Dec. 19, 1994). On December 28, 1994, the Mayor added a ninth count to his original
14 Complaint and requested that the Court issue a preliminary injunction. *See First Amended Complaint*
15 *for Declaratory and Injunctive Relief* at 16 (Dec 28, 1994). On January 25, 1995, the Governor filed
16 his Answer as well as his Motion to Dismiss Plaintiff's Second, Third, Fourth, Seventh, and Eighth
17 Causes of Action.

18 On February 22, 1995, the Court heard oral argument concerning the Mayor's motion for a
19 preliminary injunction as well as the Governor's motion to dismiss. The Court took both motions
20 under advisement. On March 1, 1995, the Court issued a decision denying the Mayor's motion for
21 preliminary injunction, citing the Mayor's failure to establish the threat of irreparable harm. In
22 addition, the Court held that ambiguities existing in the plain language of Article III, Section 17(a)
23 of the Commonwealth Constitution precluded the Court from finding a likelihood of success on the
24 merits without a more in-depth analysis of legislative intent. *See Decision and Order on Plaintiff's*
25 *Motion for Preliminary Injunction* at 12 (Mar. 1, 1995). A few days later, citing Rule 12(b) of the
26 Commonwealth Rules of Civil Procedure, the Court converted the Governor's motion to dismiss five
27 of the nine counts contained in the Mayor's complaint into a motion for partial summary judgment.

1 See Order Converting Defendants' Motion to Dismiss into a Motion for Summary Judgment at 2 (Mar.
2 6, 1995). The Court set the summary judgment hearing for April 21, 1995, and invited both parties
3 "to move for summary judgment on as many counts not currently at issue in this matter. . ." *Id.* The
4 parties responded by filing cross-motions for summary judgment.

5 On April 19, 1995, the Mayor added a tenth and eleventh cause of action to his complaint.
6 The parties have agreed that all but the Tenth Count of the Mayor's Third Amended Complaint will
7 be addressed by the Court at this time.

8

9 B. HISTORICAL CONTEXT OF THIS ACTION

10 The current controversy between the Mayor and the Governor is the product of a long history
11 of conflict and compromise between the Commonwealth's central government and its local authorities,
12 as reflected in the 1976 and 1985 Constitutional Conventions and the documents they produced. The
13 Court's determination of the issues presented must therefore be grounded in an understanding of this
14 historical context.

15

16 1. Pre-Amendment 25 Local Government Powers

17 The original framers of the Commonwealth Constitution limited the power of the local
18 governments of Saipan, Tinian, and Rota. Article VI, Section 6 "dissolve[d] existing municipal
19 councils and Mayors' offices" and "prohibite[d] the creation of any other agencies of local
20 government other than [the Mayor and the Governor's Council] for five years^{2/} following [January
21 9, 1978]." See 1976 JOURNAL OF THE 1976 NMI CON-CON, vol. 1 at xx-xxii (1976 JOURNAL);
22 ANALYSIS OF THE CONSTITUTION OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS at
23 118-20 (ANALYSIS OF THE CONSTITUTION). Although the 1976 Constitution did provide Saipan, Rota,
24 Tinian and Aguigan, and the Northern Islands with elected mayors, each mayor's role was largely that

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26 ^{2/} . Even after the five year moratorium expired, any new local agency had to be created by the
27 legislature through enabling legislation (Article II, Section 5), and not by local law or regulation.
28 ANALYSIS OF THE CONSTITUTION at 120.

1 of a local advisor to the governor.^{3/}

2 Under Article VI, Section 3(e) of the original Constitution, a mayor's authority to promulgate
3 regulations was made dependant upon legislative enactment.^{4/} However, the legislature did not
4 address the mayoral power to create local laws until five years after the creation of the
5 Commonwealth Constitution. *See* 1 CMC § 1401 (*Commission Comment*). When the legislature
6 finally did so by enacting Public Law No. 3-77 on September 21, 1983, the legislature gave mayors
7 a very limited role in the creation of local laws and regulations.^{5/}

9 2. Amendment 25 and the 1985 Constitutional Convention

10 During the opening days of the Second Constitutional Convention, it immediately became
11 apparent that the delegates intended to expend a great deal of time and effort to review the power of
12 local government. On June 20, 1985, Delegate Paul A. Manglona moved to amend Con-Con rules
13 to allow for an additional committee which would be dedicated almost entirely to the issue.^{6/}SECOND
14 CON-CON JOURNAL at 51-52 (1985)(1985 JOURNAL). Delegate Ramon G. Villagomez objected on the
15 ground that the local government issue was not complex enough to merit its own committee. Delegate
16 Ramon G. Villagomez also remarked that Delegate Manglona's proposal was a product of "the

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18 ^{3/} For example, under the 1976 Constitution a mayors' role was limited to: (1) serving on the
19 governor's council, (2) submitting findings to the governor concerning their review of government
20 services and appropriations, (3) recommending items for inclusion in the governor's proposed annual
21 budget, (4) reviewing the proposed budget and recommend amendments to the governor before its
22 submission to the legislature, (5) investigating complaints and conduct public hearings on local matters
23 and submitting such findings to the governor. 1976 JOURNAL at xxi; *see also* 1 CMC § 5106.

22 ^{4/} Article VI, Section 3(e) of the original Constitution stated. "a mayor may promulgate
23 regulations on local matters as provided by law. 1976 JOURNAL at xxi. Thus, a mayor may not act
24 with respect to local laws and regulations if the legislature "fails to grant [mayors] the authority to
25 make regulations or fails to define the local matters [over which the mayor may promulgate
26 regulations]." ANALYSIS OF THE CONSTITUTION at 114.

25 ^{5/} According to P.L. 3-77, local legislation was enacted by the legislature and subject to the
26 governor's veto power. *See* 1 CMC §§ 1404, 1405. Mayors were merely given the statutory duty to
27 review and comment on all local bills. *See* 1 CMC § 1405.

27 ^{6/} The proposed Committee on Local Government would address matters of local government
28 and corporations. *Id.*

1 delegations of Rota and Tinian insisting on having a sole committee to handle local governments . .
2 . [and] to make sure that as much power as can be delegated to a local government be done so." 1985
3 JOURNAL at 54-55.

4 In support of the Manglona proposal, Delegate Vicente M. Calvo offered his estimation that
5 30% of the amendment proposals addressed local government function. *Id.* at 55. Finally, in an
6 attempt to appease Delegate Villagomez, Delegate Rita H. Inos gave her support for the Manglona
7 proposal while at the same time defining its purpose:

8 I empathize with what Delegate Villagomez has stated. In its efficiency, I do feel that
9 creating this [Committee on] Local Government in its entirety is not to give us the
10 power by all means. It is not a power struggle we are after. We have been servants
11 of the local government as stated in the Constitution. We are concerned of the
12 efficiency of the delivery of the services under local government. I appeal to all my
13 colleagues here . . . to please give us this opportunity because as you see, this is an
14 urgent matter with us and it is not the power that we want. It is the efficiency in
15 carrying out our government into operations.

16 *Id.* at 55-56 (quoting Delegate Inos). Delegate Manglona's proposal passed by a 14 to 8 margin.
17 Later that day, Con-Con President Herman M. Guerrero presented a document which listed 67
18 proposed amendments and assigned them to one of four committees. After Delegate Villagomez
19 pointed out that only 2 of the 67 proposals had been submitted to the newly created Committee on
20 Local Government, Delegate Manglona responded, "it is obvious that to have a harmonious
21 relationship among the islands [local government] should be looked at because . . . this is the basic
22 [sic] of our Constitution, the understanding between the islands." *Id.* at 66.

23 The five member Committee on Local Government traveled to Tinian and Rota to conduct
24 public hearings about existing problems with the local execution of Commonwealth laws and the
25 delivery of public services. *Id.* at 72. The people of Rota sent a clear message that the resident
26 department head position was vital to their receipt of public services and that such officials should be
27 appointed by mayors. *Plaintiff's Exh. 18.* The people of Tinian also acknowledged the importance
28 of having resident department heads chosen locally by mayors. However, Tinian constituents were
concerned that "[p]lacing the entire administrative powers and responsibilities into the Office of the
Mayor would lead to complete deterioration of public services and public trust." *Plaintiff's Exh. 17.*

1 On July 13, 1985, at 8:50 p.m, the Convention delegates recessed into the Committee of the
2 Whole to discuss Committee Recommendations concerning local government including Committee
3 Recommendation (C.R.) Nos. 41^{7/} and 31^{8/}. On the following afternoon, Delegate Joaquin A.
4 Tenorio announced that the Committee of the Whole had adopted C.R. 41 as incorporated by other
5 language including the language contained in C.R. 31. Two days later, C.R. 41 was adopted by the
6 delegation.^{9/} Later that year, the people of the Commonwealth approved C.R. 41 as "Amendment
7 25" to the Commonwealth Constitution.

8 9 3. Changes Enacted by Amendment 25

10 The original language from Article III, Section 17(a) and (b) and Article VI and the
11 Amendment 25 modifications at issue state:^{10/}

12 ARTICLE III: EXECUTIVE BRANCH

13 Section 17: Public Services.

14 (a) The governor **shall** (~~may~~) delegate to a mayor elected under the provisions
15 of Article VI, Section 2, responsibility for the execution of Commonwealth laws as
16 **deemed appropriate** and the administration of public services in the island or islands
17 in which the mayor has been elected. Services being provided on a decentralized basis
18 shall continue ~~(to be provided on this basis unless the governor personally certifies
after public hearing on the island involved that such decentralization is inconsistent
with the efficient and economical delivery of services).~~ **In furtherance of this section,
the mayor shall have the responsibility for ensuring that the resident department**

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20 ^{7/} Committee Recommendation No. 41 purported "to repeal Sections 1,2,3,4,5 and 6 of Article
21 VI and Sections 17(a) and (b) of Article III of the Northern Mariana Islands relating to local
22 government." *Report to the Convention by the Committee on Local Government* (July, 1985).

