IN THE SUPREME COURT OF GUAM

GUAM POLICE DEPARTMENT,
Petitioner-Appellant,

v.

THE GUAM CIVIL SERVICE COMMISSION,
Respondent-Appellee,

and

MARK C. CHARFAUROS,
Real Party in Interest-Appellee.

Supreme Court Case No.: CVA18-033
Superior Court Case No.: SP0133-17

OPINION

Cite as: 2020 Guam 12

Appeal from the Superior Court of Guam
Argued and submitted on May 9, 2019
Hagåtña, Guam

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BEFORE: KATHERINE A. MARAMAN, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; ROBERT J. TORRES, Associate Justice.[1]

CARBULLIDO, J.:

[1] Petitioner-Appellant Guam Police Department ("GPD") appeals from a final order of the Superior Court and the denial of a motion to reconsider that final order. These orders dismissed GPD's Verified Petition for Judicial Review of Respondent-Appellee Civil Service Commission's ("CSC") decision to void GPD's adverse action against Real Party in Interest-Appellee Mark C. Charfauros. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] GPD took adverse action against Charfauros, demoting him from the rank of Police Colonel to Police Major, because of an incident on December 24, 2016. Charfauros appealed that adverse action to the CSC. During the merits hearing before the CSC, GPD told the panel it planned to call five witnesses and sought to call Charfauros as its first witness. The CSC denied GPD's request by a vote of 3 to 1, citing the CSC's procedure was for the employee to testify at the end of management's case-in-chief. GPD protested and did not call its other witnesses. The CSC considered GPD to have rested its case without furnishing other testimony or evidence.

[3] GPD then petitioned for a writ of prohibition and writ of mandamus in the Superior Court. The Superior Court dismissed those writ petitions for lack of subject matter jurisdiction. The CSC issued its Decision and Judgment voiding GPD's demotion of Charfauros. The CSC determined GPD "did not meet its burden of proof to show clearly and convincingly that the action of the department was correct." Record on Appeal ("RA"), tab 1, Ex. A at 17 (Dec. & J., Aug. 15, 2017).

[1] The signatures in this opinion reflect the titles of the justices at the time this matter was argued and submitted.

[4] GPD filed a Verified Petition for Judicial Review in the Superior Court, challenging the CSC's decision. Charfauros responded with a motion to dismiss for failure to state a claim under Guam Rule of Civil Procedure 12(b)(6) and for lack of jurisdiction under Guam Rule of Civil Procedure 12(b)(1). According to Charfauros, GPD failed to state a claim for relief because, under 5 GCA § 9225, an employing agency may not call an employee as a witness until the employee has forgone the opportunity to testify on his or her own behalf. The Superior Court agreed and granted Charfauros's motion to dismiss. The court determined "the CSC's failure to allow Charfauros to testify first in GPD's case in chief [did] not create a cause of action for GPD, because an employee is not able to testify in management's case in chief under section 9225." RA, tab 20 at 7 (Dec. & Order, May 9, 2018).

[5] GPD sought reconsideration of that May 9, 2018 Decision and Order. The court denied the motion. GPD then timely appealed both the May 9, 2018 Decision and Order granting the motion to dismiss and the October 8, 2018 Decision and Order denying the motion for reconsideration.

II. JURISDICTION

[6] A decision of the CSC is subject to judicial review. *See* 4 GCA § 4406(d) (as amended by Guam Pub. L. 30-112:3 (Mar. 12, 2010)); *see also Carlson v. Perez*, 2007 Guam 6 ¶ 65. The vehicle for obtaining this review is a petition for judicial review filed in the Superior Court of Guam. *See Carlson*, 2007 Guam 6 ¶ 65; *see also* 7 GCA § 7117 (2005). We have jurisdiction over appeals from a final order entered in that court. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 116-145 (2020)); 7 GCA §§ 3107(b), 3108(a), 25102(a) (2005).

[7] The Superior Court below did not enter a separate document setting forth a judgment. The separate document rule applies in cases seeking judicial review under 4 GCA § 4406. *See Dep't*

of Revenue & Taxation v. Civil Serv. Comm'n (Quintanilla), 2007 Guam 17 ¶ 22. But under the 150-day rule of Guam Rule of Civil Procedure 58(b)(2)(B), we consider judgment effectively entered on March 8, 2019, which was 150 days after entry of the court's denial of GPD's motion to reconsider. *See* Guam R. Civ. P. 58(b)(2)(B); *see also* Guam R. App. P. 4(a)(7)(B)(ii). A renewed notice of appeal was not required, and our appellate jurisdiction is proper. *See Rapadas v. Benito*, 2011 Guam 28 ¶¶ 9-10; *see also Quijano v. Atkins-Kroll, Inc.*, 2008 Guam 14 ¶ 5.

