

The parties shall submit a joint submission on a deadline for the completion of discovery, a deadline to submit pre-trial motions, and a preferred date for a hearing on pre-trial motions. A trial date, if necessary, will be set at a later date.

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CHUUK STATE SUPREME COURT TRIAL DIVISION

GARDENIA AISEK MACAYON,)	CSSC CIVIL CASE NO. 178-2014
)	
Plaintiff,)	
)	
vs.)	
)	
CHUUK STATE BOARD OF EDUCATION,)	
JOHANNES BERDON, individually and in his)	
official capacity as the Chairman of the Board of)	
Education, ANTASIO BISEK, individually and in)	
his official capacity as a member of the Board of)	
Education, SAM BISALEN, individually and in his)	
official capacity as a member of the Board of)	
Education, ABRAHAM RAYPHAND, individually)	
and in his official capacity as a member of the)	
Board of Education, KIND KANTO, individually)	
and in his official capacity as a member of the)	
Board of Education, and IROMY BRUTON,)	
individually and in her official capacity as a)	
member of the Board of Education,)	
)	
Defendants.)	
)	

ORDER GRANTING PRELIMINARY INJUNCTION

Camillo Noket
Chief Justice

Hearing: January 16, 2015
Decided: January 26, 2015

APPEARANCES:

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For the Defendants: Sabino S. Asor, Esq.
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HEADNOTES

Civil Procedure – Injunctions

A trial court judge is required by Rule 52(a) to make findings of fact and conclusions of law when granting or refusing a preliminary injunction. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 647 n.1 (Chk. S. Ct. Tr. 2015).

Civil Rights

The Chuuk State Supreme Court is perfectly competent to adjudicate a civil rights claim against the state made under 11 F.S.M.C. 701(3) (violation of national constitutional rights) and also claims made under Chuuk's own constitutional provision barring deprivation of property. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 648 (Chk. S. Ct. Tr. 2015).

Civil Rights – Acts Violating

When a plaintiff does not cite any particular constitution or specific statute, but does generally assert that when she was terminated her due process rights were violated, the court may hear, consider, and rule on her claim that her termination as Director of Education was unlawful since she was not afforded due process. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 648 (Chk. S. Ct. Tr. 2015).

Civil Procedure – Injunctions

Injunctive relief is an equitable remedy for which a court must use a balance-of-hardship test with a flexible interplay among four factors – the likelihood of irreparable harm to the plaintiff without an injunction; likelihood of harm to the defendant with an injunction; the plaintiff's likelihood of success on the merits; and the public interest. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 648 (Chk. S. Ct. Tr. 2015).

Civil Procedure – Injunctions

Striking a fair balance between the two more important factors, the likelihood of harm to the competing sides, and thus the issuance of injunctive relief is largely a matter of the facts of each situation and is thus a matter peculiarly for the trial judge's discretion. The object of seeking injunctive relief is to preserve the status quo pending the litigation on the merits. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 648 (Chk. S. Ct. Tr. 2015).

Civil Procedure – Injunctions – Irreparable Harm; Equity

A court may not grant a plaintiff's request for injunctive or other equitable relief when there has been no showing of irreparable harm or that there is no adequate remedy at law. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 648 (Chk. S. Ct. Tr. 2015).

Administrative Law – Statutory Construction; Statutes – Construction

When there is a conflict between a statute of general application to numerous agencies or situations, such as an Administrative Procedures Act, and a statute specifically aimed at a particular agency or procedure the more particularized provision will prevail. This rule is based upon recognition that the legislative body, in enacting the law of specific application, is better focused and speaks more directly to the affected agency and procedure. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 648 (Chk. S. Ct. Tr. 2015).

Administrative Law; Public Officers and Employees – Chuuk

Since the Executive Director of the Department of Education is an office uniquely created by the

Macayon v. Chuuk State Bd. of Educ.
19 FSM R. 644 (Chk. S. Ct. Tr. 2015)

Chuuk Constitution, and since both the Chuuk Constitution and the applicable statute provide the sole means by which an Executive Director may be removed, the court must conclude that the general statutory provisions of the Administrative Procedures Act do not apply to the removal of the head of the Education Department. When it comes to the Executive Director's removal, there is no higher administrative agency than the Board of Education. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 648-49 (Chk. S. Ct. Tr. 2015).