23 ^{8/} Committee Recommendation No. 31 purported "to amend Section 17(b) of Article III of the
24 Northern Mariana Islands Constitution. *Report to the Convention by the Committee on Governmental
25 Institutions* (July, 1985).

26 ^{9/} Discussions concerning C.R. 41 in the 1985 JOURNAL suggest that Delegate Villagomez
27 attempted to make significant amendments to C.R. 41. However, his proposed amendments were
28 aimed at abolishing the elected position of the Mayor of Saipan, and did not touch on the portions of
Amendment 25 germane to this lawsuit. 1985 JOURNAL at 471 (Villagomez Proposal).

^{10/} The language in bold represents words or phrases added by Amendment 25. The stricken
language represents those words or phrases repealed by the Amendment 25. The unemphasized
language represents those portions of the original constitution not disturbed by Amendment 25.

1 heads faithfully execute their duties under the law and in accordance with the
2 policies of the Commonwealth government for the administration of public
services in the island or islands in which the mayor has been elected.

3 (b) Public services on Rota and Tinian and Aguigan, shall be headed
4 ~~(supervised)~~ by a resident department head in the departments providing the services
5 ~~(appointed by the head of the executive branch department with the advice and the~~
6 ~~consent of the majority of the members of the legislature from the senatorial district~~
7 ~~in which the resident department head shall serve). No resident department head~~
8 ~~may be appointed to serve in any commonwealth-wide board, commission, or~~
9 ~~authority. These arrangements shall apply to the islands north of Saipan when the~~
10 ~~population of these islands exceeds one thousand persons.~~

11 ARTICLE VI: LOCAL GOVERNMENT

12 Section 3: Responsibilities and Duties of the Mayor

13 (a) A mayor shall serve on the governor's council as established by section 5
14 of this article.

15 (b) A mayor shall **administer** ~~(review the)~~ government programs, public
16 services, and appropriations provided by law for the island or islands served by the
17 mayor, and shall **report quarterly** ~~(submit)~~ to the governor ~~(findings or~~
18 ~~recommendations)~~ relating to those programs and, services or appropriations.

19 (c) A mayor may investigate complaints and conduct public hearings with
20 respect to **government operations** and local matters, and may submit findings or
21 recommendations to the governor and the legislature. A mayor may require
22 **information in writing relating to local matters** as may be necessary to his
23 investigation under this subsection.

24 (d) ~~A mayor~~ **The mayors of Rota, Tinian and Aguigan, in consultation with**
25 **the municipal council, and the mayor of the islands north of Saipan shall**
26 **recommend submit** items for inclusion in the proposed annual budget, ~~review the~~
27 ~~proposed budget before its submission by the governor to the legislature, and~~
28 ~~recommend amendments in the proposed budget relating to the island or islands served~~
~~by the mayor. A recommendation relating to the budget made by a mayor shall be~~
~~considered by the governor and rejected only for good cause. budgets for both~~
~~government operations and capital improvement projects. The governor's budget~~
~~submission to the legislature shall state his disposition of the budgetary requests~~
~~contained in the submissions from Rota, Tinian, an Aguigan, and the islands~~
~~north of Saipan.~~

(e) A mayor shall **coordinate any extension of federal programs** extended
to the island or islands served by the mayor ~~(may promulgate regulations on local~~
~~matters as provided by law).~~

(f) A mayor shall **act as the principal local official for coordinating**
activities with **disaster control for the mobilization of resources and meeting**
emergency conditions in ~~may expend for local public purposes the revenues raised by~~
~~local taxes that are designated by law for those purposes after the expenditures are~~
~~authorized by the legislature or by the affirmative vote of a majority of the members~~
~~of the legislature representing the island or islands served by the mayor.~~

1 (g) The mayors of Rota, and Tinian and Aguigan, shall appoint, in
2 consultation with the head of the respective executive branch department, all
3 resident department heads (~~A mayor may appoint, supervise and remove those
employees as provided by law to assist in the performance of Mayoral responsibilities~~).

4 (h) A mayor shall perform other responsibilities provided by law.

5 See Comm. Const. Art. III, § 17(a) and (b), and Art. VI § 3; *compare* 1976 JOURNAL at xvii -xxi.

6
7 **4. The Current Dispute.**

8 In May of 1994, in the wake of growing concern from the local and international media and
9 the United States Congress about alleged labor violations including rape and forced prostitution, the
10 Governor sent a task force to the Island of Rota to investigate the allegations. On June 10, 1994, the
11 House of Representatives asked the Governor "to open a satellite Office of the Governor on the Island
12 of Rota . . . [that would] function as the eyes and ears of the Governor . . . in order to enhance the
13 confidence of local and outside investors to develop new industries and services." *See* House
14 Resolution No. 9-52 (June 10, 1994). Through House Resolution 9-52, the House of Representatives
15 proposed that an Office of the Governor on the Island of Rota would "ensure that the needs of the
16 people of Rota are addressed in a timely manner . . . [because] the Mayor has engineered an agenda
17 inconsistent to the needs and wishes of the residents of Rota." *Id.*

18 On August 24, 1994, the Governor signed Directive No. 124, notifying the Mayors of Rota
19 and Tinian that, pursuant to Article III, Section 17(a) of the Commonwealth Constitution, he was
20 reserving "the statutory authority to carry out the enforcement of labor laws in the Commonwealth
21 under Sections 4441 et seq. of the Nonresident Workers Act to the Director of Labor." *See* Plaintiff's
22 Exh. 1. Directive No. 124 intended to establish centralized investigations of alleged labor violations
23 in order to achieve uniform application of C.N.M.I. labor laws. *Id.*

24 On October 12, 1994, the Governor issued a memorandum establishing the Office of the
25 Governor's Representative for Rota (Governor's Representative) "to efficiently take care of matters
26 requiring [the Governor's] attention and ensure effective coordination . . ." On October 18, 1994,
27 the Governor issued Directive No. 137 purporting to limit the Mayor's power "to hire and/or appoint
28

1 personnel for the Executive Branch Department offices in Tinian and Rota . . . to their authority
2 under Article VI, Section 3(g) to appoint the resident department heads." The Governor also relieved
3 the resident department heads of their statutorily created duty "to hire employees for positions that
4 are stationed on the islands that the resident department head represents." *See* 1 CMC § 5106.

5 In addition, Directive No. 137 firmly establishes the secretaries of the various executive
6 departments as the ultimate authority on matters of employment and regulation within those
7 departments, and describes the resident department heads' role as supervisory and subject to the
8 ultimate approval of the secretaries. On November 18, 1994, apparently pursuant to Directive No.
9 137, the Governor's Representative on Rota requested employee information from all Rota department
10 and activity heads. On November 28, 1994, also in the wake of the issuance of Directive No. 137,
11 the Governor's Representative informed all Rota resident department heads that "since the Mayor is
12 not the appointing authority for anyone but the resident department heads, he has no authority to
13 approve or disapprove annual or administrative leave for anyone else." *See* Plaintiff's First Amended
14 Complaint at 9-10. Thus, the Governor, through the Governor's Representative, has allegedly taken
15 over the grant or denial of administrative or annual leave for most of the employees in Rota's resident
16 departments.

17 The Mayor has requested this Court to issue a declaratory judgment prohibiting the Governor
18 from carrying out any of the plans to recentralize control over his executive departments contained
19 in the directives at issue, and returning control over Rota's decentralized services to the Mayor. His
20 specific claims are the following:

- 21 • Count I: Office of the Governor's Representative on Rota creates a new local agency in violation
22 of law;
- 23 • Count II: Governor has interfered with the Mayor's powers to grant administrative leave to resident
24 department employees;
- 25 • Count III: Governor has interfered with Mayor's right to make local investigations;
- 26 • Count IV: Governor has interfered with Mayor's right to assign his employees to aid in the delivery
27 of public services;
- 28 • Count V: The Governor has denied the Island of Rota its right to receive decentralized services;

- 1 • Count VI and VII: Governor has interfered with Mayor's power to appoint and dismiss resident
2 department heads;
- 3 • Count VIII: Governor has interfered with Mayor's authority to promulgate regulations on local
4 matters;
- 5 • Count IX: Governor has usurped Mayor's authority to spend public funds;

6 The Mayor contends that government employees on Rota have been left in a state of confusion
7 concerning whether they ought to follow the authority of the Mayor or the Governor. In response,
8 the Governor contends that Article III, Section 1 of the C.N.M.I. Constitution vests all executive
9 power with the Governor. In light of Article III, Section 1, the Governor claims that Article III,
10 Section 17(a) of the Commonwealth Constitution should be read to reserve him the authority to regain
11 the executive duties and responsibilities which Section 17(a) requires him to delegate to the Mayor.