III. STANDARD OF REVIEW

[8] We review *de novo*, as a question of law, the trial court's interpretation of a statute. *See Port Auth. of Guam v. Civil Serv. Comm'n (Susuico)*, 2015 Guam 14 ¶ 11. Likewise, we review *de novo* a trial court's dismissal for failure to state a claim under Guam Rule of Civil Procedure 12(b)(6). *See Ukau v. Wang*, 2016 Guam 26 ¶ 19 (citing *Taitano v. Calvo Fin. Corp.*, 2008 Guam 12 ¶ 19). Dismissal under Rule 12(b)(6) should not be granted "unless 'it appears beyond doubt that the plaintiff [or petitioner] can prove no set of facts in support of his claim which would entitle him to relief.'" *First Hawaiian Bank v. Manley*, 2007 Guam 2 ¶ 9 (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)); *see also Ukau*, 2016 Guam 26 ¶¶ 20-33 (declining to adopt heightened plausibility standard from *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)). In ruling on a motion to dismiss under Rule 12(b)(6), a court must accept all the well-pleaded facts as true, "construe the pleading in the light most favorable to the non-moving party, and resolve all doubts in the non-moving party's favor." *First Hawaiian Bank*, 2007 Guam 2 ¶ 9 (citations omitted).

IV. ANALYSIS

[9] First, GPD argues the trial court erred in dismissing the case under Guam Rule of Civil Procedure ("GRCP") 12(b)(6) because that rule does not apply to petitions for judicial review.

GPD then argues the Administrative Adjudication Law ("AAL") applies only to the CSC's rulemaking—not its merits hearings—and so, GPD argues, the trial court erred by relying on 5 GCA § 9225 of the AAL when it determined GPD had no cause of action. Finally, GPD argues the CSC's ruling on the order of witnesses deprived GPD of a fair hearing and effective legal representation. GPD also asks this court to decide the merits of its petition for judicial review.

[10] We find that until this court adopts rules of procedure, the GRCP—including Rule 12(b)(6)—apply to petitions for judicial review. We also find the AAL, specifically 5 GCA § 9225, applies to CSC hearings, and that the trial court accurately found section 9225 prohibits an employing agency from calling a party subject to adverse action until the employee has had a chance to testify in his or her own behalf. We therefore affirm.

A. The GRCP, Including Rule 12(b)(6), Apply to Petitions for Judicial Review

[11] GPD first argues petitions for judicial review are not subject to Rule 12(b)(6), and instead, "CSC's decision is final but subject to judicial review" under 4 GCA § 4406(d). Appellant's Br. at 10 (Jan. 11, 2019). We disagree and find that petitions for judicial review are governed by the GRCP absent this court having adopted rules of procedure, and so they may be disposed by a motion to dismiss under Rule 12(b)(6).

[12] Our courts recognize only one form of civil action, *see* 7 GCA § 10101 (2005), and "[w]ithin the category of 'civil action' there are the following kinds of cases: civil cases, domestic cases, and special proceedings," Guam R. Civ. P. 2. Our courts' practice has been to adjudicate petitions for judicial review as special proceedings. *See, e.g.*, Guam Police Dep't v. Guam Civil Serv. Comm'n (Charfauros), SP0133-17 (V. Pet. Judicial Review, Sept. 11, 2017). The GRCP "govern the procedure in all suits of a civil nature, including . . . special proceedings . . . of which the court has jurisdiction." Guam R. Civ. P. 1. Therefore, we applied the GRCP to petitions for

judicial review in *Guam Memorial Hospital Authority v. Civil Service Commission (Chaco)*, 2015 Guam 18, given that this court had yet to adopt rules of procedure. 2015 Guam 18 ¶ 28. As to which provisions of the GRCP should be applied, we specified our preference for the selection of those "most conformable to the spirit of . . . Title [7]." *Id.* (alterations in original) (quoting 7 GCA § 7117).

[13] While the Guam Code Annotated ("GCA") sets out procedures specific to only certain forms of special proceedings—for example, Title 7, Chapter 31 of the GCA applies only to writs of review, mandate, and prohibition, *see* 7 GCA § 31101 *et seq.*—the GCA is silent on petitions for judicial review. That is because the petition for judicial review is a judicially created vehicle which, "though not statutorily mandated, was within the court's power to design for its litigants." *Carlson*, 2007 Guam 6 ¶ 64 (citation omitted). And we created that vehicle based on "the exercise of our power to designate 'any suitable process or mode of proceedings'" that best aligns with the spirit of Title 7 of the GCA. *Id.* ¶ 65 (quoting 7 GCA § 7117).

[14] We refer to that same power when we hold that, unless the GCA otherwise applies, the GRCP govern petitions for judicial review. To date, we have not decided which system of rules presides over those petitions. While 4 GCA § 4406 "confers jurisdiction on the trial court to review CSC decisions to sustain, modify or revoke adverse actions through a petition for judicial review, . . . the procedural rules applicable to the exercise of this jurisdiction are not specifically pointed out by law or by rules of procedure adopted by this court." *Chaco*, 2015 Guam 18 ¶ 24. In *Chaco*, we observed our approach to resolving that absence has been to apply GRCP rules case by case. *See id.* ¶ 28.