Administrative Law – Judicial Review

The Chuuk State Supreme Court trial division has jurisdiction to review the actions of any state administrative agency, board, or commission, as may be provided by law. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 649 (Chk. S. Ct. Tr. 2015).

Civil Procedure – Injunctions – Irreparable Harm

Irreparable harm could occur if a preliminary injunction is not granted since the plaintiff's remedy, if successful, is her reinstatement as Director, and since, if another person is nominated and confirmed as the Director of Education in the meantime, the Department and the State would be in the untenable position of having two Executive Directors simultaneously. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 649 (Chk. S. Ct. Tr. 2015).

Public Officers and Employees – Chuuk – Termination

The Director of Education does not serve at the Board's, or the Governor's, pleasure. The Governor cannot remove the Director from office. Only the Board, by majority vote, can remove the Director, and then only for one or more of four reasons: misconduct, incompetency, neglect of duty, or other good cause. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 649 (Chk. S. Ct. Tr. 2015).

Civil Procedure – Injunctions – Likelihood of Success; Constitutional Law – Due Process – Notice and Hearing; Public Officers and Employees – Chuuk – Termination

When at a minimum, the Education Director should have been given notice of the allegations and evidence on which the Board based its resolution to terminate her, and she should have been given an opportunity to respond or to explain her actions or omissions and to rebut any false allegations but was not, her likelihood of success on her due process claim seems almost certain because this is the essence of due process – notice and an opportunity to be heard. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 649 (Chk. S. Ct. Tr. 2015).

Administrative Law – Judicial Review

Conclusory statements in the Board's resolution terminating the Executive Director present a difficulty because it gives the court no record to review so that the court can only guess at what formed the basis for the Board's conclusions. The court generally will not conduct a trial de novo to review an agency action. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 649 (Chk. S. Ct. Tr. 2015).

Administrative Law – Judicial Review; Public Officers and Employees – Chuuk – Termination

When an agency action gives the court no record to review, the better course in most instances, and the most likely course of action is that the matter would be remanded to the administrative agency – in this case, the Board of Education – for it to give the terminated employee notice of which of her actions and omissions it considers might be grounds for her removal and to give her an opportunity to respond and explain or justify or rebut the allegations against her before it votes on whether to remove her. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 649 (Chk. S. Ct. Tr. 2015).

COURT'S OPINION

CAMILLO NOKET, Chief Justice:

On January 16, 2015, this came before the court to hear the plaintiff's motion for a preliminary injunction. Johannes Berdon, Iromy Bruton, Cindy Siren Mori, and Gardenia Aisek Macayon testified. The motion is granted for the reasons that follow.

I. BACKGROUND

Based on their testimony and the parties' filings, the court makes the following findings of fact.¹ The plaintiff, Gardenia Aisek Macayon, was the duly appointed head of the Department of Education. As such, she was the Executive Director of the Chuuk State Board of Education, Chk. Const. art. X, § 4; Chk. S.L. No. 191-15, § 8(1), and was required to attend all Board meetings but did not have the power to vote, Chk. S.L. No. 191-15, § 8(2).

At the Board's July 21, 2014 meeting, someone introduced a resolution to terminate Director Macayon. Macayon was present then and aware of the resolution. The resolution averred in general terms that she had altered the Department's budget; that there had been a number of complaints about "violation of Equal Treatment, violation of court decision, and violation of Personnel Regulations"; that on sensitive information there had been "no transparency of information between the Director and the Board"; that in many of her decisions she did not cooperate or collaborate with the Board; that her decisions caused the teachers and their families to be unable "to have the necessities in life and faced an inability to pay their bills"; and that the Board had "further evidence" that the Director was "incompetent and very inconsistent." No action was taken on the resolution.

Over the next few months, there were a couple of "closed-door" Board meetings at which the Director was not present and at which she would not have been allowed to be present, but at which, the rest of the Board did discuss the Director's removal. The Board met again on December 8, 2014. Director Macayon was present. The resolution was listed on the meeting's agenda. The Director asked to be excused when that agenda item came up. At no time, either in July or December, was the Director invited to discuss the allegations against her or asked to explain or justify her alleged misdeeds or to rebut the allegations' accuracy.