12 **II. ISSUES**

13 The parties' cross-motions present the following issues:

- 14 1. Whether, and to what extent, the Governor must delegate executive power and/or duties of
15 the Governor to the Mayor pursuant to Amendment 25;
- 16 2. Whether the Governor may revoke a delegation of authority to enforce Commonwealth Law;
- 17 3. Whether the Governor may revoke a delegation of authority to administer public services;
- 18 4. Whether the Governor may strip resident department heads of responsibilities when revoking
19 the Mayor's delegated authority;
- 20 5. Whether the Governor may implement a revocation of delegated authority by means of a
21 "Resident Representative" on the island concerned;
- 22 6. Whether the Governor has the power to appoint, dismiss and control personnel within
23 executive agencies located on Rota;
- 24 7. Whether the Governor has the power to control the administration of public appropriations on
25 Rota.
- 26
- 27
- 28

1 **III. ANALYSIS**

2 **A. GOVERNING STANDARDS**

3 **1. Summary Judgment Standard**

4 The motions before the Court are for summary judgment. Summary judgment is entered
5 against a party if, viewing the undisputed facts in the light most favorable to the non-moving party,
6 the Court finds as a matter of law that the moving party is entitled to the relief requested. *Cabrera*
7 *v. Heirs of De Castro*, 1 N.M.I. 172 (1990). Once the moving party meets its initial burden of
8 showing entitlement to judgment as a matter of law, the burden shifts to the non-moving party to show
9 a genuine dispute of material fact. *Id.*, at 176.

10 Here, the parties do dispute certain facts. Nevertheless, both parties have moved for summary
11 judgment in a virtually uncharted and exceptionally difficult area of local constitutional law.
12 Moreover, the conflict between central and local government in the Commonwealth has largely
13 evolved on its own path, and analogies to the common law of the United States are of limited utility.
14 The Court is therefore called upon to set forth legal tests which will give practical effect, insofar as
15 possible, to the delicate compromises drafted by the framers of Amendment 25. Only after these legal
16 tests are described is the Court in a position to determine which of the disputed facts are material to
17 the resolution of a given cause of action. In each section that follows, therefore, the Court will begin
18 with a general discussion of the constitutional provisions at issue and then proceed to a specific
19 analysis of individual causes of action.

20
21 **2. Guiding Principles of Statutory Construction**

22 Although the constitutional issues presented here are largely of first impression, the Court still
23 has recourse to the principles of statutory construction which also govern constitutional inquiries. *City*
24 *of Princeton v. Buckner*, 377 S.E.2d 139, 143 (W.Va. 1988); see *State ex rel. Curators of the*
25 *University of Missouri v. Neill*, Mo.397 S.W.2d 666, 669 (Mo. 1966). Where a constitutional
26 provision is clear in its terms to an ordinary and reasonable mind, the provision should be applied and
27 not construed. *Nansay Micronesia Corp. v. Govendo*, 3 N.M.I. 12. 18 (1992); *Caminetti v. United*

1 *States*, 37 S.Ct. 193, 194 (1917). Moreover, when interpreting an amended constitutional provision,
2 a court should construe it within the framework of the entire constitution to avoid, to the extent
3 possible, conflicts between different parts of the constitution. *Colorado Common Cause v. Bledsoe*,
4 810 P.2d 201, 212 (Colo. 1991). Thus, the Court has an obligation to interpret Amendment 25 in
5 a manner consistent with corresponding portions of the Commonwealth Constitution. Finally, with
6 respect to the changes to the original Constitution effected by Amendment 25, the original act must
7 be compared with the amendment to determine what shortcoming in the original act the legislature
8 intended to remedy. *Mitchell v. Walden Motor Co.*, 177 So. 151, 153 (Ala. 1937). Parts left
9 unchanged are regarded as a continuation of the former law and are entitled to receive the same
10 construction. *Wring v. City of Jefferson*, 413 S.W.2d 292, 300 (1967). Conversely, portions of an
11 original Act omitted by subsequent amendments are considered repealed. *Security Trust & Savings*
12 *Bank v. Marion County Bank Co.*, 253 So.2d 17, 20 (Ala. 1971).

13

14 **B. WHAT MUST THE GOVERNOR DELEGATE?**

15 **1. Power versus Duties**

16 According to Section 203 of the Covenant to Establish a Commonwealth of the Northern
17 Mariana Islands in Political Union with the United States of America (Covenant), the Commonwealth
18 Constitution must "provide for a republican form of government with . . . executive power . . . vested
19 in a popularly elected Governor *and such other officials as the Constitution or laws of the Northern*
20 *Mariana Islands may provide.*" Covenant § 203(a) & (b) (Feb. 15, 1975) (emphasis added), *see also*
21 SECTION BY SECTION ANALYSIS OF THE COVENANT, at 23-24 (Feb 15, 1975). Thus, the Covenant
22 plainly states that a governor may be divested of his or her executive powers by constitutional
23 provision.

24 Article III of the Commonwealth Constitution addresses the structure and responsibilities of
25 the Executive Branch of the Commonwealth. Article III, Section 1 states, "[t]he executive power of
26 the Commonwealth shall be vested in a governor who shall be responsible for the faithful execution
27 of the laws." Commonwealth Constitution, Art. III, § 1. On its face, this provision does not appear
28

1 to allow the executive power to be vested in officials other than the governor. Moreover, the Analysis
2 of the Constitution of the Commonwealth of the Northern Mariana Islands (Analysis of the
3 Constitution) clearly states, "Section 1 vests all the executive power of the Commonwealth
4 government in the governor." ANALYSIS OF THE CONSTITUTION at 58 (Dec. 6, 1976) (emphasis
5 added). This statement from the Analysis of the Constitution confirms that the original framers of
6 our Constitution intended to equip future governors of the Commonwealth with one hundred percent
7 of the executive power.^{11/}

8 The language of Article III, Section 17(a) *in the original Constitution* was consistent with the
9 concept that the executive power ultimately remained with the governor:

10 The governor **may delegate** to a mayor elected under the provisions of Article VI,
11 section 2, the responsibility for the execution of Commonwealth laws and the
12 administration of public services in the island or islands in which the mayor has been
13 elected. Services being provided on a decentralized basis in Rota and Tinian on the
effective date of this Constitution shall continue to be provided on this basis unless the
governor personally certifies after public hearing on the island involved that such
decentralization is inconsistent with the efficient and economical delivery of services.

14 1 JOURNAL OF THE 1976 NMI CON-CON, at xvii (June, 1977) (emphasis added) (1976 JOURNAL). The
15 following excerpt from the Analysis of the Constitution illustrates the original framers' concern that
16 a governor have complete control over the delegation and reservation of his or her executive power:

17 Section 17(a). This provision permits the governor to delegate to the mayor the
18 responsibility for the execution of Commonwealth laws and the administration of
19 public services within the senatorial district from which the mayor was elected. The
20 governor may delegate all or any portion of this responsibility with respect to all or
21 any subject or combination of subjects. The governor may make different delegations
to different mayors depending on local problems or circumstances. With respect to
any responsibilities delegated under this section, the mayor reports to the governor and
acts for the governor in response to the governor's directions and policies. A governor
may revoke a delegation made under this section at any time without cause.

22 ANALYSIS OF THE CONSTITUTION at 84. Thus, the original framers understood that by using the term
23 "delegate," they had ensured a governor's ability to withdraw any powers which he or she had
24 previously entrusted to a mayor. Elsewhere, the Analysis of the Constitution reiterates the concept

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26 ^{11/} See *Izuko v. Camacho*, 1 CR 724, 732 (D.N.M.I. 1983) ("brevity with which governor's
27 constitutional powers are defined is an indication of the sweeping nature of his discretionary
28 function")

1 that, in the most fundamental sense, the executive power must remain with the governor. While
2 discussing the lieutenant governor's responsibilities, the Analysis of the Constitution states: "The
3 governor may delegate only duties. Powers may not be delegated. Power must remain vested with
4 the governor as required by section 1." *Id.* at 62.

5 It is thus important to distinguish between executive *power* on the one hand and executive
6 *duties and responsibilities* on the other. Article III of the Commonwealth Constitution repeatedly
7 directs the governor to delegate executive *duties and responsibilities* to other officers within the
8 executive branch. Comm. Const., Art. III, 3,11,14. However, nowhere in Article III is the
9 governor forced to relinquish his or her ultimate control over the executive power. In order for the
10 Court to interpret Amendment 25 to have invested mayors with the governor's executive power, the
11 Court would have to find that the framers of Amendment 25 implicitly amended Article III, Section
12 1. Yet constitutional amendments by implication are not favored in the law "and can occur only
13 where the terms of the later [constitutional amendment] are so repugnant to an earlier [constitution
14 provision] that they cannot stand together. *Rankin v. Jones*, 278 S.W.2d 646, 651 (Ark. 1955)
15 (quoting *Pruitt v. Sebastian County Coal & Mining Co.*, 222 S.W.2d 50, 57 (Ark. 1949). The Court
16 must therefore harmonize Amendment 25 with Article III, Section 1. whenever possible, rather than
17 find that the later enactment implicitly repealed the former.

18 19 2. "Delegation" Defined.

20 Further evidence that the framers of Amendment 25 were reluctant to divest the governor of
21 executive power is found in their preservation of the term "delegate" in Section 17(a) of Amendment
22 25, as opposed to the use of a term indicating complete divestment (such as "relinquish" or
23 "surrender"). Thus, the framers of the Amendment 25 chose to uphold the Commonwealth's tradition
24 of reserving all executive power to a governor. *See* Remarks of Delegate Inos to Second Con-Con,
25 *supra*, at 5.

26 During the Court's March 1, 1995 denial of the Mayor's motion for preliminary injunction,
27 the Court provided both parties with the generally accepted meaning of the term "delegate": "The act
28

1 of delegating authority, rather than a complete surrender or relinquishment of authority, is merely
2 entrusting power to another to act for the good of the one who authorizes him.” 11A WORDS AND
3 PHRASES, 421 (1994), citing *Mouledoux v. Maestri*, 2 So.2d 11, 15 (La. 1941); see also *Liter v.*
4 *Baton Rouge*, 245 So.2d 398, 402 (La. 1971). Neither party has provided the Court with authority
5 for an alternative definition. Nevertheless, the Mayor has continued to take the position that the term
6 “delegate”, as it appears in Amendment 25, should be read to compel the Governor to relinquish his
7 executive powers to execute Commonwealth laws and to administer public services to the Mayors of
8 Rota, Tinian and Aguigan. The Mayor’s argument fails.