[15] That case-by-case approach reveals how applying the GRCP to petitions for judicial review has conformed to the spirit of Title 7. When litigants have challenged the GRCP's application to

petitions for judicial review, we have consistently found the GRCP apply. For example, in *Santos v. Government of Guam (Guam Police Department)*, 2012 Guam 9, GPD as management and the CSC moved to dismiss an employee's petition for judicial review based on mootness and lack of subject matter jurisdiction. 2012 Guam 9 ¶ 3. The Superior Court granted the motion to dismiss based on mootness, and we upheld that decision. *Id.* ¶ 14. Neither this court nor the Superior Court found fault with that procedural vehicle, which presumably would have been lodged as a motion to dismiss under GRCP Rule 12(b)(1). Meanwhile, in *Joseph v. Guam Board of Allied Health Examiners*, 2015 Guam 4, we examined under Rule 8(a) the sufficiency of a petition for judicial review based on claims under the AAL and the Open Government Law. While we did not expressly hold the rule applies to petitions for judicial review, we cited Rule 8(a) and found that for those petitions, "Guam law requires only notice pleading, not fact pleading." *Joseph*, 2015 Guam 4 ¶ 9 (citing *Guam Election Comm'n v. Responsible Choices for All Adults Coal.*, 2007 Guam 20 ¶ 94). And in *In re Department of Agriculture v. Civil Service Commission (Rojas)*, 2009 Guam 19, we said that "we are influenced by the Guam Rules of Civil Procedure," specifically Rule 54(b), when determining whether a CSC decision is a final judgment to trigger the deadline to appeal that decision. 2009 Guam 19 ¶ 14. GPD has provided no authority showing that Rule 12(b)(6) is not aligned with the Superior Court's obligation to resolve petitions for judicial review.

[16] We have also recognized the Superior Court's authority to deploy procedural tools more typically associated with civil actions, where doing so preserved judicial economy, and the procedure conformed to the spirit of resolving a petition for judicial review. In *Port Authority of Guam v. Civil Service Commission (Guevara)*, 2018 Guam 1, the CSC refused to hear the Port

Authority of Guam's ("Port") motion to dismiss for lack of jurisdiction,[2] due to the Port's untimely filing of that motion. 2018 Guam 1 ¶ 7. The Port petitioned for judicial review in the Superior Court. *Id.* ¶ 8. Rather than vacate or remand the CSC's judgment, the Superior Court issued to the CSC an order to show cause, where it said: "[I]f the CSC can demonstrate that Guevara was a classified employee and that its jurisdiction was proper, the Court will entertain the merits of the CSC's judgment. If not, the Court will order that the CSC vacate its judgment." *Id.* We approved of that approach and held that while "an order to show cause may not be appropriate in every case," *id.* ¶ 23, it was proper in that instance because remanding to the CSC to address the Port's motion on jurisdiction "would be a vast waste of judicial resources," *id.*, and the procedure "was 'most conformable to the spirit of' resolving a petition for judicial review," *id.* (citing *Chaco*, 2015 Guam 18 ¶ 28; 7 GCA § 7117).

[17] Under that precedent, we hold that the GRCP apply to petitions for judicial review unless the GCA otherwise provides. Even where we have not expressly adopted the GRCP, we have nevertheless viewed those Rules as persuasive authority for determining what procedure the Superior Court should adopt in resolving a petition for judicial review. *See Rojas*, 2009 Guam 19 ¶ 14 (stating that "we are influenced by the Guam Rules of Civil Procedure" when determining whether a CSC decision is a final judgment to trigger deadline to appeal that decision). Here, since the GCA is silent on dispositive motions for petitions for judicial review—including motions to dismiss for failure to state a claim, as at issue here—Rule 12(b)(6) should be applied to GPD's petition because it is the provision "most conformable to the spirit of . . . Title [7]." *Chaco*, 2015

[2] The Port argued that the CSC lacked jurisdiction because the real-party-in-interest allegedly was an unclassified employee, and the CSC had jurisdiction only over classified employees. *Port Auth. of Guam v. Civil Serv. Comm'n (Guevara)*, 2018 Guam 1 ¶ 5.

Guam 18 ¶ 28 (alterations in original) (quoting 7 GCA § 7117). The Superior Court did not err in allowing Charfauros's motion to dismiss to proceed on that rule.