Six of the eight Board members then voted, by secret ballot, to remove Macayon. She was notified by letter the next day that she had been terminated, that she should "refrain from signing any document or taking any action on behalf of the Chuuk Department of Education from this date forward," and that she should vacate the Director's office, take her personal belongings, and surrender all government property. She did so.

On December 17, 2014, Macayon filed this lawsuit, alleging that she was unlawfully terminated. She seeks, as is usual in unlawful termination cases, to be reinstated in her former position. On December 22, 2014, Macayon filed a motion seeking injunctive relief until the court can rule on her declaratory relief claim that she was unlawfully terminated. She asks that a preliminary injunction be issued barring the hiring of a replacement Executive Director while this action is pending. She asks that the court order that the status quo – the Department is currently being headed by an Acting Director

¹ A trial court judge is required by Rule 52(a) to make findings of fact and conclusions of law when granting or refusing a preliminary injunction. *Mathias v. Engichy*, 15 FSM R. 90, 95 n.4 (Chk. S. Ct. App. 2007).

– be maintained until a final judgment in this case.

II. PRELIMINARY JURISDICTIONAL QUESTION

As a preliminary matter, the defendants contend that this court does not have jurisdiction over this lawsuit. They assert that the unlawful or wrongful termination of a public employee without due process is a civil rights claim under FSM national law and that therefore the national court, not the state court, should hear this claim.

The court must reject this argument. The FSM Supreme Court has acknowledged the "[t]he Chuuk State Supreme Court is perfectly competent to adjudicate a civil rights claim against the state made under 11 F.S.M.C. 701(3) (violation of national constitutional rights) and also claims made under Chuuk's own constitutional provision barring deprivation of property." Narruhn v. Chuuk, 16 FSM R. 558, 564 (Chk. 2009), *aff'd*, 17 FSM R. 289 (App. 2010). Although she does not cite any particular constitution or specific statute, Macayon does generally assert that when she was terminated her due process rights were violated. Accordingly, the court may hear, consider, and rule on Macayon's claim that her termination was unlawful since she was not afforded due process.

III. PRELIMINARY INJUNCTION ANALYSIS

The court now turns to whether Macayon should be granted a preliminary injunction. Injunctive relief is an equitable remedy for which a court must use a balance-of-hardship test with a flexible interplay among four factors – the likelihood of irreparable harm to the plaintiff without an injunction; likelihood of harm to the defendant with an injunction; plaintiff's likelihood of success on the merits; and the public interest. Onopwi v. Aizawa, 6 FSM R. 537, 539 (Chk. S. Ct. App. 1994). Striking a fair balance between the two more important factors, the likelihood of harm to the competing sides, and thus the issuance of injunctive relief is largely a matter of the facts of each situation and is thus a matter peculiarly for the trial judge's discretion. *Id.* The object of seeking injunctive relief is to preserve the status quo pending the litigation on the merits. Chuuk Public Utilities Corp. v. Billimon, 15 FSM R. 290, 292 (Chk. S. Ct. Tr. 2007).

A. Irreparable Harm

A court may not grant a plaintiff's request for injunctive or other equitable relief when there has been no showing of irreparable harm or that there is no adequate remedy at law. Hartman v. Chuuk, 8 FSM R. 580, 581 (Chk. S. Ct. Tr. 1998). The defendants contend that Macayon has an adequate remedy at law because, in their view, she has not exhausted her administrative remedies under the Administrative Procedures Act.