9 When interpreting a statutory revision, the Court must presume that the drafters of a revision
10 knew about the prior construction of terms in the original version of the revised statute. SUTHERLAND
11 STAT. CONST. § 22.30 (5th Ed.) (SUTHERLAND). With respect to the term “delegate” in Section
12 17(a), the original framers explained that: “mayor[s] report[] to the governor and act[] for the
13 governor in response to the governor’s directions and policies. **The governor may revoke a**
14 **delegation made [to a mayor] at any time without cause.**” ANALYSIS OF THE CONSTITUTION at 85
15 (emphasis added). Thus, the original framers of Section 17(a) adopted the generally accepted meaning
16 of the term “delegate” by making it clear that a governor could retract any portion of the duties and
17 responsibilities which he or she had opted to entrust to a mayor.

18 Although the 1985 Con-Con delegates incorporated several revisions into Section 17(a) and
19 (b), they chose to preserve the term “delegate” along with the original framers’ meaning of that
20 term.^{12/}

21 22 3. The Governor “Shall Delegate . . . As Deemed Appropriate.”

23 While Amendment 25 retained the word “delegate” in Section 17(a), it substantially modified
24

25 ^{12/} The 1985 JOURNAL is devoid of any evidence of a discussion regarding the framers’
26 understanding of the meaning of the term “to delegate.” Nevertheless, delegates of constitutional
27 conventions are presumed to have read the existing constitution, and drafted amendments with a full
28 understanding of the accepted meaning of every word. See *Higer v. Hansen*, 170 P.2d 411, 422
(1946).

1 the surrounding language. The principal change was that the word "may" replaced the word "shall"
2 and the language "as deemed appropriate" appeared in the first sentence of Section 17(a). The Mayor
3 urges the Court to construe the framers' replacement of the phrase "may delegate" with obligatory
4 language ("shall delegate") as a forced surrender of the governor's executive power. Not only does
5 such an interpretation ignore the plain meaning of the term "delegate," but it incorrectly equates the
6 act of delegating executive *duties* with the act of delegating executive *power*. While the former is
7 constitutionally permissible, the latter is not. *Supra* at 12. Thus, the phrase "shall delegate" in the
8 first sentence of Section 17(a) does not divest a governor of his or her executive power, but requires
9 him to delegate certain duties and responsibilities to the mayors.

10 The addition of the discretionary language, "as deemed appropriate," has been a source of
11 confusion in this case because it appears next to obligatory language. In essence, the phrase "shall
12 delegate [...] as deemed appropriate" is the functional equivalent of "may delegate." The question
13 then becomes, why would the framers of the Amendment 25 go through the trouble of obligating the
14 governor to delegate his powers to execute Commonwealth laws and to administer public services on
15 Rota and Tinian, if any such delegation is to be solely subject to the governor's discretion? As seen
16 below, the answer is found in the framers' placement of the phrase "as deemed appropriate" in
17 between "the execution of Commonwealth laws" and "the administration of public services."
18

19 C. EXECUTION OF LAWS VERSUS ADMINISTRATION OF PUBLIC SERVICES

20 Section 17(a) breaks down the duties which the governor shall delegate to a mayor into two
21 parts: (1) the execution of Commonwealth laws, and (2) the administration of public services. Had
22 the framers' intended the "as deemed appropriate" language to apply to the delegation of both
23 executive powers, they would have placed the language before, or perhaps, after the powers
24 themselves.^{13/} Significantly, the framers placed the *as deemed appropriate* language after the
25

26 ^{13/} For example:

27 "The governor shall delegate to a mayor . . . as deemed appropriate
28 responsibility for the execution of Commonwealth laws and the administration

1 “execution of Commonwealth law” clause and before the “administration of public service” clause.
2 Unless there is evidence of intent to the contrary^{14/}, a qualifying phrase refers solely to the provision
3 or clause immediately preceding it. SUTHERLAND, *Supra*, at § 47.33; *see also F.T.C. v. Mandel*
4 *Brothers, Inc.*, 79 S.Ct. 818, 823 (1959); *People of the State of California et al. v. E.P.A.*, 511 F.2d.
5 963, 970 (9th Cir. 1975); *Kizer v. Livingston County Board of Commissioners*, 195 N.W.2d 884, 890
6 (Mich. App. 1972). Thus, the *as deemed appropriate* language only qualifies that portion of Section
7 17(a) requiring the governor to delegate the executive duty to execute Commonwealth laws to the
8 mayors. Not only is this interpretation supported by the rules of statutory construction, but a contrary
9 interpretation would render the framers’ replacement of the word *may* with the word *shall* a nullity.^{15/}

10 Thus, as to the execution of Commonwealth Law, requiring the governor to delegate authority
11 when he or she *deems it appropriate* amounts to granting the governor an option to delegate as he or
12 she sees fit. Despite the delegates’ decision to modify the term “delegate” with the term “shall”
13 instead of “may,” the framers of Amendment 25 did not functionally alter that portion of Section
14 17(a) which discusses the governor’s delegation of the execution of Commonwealth laws. A governor
15 still may delegate the execution of Commonwealth laws to a mayor if he or she chooses to do so. The
16 same cannot be said for the governor’s obligation to delegate the administration of public services to
17 a mayor. As explained above, the “as deemed appropriate” language does not modify the

18
19 of public services . . .”
20 or
21 “The governor shall delegate to a mayor . . . responsibility for the execution
of Commonwealth laws and the administration of public services **as deemed**
appropriate . . .”

22 ^{14/} The *as deemed appropriate* language in Amendment 25 was part of C.R. No. 41 authored by
23 the Committee on Local Matters. Other than the *Report to the Convention by the Committee on Local*
24 *Government*, Plaintiff’s Exh. 11, the Committee kept no record of their discussions. Although the
25 Committee of the Whole did discuss Amendment 25 on July 13, 1985, the audio-taped recordings of
this discussion have not been found despite an extensive search. Accordingly, the record of the
Committee’s intent is sparse, and the record of the Committee of the Whole’s legislative intent is
nonexistent with respect to the *as deemed appropriate* language.

26 ^{15/} Whenever possible, a court must give effect to every word, clause and sentence of a statute
27 so that no part will be inoperative or insignificant. *In re Estate of Rofcg*, 2 N.M.I. 18, 29 (1991);
SUTHERLAND, *Supra*, at § 46.06; *see also United States v. Menasche*, 75 S.Ct. 513, 520 (1955).

1 administration of public services. Accordingly, a governor *must* delegate these administrative
2 responsibilities to a mayor.

3 The practical result of this distinction is that the governor may refuse to delegate any authority
4 to the Mayor over those departments whose primary function is the execution of law. Conversely,
5 where an agency's primary function is the administration of public services, the delegation of the
6 governor's duties to the mayor becomes mandatory. Here, the Court follows the functional analysis
7 employed by other Commonwealth courts faced with analogous issues of government agency
8 classification. *M.V.B. v. C.N.M.I.*, Civil Action 94-516, slip op. at 33 (Super. Ct. 1994)(employing
9 functional analysis to find MVB exists within executive branch); *citing Mafnas v. Camacho*, 1 CR
10 302, 308 (D.N.M.I. App. Div. 1982)(analysis concluded Civil Service Commission performed
11 executive functions). The Court recognizes that any given government agency both executes law and
12 administers public services, thus making the theoretical distinction the framers embedded in Section
13 17(a) blurry in practice. Indeed, since the Court is called upon in this Decision to make real-world
14 distinctions based upon this line of demarcation, the difficulty involved is painfully obvious.
15 Nevertheless, from an intensive review of the language of Amendment 25, such legislative history
16 as exists, and the accepted meanings of the terms used by the framers, the Court is convinced that this
17 distinction between execution of laws and administration of public services strikes at the heart of the
18 delicate compromise the Amendment 25 framers sought to achieve, between the need for consistency
19 with the directives of the central government and the desire to ensure equitable distribution of public
20 goods to all areas of the Commonwealth. The wisdom or folly of such a compromise is not a matter
21 for the Court's determination; rather, the Court must interpret and give effect to the Constitution as
22 written.

23 24 **1. Causes of Action Involving Execution of Laws.**

25 The Mayor has alleged three causes of action which fall within the rubric of "execution of
26 Commonwealth laws," as described above.

27 a. Department of Labor: Count V of the Mayor's complaint involves the Governor's actions
28

1 in promulgating Directive No. 124, which reserved the Governor's statutory authority to carry out
2 the enforcement of labor laws, to conduct good faith attempts to settle disputes between workers and
3 employees, and to issue and renew Nonresident Worker Certificates. The Governor may refuse to
4 delegate any authority to the Mayor over those agencies whose primary function is the execution of
5 law. All of the reservations listed in Directive No. 124 constitute examples of the execution of
6 Commonwealth labor laws, and thus, fall squarely within the area of permissive delegation. Indeed,
7 in the Court's view, the functions of the Department of Labor and Immigration as a whole relate
8 primarily to the execution of Commonwealth law. Thus, the Governor is properly able to revoke
9 all the delegations he has previously made to the Mayor regarding the execution of labor laws.
10 However, the Governor must not violate Rota's right to decentralized services^{16'} in the process. The
11 Governor's motion for summary judgment on Count V as it relates to the Governor's act of revoking
12 Mayoral authority is therefore GRANTED.