B. The AAL, Including 5 GCA § 9225, Applies to CSC Adverse Action Proceedings

[18] GPD then argues that the AAL applies only to the rulemaking authority of the CSC—not to merits hearings before the CSC—and so the trial court erred when it referred to 5 GCA § 9225, within AAL Article 2's hearing rules, when it determined GPD had no cause of action. *See* Appellant's Br. at 12. According to GPD:

> Articles 1 and 2 of the AAL do not apply to CSC proceedings, because CSC adopted and implemented its amended rules of adverse action procedure for administrative hearings pursuant to 4 GCA § 4409 in March 2010. The only requirement under the AAL applicable to CSC is that its rules comply with Article 3 of the AAL.

Appellant's Reply Br. at 3-4 (Mar. 12, 2019) (citing *Wade v. Taitano*, 2002 Guam 16; *Carlson*, 2007 Guam 6).

[19] We disagree. We find nothing in the AAL's text or in the CSC's enabling legislation that shows the Legislature intended to apply only some provisions of the AAL to the CSC. Proceedings before the CSC are governed by Title 4, Chapter 4 of the GCA. *See* 4 GCA § 4401 *et seq.* According to 4 GCA § 4409, "The rules of the [CSC] are subject to the Administrative Adjudication Law." 4 GCA § 4409 (2005). The AAL's text requires, with none of the qualifications GPD asserts, that agencies including the CSC must comply with the AAL in any proceeding where legal rights are required by law to be determined after an agency hearing. *See* 5 GCA § 9200 (2005). Our precedent cases also have applied the AAL to CSC merits hearings.

1. The AAL in its entirety applies to the CSC, unless the CSC's enabling legislation provides otherwise

[20] GPD urges us to find that only Article 3 of the AAL applies to the CSC, but nothing shows the Legislature intended to exclude the CSC from Articles 1 and 2 of the AAL—whether we look

at AAL's text, the CSC's enabling legislation, or our cases that have applied the AAL to CSC hearings.

[21] "Statutory interpretation always begins with the language of the statute." *Teleguam Holdings, LLC v. Guam*, 2015 Guam 13 ¶ 18 (citing *Aguon v. Gutierrez*, 2002 Guam 14 ¶ 6; *Pangelinan v. Gutierrez*, 2000 Guam 11 ¶ 23). "Statutes should be read as a whole[,] . . . [and] words should be given their plain meaning." *People v. Herradura*, DCA Crim. No. 85-00023A, 1986 WL 68910, at *2 (D. Guam App. Div. July 7, 1986) (citations omitted); *see also People v. Quichocho*, 1997 Guam 13 ¶ 15. "The plain meaning will prevail where there is no clearly stated legislative intent to the contrary." *Teleguam Holdings*, 2015 Guam 13 ¶ 18 (citing *Sumitomo Constr., Co. v. Gov't of Guam*, 2001 Guam 23 ¶ 17). "[I]n determining legislative intent, a statute should be read as a whole, and therefore, courts should construe each section in conjunction with other sections." *Sumitomo Constr.*, 2001 Guam 23 ¶ 17.

[22] The AAL comprises three Articles: Article 1 is titled "Definitions," *see* 5 GCA §§ 9100-9108; Article 2 is titled "General Provisions," *see* 5 GCA §§ 9200-9242; and Article 3 is titled "Rule-Making Procedures," *see* 5 GCA §§ 9300-9312. Nowhere in the three Articles does the AAL exempt the CSC from its application; instead, the AAL's text appears to apply broadly to all agency adjudications, including those before the CSC. For example, the AAL defines "administrative adjudication" to mean an "administrative investigation, hearing and determination *by any agency* of issues or cases applicable to particular parties. 5 GCA § 9108 (2005) (emphasis added). And the AAL defines "agency" as "any board, commission, department, division, bureau or officer of the territory of Guam authorized by law to make rules or adjudicate contested cases." 5 GCA § 9102 (2005). That provision notably *excludes* "any entity in the legislative and judicial branches, and for the purposes of establishing charges of utility services, it does not include the

Guam Power Authority or the Guam Waterworks Authority," *id.*—which suggests the Legislature could exempt certain entities from the AAL's reach where it so chose. It chose not to include the CSC among those exemptions.

[23] Meanwhile, 5 GCA § 9200 establishes the AAL's scope: "The procedure of any agency shall be conducted pursuant to the provisions of this Chapter in any proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after an agency hearing." 5 GCA § 9200. As we explained in *Guam Federation of Teachers ex rel. Rector v. Perez*, 2005 Guam 25, that provision in AAL's Article 2 does not create the right to a hearing, and instead "states that the hearing procedures delineated in Article 2 must be followed by an agency *when the agency is required by law to conduct a hearing*." 2005 Guam 25 ¶ 36. Guam law requires CSC to conduct a hearing under 4 GCA § 4406(e), which mandates that the CSC "shall set an adverse action appeal for hearing as expeditiously as possible" after an employee files an adverse action appeal with the commission. 4 GCA § 4406(e). Since the CSC falls within the AAL's definition of "agency," and 4 GCA § 4406 requires the CSC to conduct a hearing after an employee's adverse action appeal, the CSC's procedures "shall be conducted pursuant to the provisions" of the AAL, per 5 GCA § 9200.

