

FILED  
Clerk  
District Court  
JUL 12 2023

for the Northern Mariana Islands  
By   
(Deputy Clerk)

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN MARIANA ISLANDS

BETTY JOHNSON, on behalf of herself, and as  
a representative of a class of similarly-situated  
persons,

Plaintiffs,

v.

RALPH DELEON GUERRERO TORRES,  
Governor of the Commonwealth of the Northern  
Mariana Islands (“CNMI”), *et al.*,

Defendants.

CIVIL CASE NO. 09-00023

**ORDER**

Granting Motion to Enforce and Confirm  
and for Declaratory and Injunctive Relief  
and

Denying Cross Motion  
(ECF Nos. 850 and 853)

Pending before the court are two motions that stem from a dispute over the retirement benefits of Rosa A. Camacho, a retiree and member of the settlement class. The first is a Motion to (1) Enforce and Confirm “Full Benefit Payments” and “Full Benefits” in the Final Amended Stipulation and Agreement of Settlement,<sup>1</sup> and (2) for Declaratory and Injunctive Relief (the “Motion to Enforce”), filed by the Trustee of the NMI Settlement Fund (“NMISF”). *See* Mot. Enforce, ECF No. 850. In response to the NMISF’s motion, Ms. Camacho filed an Opposition and Cross Motion to (1) to Enforce and Confirm “Full Benefit Payments” and “Full Benefits” in the Final Amended Stipulation and Agreement of Settlement, and (2) for Declaratory and Injunctive

<sup>1</sup> The Final Amended Stipulation and Agreement of Settlement (the “Settlement Agreement”), *see* ECF No. 468-1, received final court approval on September 30, 2013. *See* Min. at 2, ECF No. 556. On October 12, 2013, the court issued a Final Judgment Approving Class Action Settlement (the “Judgment”). *See* J., ECF No. 561.

1 Relief (the “Cross Motion”). *See* Opp’n and Cross Mot., ECF No. 853. The NMISF’s Motion to  
2 Enforce asks the court to declare that Cost of Living Allowance (“COLA”) payments are not  
3 included in computing a retiree’s benefits under the Settlement Agreement. Ms. Camacho’s Cross  
4 Motion, on the other hand, argues that COLA payments are part of her retirement benefits and  
5 alleges that the NMISF miscalculated her retirement benefits by not taking into account any  
6 overtime/compensatory time she had accumulated.

7 The court finds that that oral argument will aid the court in deciding the issues presented.  
8 Having read the parties’ briefs and considered relevant authority, the court hereby GRANTS the  
9 Motion to Enforce and DENIES the Cross Motion as further discussed herein.

## 10 **I. BACKGROUND**

### 11 **A. Determination of overpayment**

12 Ms. Camacho became a member of the Northern Mariana Islands Retirement Fund (the  
13 “NMIRF”) on October 1, 1980, when the fund was established. Opp’n and Cross Mot. at 1, ECF  
14 No. 853. She retired on December 15, 1991, as a Class II member of the NMIRF. Mot. Enforce  
15 at 2, ECF No. 850. At the time of her retirement, the NMIRF had determined that Ms. Camacho  
16 had 26.66667 years of service credit and computed her annual pension benefit to be \$20,917.02,  
17 with a monthly annuity of \$1,743.09. Opp’n and Cross Mot. at 1-2, ECF No. 853, and Addenda  
18 at 2, ECF No. 853-1.

19 Subsequently, the NMIRF adjusted Ms. Camacho’s credited service and pension in 1994  
20 and 1995 to reflect overtime/compensatory time. Opp’n and Cross Mot. at 2-3, ECF No. 853, and  
21 Addenda at 4-10, ECF No. 853-1. She also received COLA payments on January 1, 2007, and  
22 January 1, 2008. Opp’n and Cross Mot. at 3, ECF No. 853, and Addenda at 24-25, ECF No. 853-1.