13 b: Local Regulations: Count VIII of the Mayor's complaint alleges that the Governor has
14 usurped the Mayor's power to issue local regulations. The Mayor's claim stems from an operational
15 policy memorandum issued by the Secretary of Public Health, Dr. Isamu Abraham, entitled "The
16 Department of Public Health and Amendment 25." Plaintiff's Exh. 32. In the memorandum, Dr.
17 Abraham expressed his view that mayors do not have the authority to promulgate rules and regulations
18 regarding the Department of Public Health "regardless of what authority has been delegated to them
19 by the Governor." *Id.* The Court agrees with Dr. Abraham.

20 Article VI, Section 3(h) of the Commonwealth Constitution states that "a mayor shall perform
21 other responsibilities *provided by law.*" *See supra* at 7. More specifically, the Commonwealth Code
22 states that "a mayor shall have the power and duty to promulgate rules and regulations as provided
23 by law. 1 CMC § 5106(e). However, both of these grants of power are made contingent upon
24 legislative action. The only legislative action in this area is Public Law No 3-77 which granted the
25 mayors a very limited role in the creation of local laws and regulations. 1 CMC § 1405. Section 1405

26 ^{16'} Count V also involves allegations involving Rota's right to decentralized services. The Court
27 will return to Count V later in this Decision.

1 grants a mayor 30 days “to review and comment on” a local bill before it can be enacted by the local
2 legislative delegation. 1 CMC §§ 1403, 1405. Accordingly, the Mayor’s claim fails because the
3 record is devoid of any evidence that the legislature has passed or plans on passing local legislation
4 without affording the Mayor 30 days to review and comment on the local legislation. Summary
5 judgment on Count VIII is GRANTED in favor of the Governor.

6 c. Local Investigations: Finally, in Count III of his amended complaint, the Mayor claims
7 that the Governor has usurped his power to make local investigations. The Mayor bases his claim on
8 a memorandum from the Governor’s Representative to all the of the executive department heads
9 requesting information including the names, employment dates, tasks and salaries of all resident
10 department employees. According to the Mayor, Article VI , Section 3(c) of the Commonwealth
11 Constitution gives him exclusive responsibility to investigate local matters. Section 3(c) does not
12 grant mayors exclusive domain over local investigations. Indeed, the ability to conduct an
13 investigation of how a particular resident department is being administered strikes at the heart of each
14 secretary’s duty to oversee the entire department. The Governor, *through his secretaries*, has
15 complete discretion to investigate local matters which concern the administration of public services
16 on Rota. Summary judgment on this Count is GRANTED in favor of the Governor.

17

18 2. Causes of Action Involving Administration of Public Services.

19 Before proceeding to the specific Counts in the Mayor’s amended complaint relating to
20 administration of services, the Court must address two general questions. First, which government
21 activities constitute “public services” under the framework of the original Constitution and
22 Amendment 25? Second, how can the Governor heed a constitutional amendment which requires him
23 to delegate the administration of public services to the Mayors of Rota and Tinian while remaining
24 true to Article III, Section I which requires him to remain vested with *all* the executive power?

25 a. “Public Services” Defined. When interpreting a statutory revision, the Court must
26 presume that the drafters of a revision knew about the prior construction of terms in the original
27 version of the revised statute. *Oikawa v. Niizeki*, Civil Action No. 94-39, slip op. at 11 (Super. Ct.

1 June 3, 1994) *citing* SUTHERLAND, *Supra*, § 22.29. In this case, the framers of Amendment 25 chose
2 to preserve the term “public services” used in the original text of Section 17. The term “public
3 service” is a general term encompassing services provided to the general public. 35 WORDS AND
4 PHRASES 636 (1993); *see Midwest Haulers v. Glander*, 83 N.E.2d 53, 55 (1948). Since it appears
5 in the first sentence of Article III, Section 17(a), the term “public services” most properly refers to
6 all those public services which the executive branch has an obligation to deliver. A broad application
7 of the term “public services” derives support from the fact that the 1976 delegates created and the
8 1985 delegates perpetuated a distinction between decentralized services and centralized services.^{17/}
9 Having preserved these two types of executive branch public services, the 1985 delegates chose not
10 to limit the delegation of administration of public services to either of these types. Further, the Court
11 has found nothing in the legislative history of either the first or second constitutional conventions
12 which would lend credibility to the Court’s adoption of a narrower application of the term “public
13 services.” Therefore, while the 1976 delegates chose to grant the governor the option to delegate the
14 administration of all public services on Rota and Tinian to the mayors of those islands, the 1985
15 delegates made this broad delegation mandatory.

16 The Governor has opposed an interpretation of the term “public services” which does not
17 reflect the actual practice of the Commonwealth Government since 1976, noting that until now only
18 “decentralized” public services have been subject to delegation to the mayors under Section 17.
19 However, such a practice, undertaken without the benefit of judicial interpretation of the provision
20 at issue, cannot nullify the plain language of the constitutional text. As the New York Court of
21 Appeals stated in *King v. Cuomo*, 597 N.Y.S.2d 918, 921 (N.Y. 1993), “[c]ourts do not have the

22 ^{17/}

23 Section 17(c) demonstrates how the term “public services” includes both centralized and
24 decentralized government services:

25 c) Public services shall be provided on an equitable basis to the citizens of the
26 Commonwealth. The legislature may require that these services be provided through
27 decentralized administrative arrangements. . .

28 Comm. Const., Art. III, § 17(c). The 1985 left this portion of Section 17 unamended.

1 leeway to construe their way around a self-evident constitutional provision by validating an
2 inconsistent 'practice and usage of those charged with implementing the laws' (citations omitted).
3 Thus, the requirement that "public services" be delegated to the mayors, encompasses *all* public
4 services, not merely those which have historically been administered on a decentralized basis.

5 b. When May the Governor Revoke a Delegation of Public Services Administration?

6 Section 17(a) of the 1976 Constitution granted the governor the option to delegate some or all of his
7 responsibility to administer public services to the mayors.^{18/} Consistent with such a grant, the framers
8 of the 1976 Constitution allowed the governor to revoke any such delegation "at any time without
9 cause."^{19/} As the Court has discussed, the framers of Amendment 25 attempted to give some teeth
10 to Section 17(a) in order to empower mayors with more responsibility. *See* Committee

11 Recommendation No. 41. At the same time, however, Section 17(a) requires a mayor to ensure
12 that resident department heads faithfully execute their duties to execute the policy directives of the
13 central government:

14 In furtherance of this section, the mayor shall have the responsibility for ensuring that
15 the resident department heads faithfully execute their duties under the law and in
16 accordance with the policies of the Commonwealth government for the administration
17 of public services in the island or islands in which the mayor has been elected.

18 Comm. Const. Art. III, § 17(a). As used in this sentence, *Commonwealth government policies* refer
19 to the policies of the central government mandated by the governor through his department
20 secretaries. Thus, resident department heads work under a constitutional obligation to implement the
21 policies issued by their superiors, the secretaries of the executive departments.

22 Moreover, mayors have a supervisory responsibility over each of these resident department
23 heads to ensure that they fulfill their responsibilities. The plain language of the third sentence in

23 ^{18/} The Analysis of the Constitution states, "[t]he governor may delegate all or any portion of this
24 responsibility [to execute Commonwealth laws and administer public services] with respect to all or
25 any subject or combination of subjects. The governor may make different delegations to different
26 mayors depending on local problems or circumstances." *Id.* at 85.

26 ^{19/} The Analysis of the Constitution states, "[w]ith respect to any responsibilities delegated under
27 this section, the mayor reports to the governor and acts for the governor in response to the governor's
28 directions and policies. The governor may revoke a delegation made under this section at any time
without cause."

1 Section 17(a) obligates mayors to ensure that the governor's policies are being implemented on their
2 respective islands. "In essence, a mayor will be accountable on all aspects of government operation
3 and will answer to his constituents *and the central government.*" Comm. Rec. No. 41 at 3 (emphasis
4 added).

5 Consider the alternative. If secretaries were powerless to expect the mayors and the resident
6 department heads to follow the policies of the central government, then the *fifteen executive*
7 *department limit* established by Article III, Section 15 of the Commonwealth Constitution would soon
8 be exceeded. In effect, the ten^{20/} decentralized public service departments on Rota would become
9 executive departments controlled by resident department heads answerable to no one but the Mayor
10 of Rota. Under no obligation to follow central government policy, the Island of Rota would quickly
11 adopt policies of its own. Tinian's resident departments would also acquire a life of their own.
12 Meanwhile, department secretaries on Saipan would face a constitutional mandate to be chief
13 executive of a department which they had no authority to control. Such dissention among our islands
14 undermines our constitutional commitment to a unified Commonwealth.

15 Thus, while a governor has a constitutional duty to entrust the administration of public services
16 on Rota and Tinian to the respective mayors of those islands, the mayors have corresponding duties
17 to make sure that the administration of public services is consonant with the governor's policies.
18 While the initial delegation to the mayors is mandatory, it is counterbalanced by an implicit power
19 of revocation in the cases where a mayor fails to discharge his or her duty to ensure that the
20 administration of public services reflects the policies of the Commonwealth Government. Where the
21 original Constitution allowed a governor to revoke the delegation of public services "without cause,"
22 the current Constitution implicitly requires just cause for a governor to revoke such a delegation.

23 According to common law precedents in the analogous field of termination of employment,
24 "just cause" termination is defined as that which is "not for any arbitrary, capricious or illegal reason

25 ^{20/} At oral argument on this motion, the "decentralized" departments were listed as the
26 Departments of Community and Cultural Affairs, Commerce, Labor and Immigration, Public Health
27 and Environmental Services, Public Safety, Public Works, Finance, Natural Resources, Public Lands,
and the Public School System.