[24] GPD asks us, in effect, to read those provisions out of the statute. *See* Reply Br. at 4 ("GPD contends that neither the CSC nor the Superior Court should reference or rely on any provision of the AAL in Articles 1 and 2, for hearings before CSC or judicial review of CSC decisions, including but not limited to, 5 GCA § 9200 and 5 GCA §§ 9225-9228."). But GPD gives us no convincing reason why we should do so—especially since the AAL "should be read as a whole, and therefore, courts should construe each section in conjunction with other sections." *Sumitomo Constr.*, 2001 Guam 23 ¶ 17. Read as a whole, it is clear the Legislature intended agencies

including the CSC to comply with all of the AAL, and not just parts of it. For example, the AAL requires "any agency" to conduct proceedings "pursuant to the provisions of *this Chapter*," 5 GCA § 9200 (emphasis added)—and the Chapter comprises all three Articles of the AAL. And while GPD would have us read Article 1 out of the AAL, doing so would mean Article 3 applies to the CSC without the definitions in Article 1—leading to the absurd outcome that Article 3 would apply to the CSC with its terms depleted of any statutorily intended definitions. The Legislature could not have intended that result. *See Toves v. Guam Mem'l Hosp. Auth.*, D.C. Civ. No. 86-0060A, 1987 WL 109896, at *2 (D. Guam App. Div. June 22, 1987) ("[I]nterpretations of statutes which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available." (citation omitted)).

[25] GPD also points to provisions in Article 2 of the AAL that do not appear to apply to the CSC—for example, 5 GCA §§ 9201 and 9202, among others, which according to GPD "reveal[] that the agencies or authorities subject to the procedural rules of the AAL typically involve a license, privilege or right which may be suspended, limited, conditioned, or revoked," Reply Br. at 4-5—as meaning the entirety of Article 2 does not apply. But that argument proves too much, and it misses a narrower reading of the statute: The AAL applies only if its rule refers to a procedure the CSC undertakes. And here, Article 2 governs because the CSC's activity at issue is its adverse action appeal, a "proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after an agency hearing," 5 GCA § 9200.

[26] GPD additionally argues that certain parts of the CSC's Amended Adverse Action Appeal Rules of Procedure ("AA Rules") conflict with certain provisions in Article 2 of the AAL, thereby requiring the CSC to follow its own rules of procedure instead of those contained in the AAL. *See* Appellant's Br. at 14. But here, we see no conflict that would make a portion of the AAL

inapplicable. GPD cites to CSC AA Rule 11.2.4, which relates to the right to call witnesses, as a source of conflict with the final sentence of section 9225. *See* CSC AA Rule 11.2.4; Appellant's Br. at 16. This provision, however, says nothing about the order in which witnesses may be called. Similarly, while CSC AA Rule 11.2.6 provides the general order of procedure in terms of which party presents its case first, it says nothing regarding the presentation of witnesses generally, or the order in which witnesses may be called. *See* CSC AA Rule 11.2.6. Upon our review, we find nothing in the laws governing the CSC that would make section 9225 inapplicable.

2. The CSC's enabling legislation does not limit the AAL's application

[27] Since the text of the AAL does not exclude the CSC from the AAL's full application, GPD's argument that only Article 3 of the AAL applies to the CSC might be more tenable if the CSC's enabling legislation limited the AAL's application. But nothing in the text of the CSC's enabling statute, *see* 4 GCA §§ 4401-4411, that statute's legislative history, or our caselaw, so limits the AAL's reach.

[28] GPD bases its argument on CSC's adopting its own adverse action procedure rules under 4 GCA § 4409. *See* Reply Br. at 3 ("GPD contends that Articles 1 and 2 of the AAL do not apply to CSC proceedings, because CSC adopted and implemented its amended rules of adverse action procedure for administrative hearings pursuant to 4 GCA § 4409 in March 2010."). Yet nothing about 4 GCA § 4409—and indeed, nothing in the CSC's enabling legislation—shows the Legislature intended for the CSC's rules to supplant the AAL.[3] In fact, 4 GCA § 4409 states: "The rules of the Commission are subject to the Administrative Adjudication Law." 4 GCA § 4409. GPD argues that provision means only CSC's rulemaking is subject to the AAL, and that where

[3] We also see no merit in GPD's argument that 4 GCA § 4404 determines the issue before us. *See* Appellant's Br. at 15. That provision merely provides the CSC with subpoena power to force the appearance of a witness or production of records before the commission. *See* 4 GCA § 4404 (2005).

the CSC has adopted rules for its adverse action hearings, those CSC rules govern instead of the AAL's rules governing agency hearings under Article 2. But nothing in the text of 4 GCA § 4409 supports that position; the provision states "rules," not rulemaking, and states those rules "are subject to the Administrative Adjudication Law," not merely the AAL's rulemaking provisions under Article 3.