23 On March 23, 2016, the NMISF sent Ms. Camacho a Notice of Overpayment. Mot. Enforce  
24 at 2, ECF No. 850, and Addenda at 19-20, ECF No. 853-1. According to the notice, following her  
25 retirement, Ms. Camacho’s “annual pension computation was improperly adjusted to include [her]  
26 accumulated overtime/compensatory time (OT/CT) hours as service credit instead of vesting service  
27 credit contrary to 1 CMC § 8333.” Addenda at 19, ECF No. 853-1. The Notice of Overpayment  
28 stated that Ms. Camacho had “received an overpayment of benefits in the amount of \$24,652.11 as

1 of March 4, 2016.” *Id.* The NMISF also determined that Ms. Camacho’s current annual benefit  
2 of \$23,774.10, should be reduced to \$22,627.22 annually and \$1,885.62 monthly. *Id.* The Notice  
3 of Overpayment advised Ms. Camacho of her right to appeal the adverse action by filing a Notice  
4 of Review within 30 days, as provided in the NMISF’s Appeal Rules and Procedures (the NMISF  
5 Appeal Rules”). *Id.* at 20.

6 B. Procedural History

7 On April 21, 2016, Ms. Camacho appealed the NMISF’s Notice of Overpayment. Mot.  
8 Enforce at 2, ECF No. 850.

9 In early 2022, the parties engaged in mediation with the Honorable Dan Collins, but they  
10 were unable to resolve their dispute. *Id.* The appeal was then submitted to Deborah Fisher, the  
11 hearing officer. *Id.*

12 During the administrative appeal, Ms. Camacho raised for the first time the COLA issue.  
13 *Id.* at 3. She asserted that she had actually been underpaid because she had not received any COLA  
14 payments from 2009 to the present. *Id.* Ms. Camacho sought “a determination of her rights relating  
15 to the COLA payments through the Administrative Appeal process.” *Id.*

16 The NMISF then filed the instant Motion to Enforce, asserting that the issue of whether a  
17 retiree is entitled to COLA payments under the Settlement Agreement should be resolved by this  
18 court and not under the Administrative Appeals process because it “involves jurisdictional and legal  
19 issues relating to the interpretation of the Settlement Agreement.” *Id.*

20 In response, Ms. Camacho filed an Opposition to the Motion to Enforce combined with the  
21 Cross Motion before the court. *See* ECF No. 853. Ms. Camacho argued that COLA payments were  
22 part of her “Full Benefits” and further asserted that this court should confirm that  
23 overtime/compensatory time were also included as a “Full Benefit” under the Settlement  
24 Agreement.

25 **II. LEGAL STANDARD**

26 The NMISF requests the court to confirm whether COLA payments are included within the  
27 definition of “Full Benefits” or “Full Benefit Payment” under the terms of the Settlement  
28 Agreement. Additionally, Ms. Camacho asks the court to confirm whether the term “Full Benefits”

1 under the Settlement Agreement includes overtime/compensatory time in accordance with Public  
2 Law 8-24.

3 “An agreement to settle a legal dispute is a contract and its enforceability is governed by  
4 familiar principles of contract law.” *Jeff D. v. Andrus*, 899 F.2d 753, 759 (9th Cir. 1989). “The  
5 construction and enforcement of settlement agreements are governed by principles of local law  
6 which apply to interpretation of contracts generally.” *Id.* “[A] written contract must be read as a  
7 whole and every part interpreted with reference to the whole.” *Isla Dev. Prop., Inc. v. Jang*, No.  
8 2017-SCC-0009-CIV, 2017 WL 6404832, at \*2 (N. Mar. I. Dec. 15, 2017). The Supreme Court  
9 of the CNMI has also held that

10 the language in a contract is to be given its plain grammatical meaning unless doing  
11 so would defeat the parties’ intent. Furthermore, in determining the intention of the  
12 parties, we look only within the four corners of the agreement to see what is actually  
13 stated, and not at what was allegedly meant. Confining our inquiry to the four  
corners of a contract is the most equitable method of determining the parties’ intent.  
Doing so allows the court to interpret what both parties agreed to and not what the  
contract may have devolved into.

14 *Commonwealth Ports Auth. v. Tinian Shipping Co.*, No. CV-04-0017-GA, 2007 WL 3033499, at  
15 \*4 (N. Mar. I. Oct. 15, 2007) (internal citations omitted).

16 This standard is consistent with ¶ 38.0 of the Settlement Agreement, which provides that  
17 “[t]his Agreement shall be governed by, construed and enforced . . . in accordance with general  
18 principals of contract law construction in the United States and shall not be construed as controlled  
19 by the laws, case law, statutes, or regulations of any particular State or territory of the United  
20 States.” See Settlement Agreement at ¶ 38.0, ECF No. 468-1.