1 and which is based on facts (1) supported by substantial evidence and (2) reasonably believed [...] to
2 be true." *Braun v. Alaska Com. Fishing & Agr. Bank*, 816 P.2d 140, 143 (Alaska 1991) (citations
3 omitted). Here, the propriety of any given exercise of a governor's power to revoke a delegation
4 of public services thus becomes an issue of fact, to be determined on the merits of whether the
5 governor's action was supported by substantial evidence which he or she reasonably believed to be
6 true.

7 c. The "Right" to Decentralized Services. In Count V of his Complaint, the Mayor asserts
8 that the Governor cannot legally strip his control over public services on Rota under any
9 circumstances. He premises this contention upon the second sentence of Section 17(a) which states:
10 "[s]ervices being provided on a decentralized basis on Rota, Tinian and Aguigan, on the effective date
11 of this provision shall continue." Comm. Const. Art. III, § 17(a). This language was carried over
12 from the original Constitution, essentially without change. It must therefore be regarded as a
13 continuation of the former law and receive the same construction. *Wring v. City of Jefferson*, 413
14 S.W.2d 292, 300 (1967). The framers of the original Constitution gave the term "decentralization"
15 the following meaning:

16 Decentralization, as used in [Section 17(a)], means the supervision of the delivery of
17 services on the island where the services are being provided rather than from the island
18 where the department's main offices are located. [Section 17(a)] requires the governor
19 to maintain at least that level of supervision on these two islands where the services are
provided as was in existence at the effective date of the Constitution. This means that
if there was one line supervisor resident on the island at the effective date, there must
be at least the same amount of supervisory responsibility on the individual islands.

20 ANALYSIS OF THE CONSTITUTION at 86. Under this definition, decentralization of a given public
21 service exists as long as a resident of the island has been given the responsibility to deliver that service
22 from his or her respective island rather than from the Island of Saipan. Significantly, the framers'
23 definition of decentralization does not implicate the need for mayoral oversight. Thus, contrary to
24 the Mayor's contention, decentralization of a public service and mayoral oversight of a public service
25 are not synonymous. Accordingly, the constitutionally mandated decentralized services can exist with
26 or without the oversight of the Mayors of Tinian and Rota. The essence of "decentralization," then,
27 is the retention of the same number of resident department heads *with at least the same amount of*

1 *supervisory responsibility as existed on January 7, 1986 (the effective date of Amendment 25)*, not the
2 overall command structure under which they operate. In sum, the right to decentralized services does
3 not insulate the Mayor from the Governor's power to revoke delegated duties.

4 However, the right to decentralized services does protect the supervisory responsibilities of
5 the resident department heads. Count V of the Mayor's amended complaint alleges several instances
6 in which the Governor, through his secretaries, purported to relieve individual resident department
7 heads of their responsibilities.^{21/} For example, in September of 1994, Pedro Q. Dela Cruz, Secretary
8 of Commerce and Labor relieved Resident Department Head Glenn H. Manglona and the entire
9 resident department staff for the Department on Rota of the authority to issue or extend labor permits
10 on Rota. Plaintiff's Exh. 2 & 3. The Department of Commerce and Labor (now known as Labor and

11 Immigration) is a decentralized service. As such, under the framers' definition of decentralization,
12 the Governor can never reduce the amount of supervisory responsibility which was afforded resident
13 department heads on Rota on January 7, 1986. To the extent that Governor Tenorio has done so, he
14 has recentralized the Department of Commerce and Labor back to the hub of the central government
15 on Saipan, in violation of Article III, Section 17(a) of the Commonwealth Constitution. With respect
16 to this issue, the Court has seen ample evidence that Rota's Resident Department Head of Commerce
17 and Labor lost a responsibility previously delegated to him by the Secretary of Commerce and Labor.
18 However, the Mayor has not offered any evidence to suggest that issuing labor permits was part of
19 the duties of the Resident Department Head of Commerce and Labor for Rota on January 7, 1986.

20 The Court has already granted the Governor partial summary judgment on Count V with
21 respect to his revocation of the Mayor's responsibility to execute Commonwealth law by the
22 Department of Labor. *See infra*, Part C(1)(a). However, the factual issue raised above prevents the
23 grant of summary judgment with respect to the decentralization argument in Count V. If either party
24 so desires, the Court would be willing to conduct an evidentiary hearing on this issue. The Governor's
25 motion for summary judgment with respect to this portion of Count V is DENIED.

26
27 ^{21/} On September 28, 1994, Pedro Q. Dela Cruz, then Secretary of Commerce Labor

1 on Rota as a satellite Office of the Governor is consistent with the Commonwealth Constitution, it is
2 unconstitutional for the Governor's Representative to do any more than the Constitution allows and
3 the legislature authorizes the Office of the Governor to do.

4 Article III, Section 14 of the Commonwealth Constitution requires the Governor to appoint
5 a single executive department head (secretary) and allows the Governor to "require information . .
6 . from the [secretary] of any administrative department, office or agency of the Commonwealth."

7 Comm. Const., Art. III, § 14. Section 14 contemplated that a governor could accomplish his duties
8 and responsibilities with respect to the delivery of each of the public services by requesting
9 information from each of his secretaries and holding them accountable for the delivery of the public
10 service. ANALYSIS OF THE CONSTITUTION at 82-83. As this framework suggests, mayors act as local

11 supervisors of executive departments, and department secretaries oversee the entire operation.

12 Permitting the Governor to circumvent this Constitutional procedure by directly supervising and
13 requesting information from resident department heads would be tantamount to making the secretarial
14 appointment requirement in Section 14 an option.

15 The Governor's actions evince his belief that once he decides to execute Commonwealth law
16 in Rota or once he has established just cause to revoke a delegation made to the Mayor of Rota, he
17 has a constitutional right to *directly* execute the laws and administrate the public services *through his*
18 *own office*. The Governor's papers readily admit that the Governor's Representative has been acting
19 as his "eyes and ears" on Rota in each of his executive departments and has assisted in delivering
20 public services.^{23/} As Section 17(a) directs, the Mayor is under an obligation to make central
21 government policies a reality on Rota. As each secretary bears the ultimate responsibility of
22 overseeing the Commonwealth-wide administration of the public service, these executive officers are
23 the Mayor's natural source for the administrative policies emanating from the central government.
24 In sum, while the Governor may revoke delegated authority, he must do so through the administrative
25 agencies and institutions authorized by law, i.e., the department secretaries. He may not do so by

26
27 ^{23/} Neither of these activities are authorized by Section 2053.

1 creating an unauthorized, ad hoc agency such as the Governor's Representative on Rota.
2 Accordingly, as a matter of law, the Governor's Representative is operating in violation of Article
3 III, Sections 14 & 15, and Title 1, Section 2053 of the Commonwealth Code. The Mayor's motion
4 for summary judgment on Count 1 of his Amended Complaint is therefore GRANTED.

5
6 **4. Causes of Action Involving Control over Personnel.**

7 a. The Mayor's Duty to Appoint and Dismiss Resident Department Heads. The 1976
8 Constitution directed that each resident department head be "appointed by the head of the executive
9 branch department [secretary] with the advice and consent of the majority of the members of the
10 legislature from the senatorial district in which the resident department head shall serve." Comm.
11 Const., Art. III, § 17(b) (1976). The framers of Amendment 25 shifted these duties from the
12 secretaries to the local government officials of Rota and Tinian. See Comm. Const., Art. VI, §§
13 3(g), and 7(3) (mayor's and municipal council's respective duties to appoint and confirm). Although
14 the mayors must consult the department secretaries prior to making an appointment, the consultation
15 requirement will be satisfied when a mayor has given a secretary of the department an opportunity
16 to express written recommendations, criticisms and views prior to that mayor's appointment decision.
17 See *Mid-America Regional Council v. Mathews*, 416 F.Supp. 896, 904 (D.C.Mo. 1976)
18 ("consultation" defined as deliberating, seeking advice and opinion, and applying for information).
19 Likewise, a mayoral dismissal of a resident department head must occur in a similar manner.

20 b. Confirmed Resident Department Heads versus "Acting" Resident Department Heads.

21 Once a mayor has appointed a resident department head, the Commonwealth Constitution requires
22 "all resident department heads" to receive confirmation from the Municipal Council prior to their
23 taking office. Comm. Const., Art. VI, § 7(3) (1987) (emphasis added). Prior to confirmation, such
24 appointees are considered *acting* resident department heads. During the February 1995 hearing for
25 preliminary injunction, the Mayor informed the Court of his concern over the Governor's recent
26 practice of appointing *acting* resident department heads for the Department of Labor and Immigration
27 and the Department of Health Services despite the fact that the Mayor had already placed his own

1 *acting* resident department heads in those positions. The Court expressed concern over the fact that
2 some of the Mayor's *acting* resident department heads had remained in their positions for periods
3 exceeding six months. Mr. Thomas Bruce, counsel to the Mayor, responded that perhaps the Court
4 had just uncovered the biggest loophole in the Commonwealth statutory scheme, but that no limit
5 exists on the length of time that an *acting* resident department head may continue to serve in office.
6 The loophole is not as large as counsel might think.

7 Implicit within the confirmation mandate is the mayoral duty to present the municipal council
8 with a candidate for a resident department head position within a reasonable time after the position
9 becomes available. If this were not the case, the municipal confirmation power, in essence, would
10 be reduced to an optional hurdle which mayors could walk around as they wished.^{24/} Such was not
11 the intent of the framers of Amendment 25.