[29] GPD also bases its argument on 4 GCA § 4402. Section 4402 provides:

> The quorum of the Commission shall be four (4) members. The affirmative vote of four (4) members shall be required for any action of the Commission. The Commission may adopt rules to govern its procedures and the standards to be maintained by non-attorney representatives; provided, that rules adopted by the Commission shall recognize that representative is not an attorney and cannot be bound by the same standards and ethics as an attorney; and, further, provided, that in cases where an employee represents oneself, the Commission shall render all possible assistance to the employee to insure a fair and impartial hearing.

4 GCA § 4402 (2005). According to GPD, since the Legislature "conferred upon the CSC the specific authority to 'adopt rules to govern its procedures'"—and CSC adopted the Amended Adverse Action Appeal Rules of Procedure—then the AAL's hearing rules under Article 2 no longer govern CSC's adverse action appeal hearings. But again, GPD's argument relies on reading a provision far broader than the Legislature intended.

[30] The plain text of that provision states only that the CSC may "adopt rules to govern its procedures," 4 GCA § 4402; nowhere does it state those rules modify or supplant the AAL. And we are unconvinced the Legislature would commit the expansive policy decision to insulate the CSC from AAL Articles 1 and 2 with such short shrift, especially when the CSC's enabling legislation also states the CSC's rules "are subject to the Administrative Adjudication Law," 4 GCA § 4409. "If we can find 'a harmonious construction' of the two statutes, we 'must adopt that harmonizing construction.'" *People v. Acosta*, 52 P.3d 624, 643 (Cal. 2002) (emphasis and citation omitted). And "[w]e presume that the Legislature, when enacting a statute, was aware of existing

related laws and intended to maintain a consistent body of rules." *Stone St. Capital, LLC v. Cal. State LotteryComm'n*, 80 Cal. Rptr. 3d 326, 333 (Ct. App. 2008).

[31] Reading 5 GCA § 9200 and 4 GCA § 4402 together, it is clear the Legislature intended to empower the CSC to adopt rules for its hearings in light of, not instead of, the AAL's Article 2—meaning while the CSC can adopt rules for its adverse action appeal hearings, those rules still must be consistent with the AAL. To find that the CSC rules must substantively comply with Article 2 of the AAL, but that not all sections of Article 2 apply on their own force, would cause a situation in which the CSC may choose what rules in Article 2 should apply and which should not. This would defeat the legislative purpose in ensuring that the rules of the CSC are "subject to" the AAL. *See Toves*, 1987 WL 109896, at *2.

[32] Legislative history behind the CSC's enabling statute supports our reading. The current 4 GCA § 4409 previously was codified as 4 GCA § 4178, which expressly provided: "Administrative Adjudication Act Not Applicable. Neither the rules of the Civil Service Commission, nor any procedures proscribed thereunder are subject to the Administrative Adjudication Law, unless the contrary is expressly required by a law other than the Administrative Adjudication Law." Pub. L. 16-023:1. Later that year, the Legislature added a provision permitting the CSC to adopt temporary rules and expressly excluded such temporary rules and regulations from the AAL, stating that "[t]he Administrative Adjudication Act shall not govern the adoption of the temporary rules and regulations . . . ." Pub. L. 16-041:7. In 2002, the Legislature repealed 4 GCA § 4178 and replaced it with its current iteration, which as noted above, states: "The rules of the Commission are subject to the Administrative Adjudication Law." *See* Pub. L. 26-088:5; 4 GCA § 4409. This history reveals the Legislature's intent to replace the former regime, which expressly excluded the CSC's

rules from the AAL's ambit, to the current regime in which the CSC's rules are expressly subject to the AAL.

[33] Our caselaw also supports this view. In recent cases, we relied on the AAL to determine how proceedings before the CSC should be conducted. In *Guevara*, 2018 Guam 1, we observed that 5 GCA § 9225—the AAL Article 2 provision at issue, and which GPD argues does not apply in CSC hearings—requires "a fuller evidentiary hearing" in a merits proceeding before the CSC. *See Guevara*, 2018 Guam 1 ¶ 36 n.5 ("Contrary to the more truncated procedure applicable to pre-merits motions, under both the CSC AA Rules and the Administrative Adjudication Law, a fuller evidentiary hearing is required when hearing the merits." (citing CSC AA R. 9.1, 9, 11.2.6, 11.3; 5 GCA § 9225)). This observation, while dicta, is in accord with other recent authority. *See Port Transp., Stevedore, & Terminal Emps. v. Guam Civil Serv. Comm'n (Port Auth. of Guam)*, 2018 Guam 18 ¶ 29 (noting that CSC need not conduct a full-blown evidentiary hearing, based on persuasive caselaw and Article 2 of AAL (citing *Johnson v. Ala. Agric. & Mech. Univ.*, 481 So. 2d 336, 339 (Ala. 1985); 5 GCA § 9226 (2005))). As a further example, in *Port Authority of Guam v. Civil Service Commission (Javelosa)*, 2018 Guam 9, we relied on two provisions from Article 2 of the AAL—one related to judicial notice of facts, *see* 5 GCA § 9228 (2005), and the other related to hearsay and privilege, *see* 5 GCA § 9226—to support our guidance that "[t]here are numerous situations where the CSC must apply legal standards and knowledge of the law in its decision-making" process. 2018 Guam 9 ¶ 24 (citing 5 GCA §§ 9226, 9228).[4] In sum, our decisions have shown the AAL applies to CSC adverse action hearings—and we find no reason to deviate now.