### 21 **III. ANALYSIS**

#### 22 **A. Whether COLA payments are required under the Settlement Agreement**

23 The parties disagree on whether COLA payments are a benefit owed to Class Members, so  
24 the court’s analysis begins by reviewing the language of the Settlement Agreement. Under the  
25 terms of the Settlement Agreement, “Settlement Class Members . . . agree that they will be entitled  
26 to only 75% of their Full Benefits annually until the Settlement Fund has sufficient assets to pay  
27 more and remain actuarially sound while paying more over its life and providing prudently for the  
28 costs and future costs of operating the Settlement Fund.” Settlement Agreement at ¶ 7.0, ECF

No. 468-1. The terms “Full Benefit Payments” or “Full Benefits” is defined as “benefit payments in the amount defined by 1 CMC § 8301 *et seq.* (excluding any changes by P.L. 17-82 or P.L. 18-02) as those laws existed on June 26, 2013, or guaranteed by N. Mar. I. Const. art. II,<sup>2</sup> § 20(a) as it existed in June 26, 2013.” *Id.* at ¶ 1.13. This definition of Full Benefits is silent with regard to COLA payments. The court must further examine then whether, on June 26, 2013, COLA payments were benefits provided under 1 CMC § 8301 *et seq.*<sup>3</sup> (excluding any changes by P.L. 17-82 or P.L. 18-02) or guaranteed by the Article III, Section 20(a) of the Commonwealth Constitution.

The NMISF argues that COLA payments are not part of a member’s “Full Benefits” because COLA payments are not guaranteed under the Retirement Fund Act and are subject to annual appropriation from the Legislature. The NMISF asserts that as of June 26, 2013, Section 8358 of the Retirement Fund Act contained the following pertinent provisions:

§ 8358. Annual Cost of Living Increase.

(a) Eligible class I and class II members in a receipt of a service retirement or disability annuity and eligible surviving spouses **may** be provided an annual cost of living increase. The annuity amount will automatically increase on the first day of the quarter following approval by the board.

...  
(d) **The board shall pay as a COLA . . . only such amount as the Legislature appropriates for this purpose each year.**

1 CMC § 8358 (emphasis added).

Based on the statutory language, the NMISF maintains that COLA payments can only be paid when two conditions are satisfied: (1) when the Board of the NMI Retirement Fund approves the COLA increase and (2) separate funding for the COLA payment for that year is appropriated by the Legislature. Mot. Enforce at 6, ECF No. 850. Because COLA payments are discretionary

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<sup>2</sup> This citation to Article II of the Commonwealth Constitution is likely a typographical error, since the provision regarding the Retirement System is contained in Article III, Section 20 of the Commonwealth Constitution.

<sup>3</sup> These statutes will hereinafter be referenced as the Retirement Fund Act.

1 and subject to legislative appropriation, the NMISF contends that such payments are not included  
2 in the definition of “Full Benefits” under the Settlement Agreement. The court agrees.

3 Ms. Camacho counters that Section 8358, which became effective on February 16, 2011 by  
4 the passage of Public Law 17-32, should not be applied to her since she became a member of the  
5 Retirement Fund 20 years earlier. Ms. Camacho asserts that to apply Public Law 17-32 to her  
6 retroactively “would impair and diminish [her] pension rights and violate the Commonwealth  
7 Constitution art III §20(a).” Opp’n and Cross Mot. at 8, ECF No. 853.

8 As noted by the NMISF, the NMI Supreme Court has held that a public employee’s  
9 retirement benefits vest at the time employment is accepted, not at the time of retirement. *See Cody*  
10 *v. NMI Retirement Fund*, 2011 MP 16 ¶ 33. When Ms. Camacho became a member of the NMIRF  
11 on October 1, 1980 (when it was established under Public Law 1-43), COLA payments did not yet  
12 exist. Even Ms. Camacho’s own Cross Motion acknowledged that COLA payments were first  
13 authorized by Public Law 6-17, which became effective on May 7, 1989, followed by the passage  
14 of other legislation authorizing COLA payments. *See* Opp’n and Cross Mot. at 6, ECF No. 853.  
15 Thus, any adjustments to retirement benefits, such as COLA payments, that were authorized after  
16 Ms. Camacho’s retirement vested on October 1, 1980, are not “accrued benefits.”