12 The Personnel Service System Rules and Regulations (Personnel Regulations) defines "acting"
13 appointments as the official written designation that an employee will act for a period of up to 30 days
14 in place of a supervisor, and requires that an employee who has occupied an "acting" status for over
15 90 days shall temporarily succeed to that position if the employee meets the qualifications for the
16 position. PERSONNEL SERVICE SYSTEM RULES AND REGULATIONS. Part III.B3(G), at pp. 20-21. Even
17 more on point, in cases involving the appointment of department heads, an acting secretary appointed
18 by the governor must be submitted to the legislative officer presiding over the appointment within 30
19 days following the day the person was temporarily appointed. 1 CMC §§ 2901-04. In turn, if the
20 confirming body fails to confirm the acting appointee within 90 days from the date the person was
21 temporarily appointed, the position shall become vacant, and the appointee shall not be renominated.
22 *Id.*

23 While these statutes do not mandate a particular time limit on the appointment or confirmation
24 of "acting" resident department heads, they do provide convincing guidelines on what constitutes a
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26 ^{24/} Whenever possible, a court must give effect to every word, clause and sentence of a statute
27 so that no part will be inoperative or insignificant. SUTHERLAND at § 46.06; *see also United States*
28 *v. Menasche*, 75 S.Ct. 513, 520 (1955)

1 reasonable time in that context. Accordingly, this Court finds that a mayor must submit the
2 appointment of all resident department heads to the local municipal council for confirmation within
3 30 days of the appointment. In addition this Court finds that any “acting” resident department heads
4 not confirmed by the municipal council within 90 days from the date the person was temporarily
5 appointed shall cease to be “acting” department head and shall not be reconsidered for the position.

6 Thus, in the case at bar, if the 30 day appointment requirement or the 90 day confirmation
7 requirement passed due to the Mayor’s respective failure to either appoint a resident department head
8 or present the Municipal Council of Rota with an appointee, a department secretary shall have “just
9 cause” to appoint a temporary resident department head who shall only hold that position until such
10 time as that the Mayor fulfills his duty to appoint. In other words, regardless of whether the Mayor’s
11 authority to administer a public service has been revoked by a secretary, the Mayor’s constitutional
12 authority to appoint resident department heads can be placed in jeopardy by no one but himself. In
13 such cases where the Mayor has failed to appoint a resident department head, a secretarial
14 appointment of a Rota resident to the resident department position is justified in order to ensure that
15 decentralized services shall continue to be provided to the People of Rota.

16
17 c. The Governor’s Power to Fire Resident Department Heads through his Secretaries.

18 According to Article III, Section 14 of the Commonwealth Constitution, a governor is obligated to
19 exercise his or her executive power through appointed executive department heads, now called
20 “secretaries,” of the fifteen principal departments provided by law. ANALYSIS OF THE CONSTITUTION
21 at 82. Each secretary has an obligation to ensure that the governor’s policies are implemented on all
22 of the islands. As the Analysis to the Constitution makes clear in its discussion of Article III, Section
23 14, “[i]t is intended that there be a single person directing the actions of the department whom the
24 governor in turn can hold responsible for the execution of the department’s responsibilities in
25 accordance with the law and the governor’s program.” *Id.* Pursuant to the mandate for decentralized
26 services on Rota and Tinian in Section 17(a), the secretaries of the “decentralized” departments must
27 work through resident department heads who are under an obligation to implement the governor’s

1 policies. Pursuant to the mandate for gubernatorial delegation of public service administration in
2 Section 17(a), the secretaries must respect a mayor's authority to direct his resident department heads.
3 Thus, the Constitution has effectively given the resident department heads on Tinian and Rota two
4 superior officers.^{25/}

5 In order to carry out these competing Constitutional mandates, both the mayors and the
6 secretaries of the departments must have authority to remove, discipline and ultimately control the
7 actions of resident department heads on Rota and Tinian in order to remain accountable to the
8 governor for their respective obligations. ANALYSIS OF THE CONSTITUTION at 82. Given the nature
9 of the mayor's role as local supervisor over the resident department heads, the secretaries must defer
10 initial judgment over a resident department head's performance to the mayor. Thus, secretaries must

11 refrain from disciplining or firing a resident department head until it becomes clear that the mayor
12 has failed to do so. In this manner, the secretarial authority to control or remove resident department
13 heads embodies the gubernatorial power to revoke a mayor's delegated administrative responsibility.

14 Accordingly, a secretary may fire a resident department head at any time when the
15 department's primary function is the execution of Commonwealth law. A secretary of an agency
16 primarily concerned with the provision of public services may also discipline or dismiss a resident
17 department head if there is "just cause" for the action, i.e., the secretary has a reasonable belief based
18 upon substantial evidence that the mayor has allowed the resident department head to carry out his
19 duties in a manner inconsistent with the policies of the Commonwealth government. Once a resident
20 department head has been fired, a mayor has the authority to appoint a new resident department head

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22 ^{25/} The framers of the 1976 Constitution favored economic efficiency over this duplicative
supervisory arrangement:

23 [Section 17(b)] does not require that each executive branch department have a different
24 resident department head. One person may be appointed as resident department head
25 by several executive branch department heads and may supervise the delivery of
26 services by each of those departments. The mayor of an island or group of islands
may serve as resident department head for one or more executive branch departments.
*The designation of a mayor as a resident department head is the functional equivalent
of the delegation by the governor to the mayor permitted by section 17(a).*

27 ANALYSIS OF THE CONSTITUTION at 87.

1 in consultation with the agency secretary.

2 By way of illustration, if mandatory AIDS (Acquired Immune Deficiency Syndrome) testing
3 for doctors and nurses employed at Commonwealth public hospitals became the policy of the
4 Commonwealth government, the Secretary of Public Health would be charged with the responsibility
5 to implement the policy. As the recipient of delegated authority over the administration of public
6 services on Rota, the Mayor would act as the Secretary's eyes and ears on Rota to make sure that his
7 Resident Department Head for Public Health on Rota implemented the Commonwealth-wide policy.
8 If a Resident Department Head failed to timely comply with the mandatory AIDS testing policy, the
9 Mayor, as supervisor, would have a duty to take immediate steps to insure the policy's
10 implementation, including reasonable disciplinary action. If the AIDS policy continued to be ignored
11 by the resident department, and the Secretary had "just cause" to believe that the Mayor had not
12 fulfilled his supervisory role, the Secretary could either discipline the Resident Department Head
13 and/or revoke the Mayor's authority to administer that particular resident department.

14 Count VI and VII of the Mayor's amended complaint alleges several incidents where
15 department secretaries have appointed *acting* resident department heads to positions currently held by
16 mayoral appointees. The record contains substantial evidence of "just cause" in that many of the
17 mayoral appointees have remained "acting" resident department heads for periods far exceeding a
18 reasonable time as defined by the "30 and 90 day rule" for resident department head appointments
19 prescribed above. With respect to any resident department heads properly appointed and confirmed,
20 the Court has set out the manner in which a secretary may dismiss a properly appointed and confirmed
21 resident department head and revoke a mayor's delegated power for "just cause." Both of these
22 issues involve questions of fact. Thus, the Court finds that Counts VI and VII cannot be resolved
23 without an evidentiary hearing for "just cause." The Mayor's and the Governor's respective motions
24 for summary judgment on Counts VI and VII are DENIED.

25
26 **5. Employee Work Assignments.**

27 In Count IV of his complaint, the Mayor alleges that Article III, Section 17(a) gives him the
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1 irrevocable right to detail employees of the Office of the Mayor to the resident departments of the
2 Commonwealth government on Rota. He also points to 1 CMC § 5106(h), which authorizes mayors
3 to “[a]ppoint, supervise and remove those employees as are provided by law to assist in the
4 performance of mayoral responsibilities,” and to 1 CMC § 5201, which gives a mayor “the authority
5 necessary to efficiently and effectively carry out the administration and delivery of public services.”
6 In the Mayor’s view, these statutes guarantee his authority to assign mayoral employees to whatever
7 agency on Rota he deems proper.

8 These arguments are unpersuasive. As the Court has shown, the delegation of authority
9 mandated in Section 17(a) may be revoked in instances concerning the execution of Commonwealth
10 law and in other instances where just cause exists to support the revocation. This power of
11 revocation allows the Governor, acting through the department secretary, to reassert control over the
12 department. A basic element of this control is the power to manage staff allocations. Thus, absent
13 some direct constitutional or statutory mandate to the contrary, the Governor has the power to decline
14 to accept the assistance of mayoral employees in those agencies over which he has lawfully reasserted
15 control.

16 Neither of the statutes cited by the Mayor alters this analysis. Title 1 CMC § 5106(h) allows
17 mayors to manage employees only “in the performance of *mayoral* responsibilities” (emphasis added).
18 Once a gubernatorial delegation of duties has been validly revoked, assistance to that department
19 agency of the executive branch is no longer a mayoral responsibility. Likewise, Section 5201
20 provides that mayors shall have the authority to administer public services “if so designated by the
21 department head.” If the department head no longer so designates, the authority conferred by the
22 statute terminates.

23 In November of 1994, Secretary of Finance, Maria D. Cabrera, and Secretary of Labor and
24 Immigration, Reynaldo Cing refused to allow employees of the Office of the Mayor to work in their
25 respective departments. As the executive director of a department primarily involved in the function
26 of executing Commonwealth law, Secretary Cing was within his right to remove the mayoral
27 employees as he wished. However, in the Court’s view, the Department of Finance fulfills a much
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1 more ministerial service. Thus, Secretary Cabrera's dismissal of the Mayor's employees requires a
2 showing of just cause. The "just cause" requirement has arisen out of this litigation. In the interest
3 of fairness, both parties shall have the opportunity to supplement the record with facts on this issue.