[4] *Cf. Gov't of Guam v. Gutierrez*, 2015 Guam 8 ¶ 16 (stating in dicta that Guam Ancestral Lands Commission ("GALC") is "subject to the rules and privileges of the Guam Administrative Adjudication Act," citing its enabling legislation, 21 GCA § 80104(b), which provides that GALC "shall establish, in accordance with the Administrative Adjudication Law, written procedures . . ., as well as other rules and regulations required to administer this Chapter").

[34] Finally, GPD takes some length to describe how the CSC's rules may or may not conflict with the AAL, alleging "CSC understood 4 GCA § 4402 to mean that it had the authority to make its own hearing procedures separate and apart from the general hearing procedures contained in the AAL." Appellant's Br. at 14. But whether the CSC did believe it could "make its own hearing procedures separate and apart" from the AAL's hearing rules, that position avoids the well-settled principle that agency rules cannot contravene legislation. *See, e.g., Cal. Sch. Emps. Ass'n v. Pers. Comm'n of Pajaro Valley Unified Sch. Dist.*, 474 P.2d 436, 439 (Cal. 1970) (in bank) ("[A]n administrative agency has no authority to enact rules or regulations which alter or enlarge the terms of legislative enactments."); *Green River Cmty. Coll., Dist. No. 10 v. Higher Educ. Pers. Bd.*, 622 P.2d 826, 829 (Wash. 1980) (en banc) ("[A]n agency does not have the power to promulgate rules that amend or change legislative enactments."), *op. modified on reh'g*, 633 P.2d 1324 (Wash. 1981); *State v. Dodd*, 783 P.2d 106, 108 (Wash. Ct. App. 1989) ("It is a cardinal rule of administrative law that an agency by its rulemaking authority may not amend or nullify a statute under the guise of interpretation.").

[35] Thus, we find the AAL governs hearings before the CSC—and the CSC's adverse action hearing rules are valid to the extent they do not contravene the hearing requirements under Article 2 of the AAL.

C. Under 5 GCA § 9225, an Employing Agency May Not Call to Testify the Employee Subject to the Adverse Action, Unless that Employee First Has Been Given the Opportunity to Testify in Her Case-in-Chief

[36] Since the AAL applies to adverse action hearings before the CSC, 5 GCA § 9225 in AAL's Article 2 applies to those hearings. Under that provision:

> Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him to testify; and to

> rebut the evidence against him. If respondent does not testify in his own behalf, he may be called and examined as if under cross-examination.

5 GCA § 9225 (2005). The trial court determined the last sentence of 5 GCA § 9225 barred a government agency from calling an employee subject to adverse action until the employee has chosen not to testify in his or her own defense. *See* RA, tab 20 at 7 (Dec. & Order, May 9, 2018) ("The Court finds that the last sentence in section 9225 provides that an employee, as the respondent, may not be called as a witness until he has had an opportunity to testify on his own behalf, and has failed to do so."). We agree with the trial court's interpretation.

[37] We start our analysis with the statutory text. *See Teleguam Holdings*, 2015 Guam 13 ¶ 18; *see also Quichocho*, 1997 Guam 13 ¶ 15. The last sentence in 5 GCA § 9225 states: "If respondent does not testify in his own behalf, he may be called and examined as if under cross-examination." 5 GCA § 9225. The AAL defines "respondent" as "any person against whom an accusation is filed or against whom a statement of issues is filed pursuant to this Chapter," 5 GCA § 9105 (2005), so here "respondent" in 5 GCA § 9225 would refer to Charfauros, the employee against whom adverse action was taken.