When there is a conflict between a statute of general application to numerous agencies or situations, such as an Administrative Procedures Act, and a statute specifically aimed at a particular agency or procedure the more particularized provision will prevail. Olter v. National Election Comm'r, 3 FSM R. 123, 129 (App. 1987). "This rule is based upon recognition that the legislative body, in enacting the law of specific application, is better focused and speaks more directly to the affected agency and procedure." *Id.*

Since the Executive Director of the Department of Education is an office uniquely created by the Chuuk Constitution, Chk. Const. art. X, § 4, and since both the Chuuk Constitution and the applicable statute provide the sole means by which an Executive Director may be removed, the court must conclude that the general statutory provisions of the Administrative Procedures Act do not apply to the removal of the head of the Education Department. When it comes to the Executive Director's removal,

there is no higher administrative agency than the Board. Thus, the only place the removal of the Executive Director of the Education Department can be reviewed is in court. "The trial division of the State Supreme Court has jurisdiction to review the actions of any state administrative agency, board, or commission, as may be provided by law." Chk. Const. art. VII, § 3(c). The Chuuk State Judiciary Act provides that the court has "the authority to review all actions of an agency of the Government of this State in accordance with this Act and the provisions of the Chuuk State Constitution." Chk. S.L. No. 190-08, § 17(1).

The court further finds that irreparable harm could occur if the preliminary injunction is not granted. Since the plaintiff's remedy, if successful in this suit, is her reinstatement as Director, if another person is nominated and confirmed as the Director in the meantime, the Department and the State would be in the untenable position of having two Executive Directors simultaneously.

B. Likelihood of Success on the Merits

The Director does not serve at the Board's, or the Governor's, pleasure. The Governor cannot remove the Director from office. Only the Board, by majority vote, can remove the Director, and then only for one or more of four reasons: "misconduct, incompetency, neglect of duty, or other good cause." Chk. S.L. No. 191-15, § 8(6). Several of these reasons were cited in the Board's resolution removing Macayon. However, no specifics were mentioned or provided. This presents two difficulties.

First, Macayon was not given the opportunity to respond to the allegations because she was not given notice of which of her actions or omissions were the grounds for the Board concluding that she had committed some misconduct, or that she was incompetent, or that constituted good cause for her termination. At a minimum, Macayon should have been given notice of the allegations and evidence on which the Board based its resolution, and she should have been given an opportunity to respond or to explain her actions or omissions and to rebut any false allegations. This is the essence of due process – notice and an opportunity to be heard. Phillip v. Moses, 18 FSM R. 247, 250 (Chk. S. Ct. App. 2012). Thus, Macayon's likelihood of success on her due process claim seems almost certain.

The second difficulty presented by the conclusory statements in the Board's resolution terminating Macayon, is that it gives the court no record to review. The court can only guess at what formed the basis for the Board's conclusions. The court generally will not conduct a trial de novo to review an agency action. See Nakamura v. Moen Municipality, 7 FSM R. 375, 377-78 (Chk. S. Ct. Tr. 1996). And it has no desire to in this case. The better course in most instances, and the most likely course of action in this case, is that the matter would be remanded to the administrative agency – in this case, the Board of Education – for it to give Macayon notice of which of her actions and omissions it considers might be grounds for her removal and to give her an opportunity to respond to those grounds and explain or justify or rebut the allegations against her before it votes on whether to remove her.

C. Balance of Hardship (Harm to the Defendants)

The harm of a preliminary injunction to the defendants appears to be slight. The Department of Education will continue to function under an acting director until this litigation is decided on the merits. The defendants have not shown that they, or the public, will be harmed by this.

D. Public Interest

The public interest favors compliance with the law that an Executive Director can only be removed for certain specified and limited number of reasons. The public should be able to be satisfied

that those grounds exist before any removal is effected.

E. *Issuance of Preliminary Injunction*

Weighing all four factors, the court concludes that a preliminary injunction should issue as requested. Furthermore, no bond will be required because of the lack of monetary harm to the defendants if the preliminary injunction should not have been granted.

IV. CONCLUSION

Accordingly, a preliminary injunction will issue with this order, enjoining the nomination, hiring, or appointment of the head or the Executive Director of the Chuuk Department of Education until further court order.

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CHUUK STATE SUPREME COURT TRIAL DIVISION

FINEUO SAITO,)	CSSC CIVIL ACTION NO. 035-2011
)	
Plaintiff,)	
)	
vs.)	
)	
MASASINGE SIRO, SONSY SIRO, SAM SIRO,)	
and all heirs and persons claiming interest under)	
Siro Kallen, and Fuko Narruhn, and John Does,)	
)	
Defendants.)	
_____)	

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

Keske Marar
Associate Justice

Hearing: August 6 2014
Decided: January 28, 2015

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