4 The Court is aware of the potential policy ramifications of this holding, which empowers the
5 Governor under limited circumstances to remove from their duties (though not their employment with
6 the Office of the Mayor) mayoral employees who may have been detailed to executive branch
7 agencies for years. Nevertheless, the Court is not at liberty to allow policy considerations to outweigh
8 the dictates of the law, nor to act as a super-legislature in mitigating the costs of an inefficient or
9 costly legal framework. *See King v. Board of Elections*, 2 N.M.I. 398, 406 (1991). The Governor's
10 motion for summary judgment on Count IV is GRANTED with respect to the allegation's concerning
11 the Department of Labor and Immigration and DENIED with respect to the Department of Finance.

12 13 **6. Power over Administrative Leave.**

14 In Count II of his amended complaint, the Mayor claims that the Governor has usurped the
15 Mayor's power to grant administrative leave to resident department employees. As authority for this
16 position, the Mayor cites Article III, Section 17(a) and Article VI, Section 3(b) of the Commonwealth
17 Constitution. According to the Mayor, Antonio Quitugua, Special Assistant for Administration of
18 the Governor's Representative approved administrative leave for 40 Rota employees to participate in
19 a local Halloween festivity. In support of his contention, the Mayor has produced a memorandum
20 sent by the Governor's Representative to all of the resident department heads on Rota explaining that
21 the Mayor lacked the authority to approve or disapprove leave for anyone but the resident department
22 heads.

23 The Mayor contends that the authority to grant administrative leave is a necessary part of the
24 administration of public services. The Mayor reasons that without such authority he would be
25 powerless to administer the public services because he would have no control over the amount of
26 workers he had available to deliver the public service on any given day. The Court agrees that
27 administration of public service would be difficult without complete control over ones employees.

1 However, a mayor's authority to administer a public service exists only so far as the primary
2 function of the public service is ministerial in nature, and so long as the secretaries have not found
3 good cause to revoke the required delegation of that service. The Commonwealth Constitution directs
4 the legislature to create a Civil Service Commission (CSC) responsible for establishing and
5 administering personnel policies for the Commonwealth government. Comm. Const. Art. XX, § 1
6 (1985); see 1 CMC § 8117(a).^{26/} The CSC responded by issuing the Personnel Service System Rules
7 and Regulations (Personnel Regulations). According to Part I.C, the Personnel Regulations apply to
8 "all employees and positions . . . established in the Executive Branch and all personnel services
9 performed for the Executive Branch . . ." ^{27/} According to Part VII.A4G, entitled *Administrative*
10 *Leave*, "[t]he governor, appointing authorities or their designees have the responsibility for approving
11 administrative leave requests." The Commonwealth Constitution has designated mayors as the
12 "appointing authorities" of resident department heads. Comm. Const., Art. III, § 3(g). Thus, the
13 Mayor has power to grant or deny resident department heads administrative leave.

14 A mayor's responsibility to grant administrative leave to other resident department employees
15 is not so secure. At the beginning of a governor's term and as long as a mayor continues to run a
16 given ministerially-based public service in a manner consistent with the governor's policies, a mayor
17 shall remain the "designee" of the governor for purposes of granting administrative leave in each of
18 the resident departments. However, if a governor properly revokes a mayor's duty to grant
19 administrative leave in a particular office, the duty to grant administrative leave will return to that
20 governor's primary designee, the department secretary.

21 Governors must entrust department secretaries with the day to day administration of public
22 services and cannot administer public services directly through the Office of the Governor. In this
23 instance, the Governor circumvented all of his department secretaries by issuing the revocation
24

25 ^{26/} 1985 Constitutional Convention Amendment 41 repealed Article III, Section 16 and added
26 Article XX relating to Civil Service.

27 ^{27/} None of the exceptions accompanying Part I.C apply to either resident department employees
28 or resident department heads.

1 directly to the resident department heads through his Governor's Representative. Plaintiff's Exh. 51.
2 The Governor's Representative's memorandum constitutes an act in violation of Article III, Section
3 15, and Title 1, Section 2053 of the Commonwealth Code. Accordingly, the Governor's attempt to
4 revoke the Mayor's duty to grant administrative leave fails due to a procedural flaw.

5 To be sure, the Governor could properly revoke the Mayor's duty if he did so through his
6 department secretaries, and such revocation was supported by just cause. In this case, since the
7 Governor's revocation covered all executive branch public services which employ resident department
8 heads, the Governor would have had an obligation to make individual demonstrations of "just cause"
9 in each of the ministerially-based decentralized services.^{28/} Thus, the Mayor's motion for summary
10 judgment on Count II is GRANTED in favor of the Mayor.

11

12 **7. Mayor's Expenditure Authority.**

13 Another dimension of the governor's delegation of duties to a mayor is the administration of
14 public funds. Article VI, Section 3(b) of the Commonwealth Constitution provides:

15 The mayor shall administer government programs, public services, and appropriations
16 provided by law for the island or islands served by the mayor, and shall report
quarterly to the Governor relating to those programs and services or appropriations.

17 Like the provisions governing personnel discussed above, the Court analyzes this provision in the light
18 of the balance struck in Article III, Section 17(a) between central government authority and local
19 administration. A governor must delegate to a mayor the duty to administer appropriations, but this

20 _____
21 ^{28/} Part VII.A4(G) of the Personnel Regulations goes on to break down "administrative leave"
into four classes. The first class includes:

22 absences authorized under emergency conditions beyond control of management, e.g.
23 typhoons, *or* for participation in civic activities of interest to the government, *or*
24 employment connected examinations, *or for such reasons as the Governor may*
determine (such as a shortened work day on Christmas Eve)

25 Personnel Regs. at 121 (emphasis added). This class of administrative leave lists examples of
26 administrative leave situations which are Commonwealth-wide. The final example specifically states
27 that holiday-related administrative leave are for the governor's determination. The Mayor's claim
here rests on one incident involving 40 Rota government employees on Halloween. The Court has
not received enough information about the circumstances surrounding the Halloween incident to
determine whether the festivity falls was Commonwealth-wide.

1 delegation can be revoked where it concerns the execution of Commonwealth law or where the
2 Governor has just cause to believe that the mayor or his designee is not carrying out the policies of
3 the Commonwealth government.

4 In Count IX of his amended complaint, the Mayor contends that the Governor has usurped his
5 power of appropriation by failing to provide salaries for three new employees of the Customs Service
6 of the Resident Department of Finance. *See Complaint* at ¶ 53. These positions were initially
7 authorized by House Joint Resolution 8-25, passed by the Legislature on September 10, 1993. The
8 Governor correctly contends that this resolution was a temporary appropriation superseded by the
9 Commonwealth's most recent budget enactment, Public Law 9-25. It is not clear, however, when
10 the alleged "usurpation" took place and on what grounds. For example, the Mayor's complaint might
11 state a cause of action if he had sought to hire the employees in question during the time House Joint
12 Resolution was still in effect, prior to the passage of Public Law 9-25. Since neither party has
13 provided the Court with any pertinent facts -- disputed or not -- the Court has no way of evaluating
14 this cause of action. In the absence of a proper evidentiary background, the Court cannot determine
15 whether there exists a genuine dispute of material fact. Both the Governor's and the Mayor's
16 motions for summary judgment on Count IX are DENIED.

17 18 **8. Estoppel**

19 In Count XI, the Mayor argues that the Governor should be estopped from exercising any
20 authority to revoke executive duties which he may possess because, for the past eight years,
21 Commonwealth governors have refrained from doing so. The practices of past governors, undertaken
22 without the benefit of judicial interpretation of the provision at issue, cannot nullify the plain language
23 of the constitutional text. *King*, 597 N.Y.S.2d at 921. This Decision marks the Commonwealth
24 Judiciary's first opportunity to provide Commonwealth leaders with guidance on the meaning of
25 Amendment 25. Although the Court's interpretation of Amendment 25 may be long overdue, the
26 parties shall be bound by this Decision to the extent that it deviates from past gubernatorial practices.
27 The Governor's motion for summary judgment on Count XI is GRANTED.

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V. CONCLUSION

For the foregoing reasons, the Court hereby ORDERS:

1. The Governor's motion for summary judgment as to Count I of the Mayor's amended complaint is hereby DENIED; the Mayor's motion as to that Count is hereby GRANTED.
2. The Governor's motion for summary judgment as to Count II of the Mayor's amended complaint is hereby DENIED; the Mayor's motion as to that Count is hereby GRANTED.
3. The Governor's motion for summary judgment as to Count III of the Mayor's amended complaint is hereby GRANTED; the Mayor's motion as to that Count is hereby DENIED.
4. The Governor's motion for summary judgment as to Count IV of the Mayor's amended complaint is hereby GRANTED with respect to allegations concerning the Department of Labor and DENIED with respect to allegations concerning the Department of Finance; the Mayor's motion as to that Count is hereby DENIED.
5. The Governor's motion for summary judgment as to Count V of the Mayor's amended complaint is hereby GRANTED with respect to the revocation of the Mayor's duty to execute Commonwealth law and DENIED with respect to the allegations concerning decentralization; the Mayor's motion as to that Count is hereby DENIED.
6. The Governor's motion for summary judgment as to Count VI of the Mayor's amended complaint is hereby DENIED; the Mayor's motion as to that Count is hereby DENIED.
7. The Governor's motion for summary judgment as to Count VII of the Mayor's amended complaint is hereby DENIED; the Mayor's motion as to that Count is hereby DENIED.
8. The Governor's motion for summary judgment as to Count VIII of the Mayor's amended complaint is hereby GRANTED; the Mayor's motion as to that Count is hereby DENIED.

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- 9. The Governor's motion for summary judgment as to Count IX of the Mayor's amended complaint is hereby DENIED; the Mayor's motion as to that Count is hereby DENIED.
- 10. The Governor's motion for summary judgment as to Count XI of the Mayor's amended complaint is hereby GRANTED.

So ORDERED this 14 day of June, 1995.


EDWARD MANIBUSAN, Associate Judge