[38] The last sentence of section 9225 was adopted from the same California statute, codified at California Government Code section 11513(b). *See* Cal. Gov't Code § 11513(b) (West 2020); *cf. Gutierrez v. Guam Election Comm'n*, 2011 Guam 3 ¶ 14 ("Guam adopted the Guam [AAL], codified at 5 GCA § 9100 *et seq.*, which is substantially similar to the California Administrative Procedure Act.").[5] Because the Legislature adopted section 9225 from California law, California authority interpreting the provision is persuasive to our own interpretation. *See generally Castino*

[5] The text of the California statute provides: "Each party shall have these rights: to call and examine witnesses, to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him or her to testify; and to rebut the evidence against him or her. If respondent does not testify in his or her own behalf he or she may be called and examined as if under cross-examination." Cal. Gov't Code § 11513(b).

v. G.C. Corp., 2010 Guam 3 ¶ 22 (collecting cases). Unfortunately, no California court has addressed whether the language of section 11513(b) requires that a respondent be given the opportunity to testify in the first instance before being called by a government agency. *See* 1 Witkin, *Cal. Evid. 5th Intro--Evid* § 88 (5th ed. 2020) (stating that whether section 11513(b) limits an agency from calling respondent to testify at any time is "not yet resolved").[6] [7] No other state or territory has a similarly worded statute. *See* Billy H. Hunt, *Administrative Law: Agency Calling Party as Witness at Hearing: Government Code Section 11513(b)*, 44 Cal. L. Rev. 400, 401 (1956).

[39] Administrative agencies in California appear to be guided by an opinion of the California Attorney General from 1948. *See* 11 Ops. Cal. Att'y Gen. 116 (1948). In that opinion, the California Attorney General determined that a government entity could *not* call a respondent until the respondent has had an opportunity to testify in his or her own case-in-chief. *See id.* ("The respondent in an administrative hearing may not be called as a witness by the department under the provisions of Government Code section 11513 until he has had opportunity to testify in his own behalf and has failed to do so."); *see also* Hunt, *Administrative Law*, 44 Cal. L. Rev. at 401. The California Attorney General believed it was the California Legislature's intent to adopt an intermediate position between the rules applicable in civil proceedings and those applicable in criminal proceedings. *See* 11 Ops. Cal. Att'y Gen. 116; *see also* Hunt, *Administrative Law*, 44 Cal. L. Rev. at 401. According to the opinion, "the language of section 11513(b) created the order

[6] According to Witkin, "[Section 11513(b)'s] peculiar introductory words raise a problem of interpretation not yet resolved: May the respondent be called by the agency *at any time*, or *only after the agency has presented a prima facie case*, at which time it first becomes necessary for the respondent to testify or refuse to testify 'in his or her own behalf'?" 1 Witkin, *Cal. Evid. 5th Intro—Evid* § 88.

[7] Some secondary materials have interpreted California's section 11513 to mean the employing agency may not call the employee in the agency's case-in-chief, except as a rebuttal witness. *See* California Practice Guide: Administrative Law Ch. 9-A ("Presumably, this rule would not allow the agency to call the respondent as a witness in its case-in-chief, but only as a rebuttal witness."); California Practice Guide: Administrative Law, Appendix A. [9:500] Preparation by Respondent's Counsel for Hearing in Licensing Cases ("This does *not* permit agency counsel to call the respondent in agency's case in chief.").

for proceeding, and that respondent could not be required to testify until the agency's case was 'in' and he had failed to testify as part of his defense." Hunt, *Administrative Law*, 44 Cal. L. Rev. at 401.

[40] At least one case has appeared to accept the California Attorney General's interpretation. In *O'Mara v. California State Board of Pharmacy*, 54 Cal. Rptr. 862 (Dist. Ct. App. 1966), a California District Court of Appeal addressed whether a party to an administrative hearing could move to nonsuit the hearing following the government resting its case, and before the respondent had put on his own case, based on the government's failure to meet its burden of proof. *See* 54 Cal. Rptr. at 864. The court found that procedure was not permitted under applicable statutes, holding that the hearing officer "must proceed with the taking of evidence until *all* of the testimony to be offered by all the parties has been received." *See id.* (emphasis added). While the court noted its decision was controlled by prior cases that reached a similar result, it also relied on the language of section 11513(b). The court stated in dicta that the language of this statute required the government agency to "rest its case temporarily to allow appellant to exercise his right to testify before they might call him as their own witness." *Id.* at 865. The court reasoned it would be unfair to allow for a motion to nonsuit—the functional equivalent of a motion for a directed verdict—before the government could cross-examine the respondent. What little authority exists from California thus supports the trial court's interpretation of section 9225 and the plain meaning of the statute.

[41] We hold that 5 GCA § 9225 applies to proceedings before the CSC and bars the government from calling an employee subject to adverse action as a witness until that employee has not testified

in his or her own behalf.[8] Because of our resolution of the above issues, we need not address the other arguments raised by the parties.

V. CONCLUSION

[42] We **AFFIRM** both the Superior Court's Decision and Order dismissing the Verified Petition for Judicial Review and the Decision and Order denying the motion for reconsideration.

/s/
F. PHILIP CARBULLIDO
Associate Justice

/s/
ROBERT J. TORRES
Associate Justice

/s/
KATHERINE A. MARAMAN
Chief Justice

[8] We are bound to an interpretation based on the statute's text, the legislative history, and our precedent. It is the Legislature's province, and not ours, to rewrite the CSC's statutory scheme in the manner that would best reflect the Legislature's desired public policy.