17 The court concludes that as of June 26, 2013, COLA payments were not guaranteed benefits  
18 payments under either the Retirement Fund Act or the NMI Constitution. COLA payments are  
19 discretionary and were not guaranteed under the Retirement Fund Act because Section 8358(d)  
20 expressly provided that COLA payments shall only be paid in “such amount as the Legislature  
21 appropriates for this purpose each year.” 1 CMC § 8358(d). Additionally, the Commonwealth  
22 Constitution did not guarantee Ms. Camacho COLA payments at the time of her employment, so  
23 any subsequent failure to pay COLA neither diminishes nor impairs her “accrued benefits” under  
24 the Constitution.

25 The court’s conclusion is bolstered by the fact that the Settlement Agreement contemplated  
26 the NMI Government making minimum annual payments (“MAP”) to the Settlement Fund, and  
27

1 these MAP payments were based on “75% of the Class Members’ Full Benefits each year for the  
 2 Settlement Fund’s expected life as determined by an independent actuary appointed by the Trustee  
 3 and approved by the District Court.” Settlement Agreement at ¶¶ 4.0 and 4.1, ECF No. 468-1.  
 4 “Because COLA payments . . . are . . . discretionary and expressly subject to a separate legislative  
 5 appropriation and funding, the computation of the MAP (which is confirmed by the actuary) does  
 6 not include COLA payments.” Mot. Enforce at 7, ECF No. 850. As noted by the NMISF,  
 7 “[r]equiring the Settlement Fund to pay annual COLA[] without the appropriate funding will require  
 8 the Settlement Fund to deplete [its] investment savings and severely shorten the Settlement Fund’s  
 9 investment horizon.” *Id.* To require the Settlement Fund to make COLA payments annually to the  
 10 Class Members would go against the primary purpose of the Settlement Agreement, which is “to  
 11 insure that retirees who are part of this Agreement will always get paid at least 75% of their  
 12 benefits[.]” Settlement Agreement at ¶ I.D, ECF No. 468-1.

13 Based on the above discussion, the court grants the NMISF’s Motion to Enforce and  
 14 confirms that the Settlement Fund is not required to pay COLA under the Settlement Agreement  
 15 because COLA payments are not included within the definition of “Full Benefits” or “Full Benefit  
 16 Payment” under the Settlement Agreement.<sup>4</sup>

17 B. Whether Ms. Camacho Should Receive Credit for Overtime/Compensatory Time

18 The next issue before the court is raised in Ms. Camacho’s Cross Motion. She asks the  
 19 court to confirm that overtime/compensatory time should be used to calculate her creditable service  
 20 and in turn her retirement benefits. The NMISF argues that the filing of the Cross Motion is  
 21 improper and that the court should reject her attempt to circumvent the administrative appeals  
 22 process. NMISF’s Reply 5, ECF No. 856. Before the court can address the merits of the Cross  
 23 Motion, the court must again examine the terms of the Settlement Agreement, to which  
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25 <sup>4</sup> Because the court so holds that COLA payments are not included in the definition of “Full  
 26 Benefits” or “Full Benefit Payments,” there is no further need to address the NMISF’s alternative  
 27 argument that claims for COLA payments were released under the Settlement Agreement.



Ms. Camacho agreed to be bound when she became a member of the Settlement Class.

Under the Settlement Agreement, the Settlement Fund Trustee was authorized to “establish policies and appoint hearings officers for the resolution of all disputes between individual [m]embers of the Settlement Fund and the Settlement Fund consistent with due process and a right to a final appeal to an independent arbitrator selected by the Trustee and approved by the District Court, there shall be no further appeal from the decision of the arbitrator.”<sup>5</sup> *Id.* at ¶ 10.0(k). The parties consented to the

exclusive and continuing jurisdiction of the District Court over the Johnson Action and any related litigation and to the District[] Court’s exclusive jurisdiction to enforce and interpret any provision of this agreement and *to enjoin any person or entity from pursuing any action that is inconsistent with this Agreement* or the exclusive jurisdiction of the District Court over this Agreement or the Johnson Action.

*Id.* at ¶ 28.0 (emphasis added).

As noted above, on March 23, 2016, the NMISF notified Ms. Camacho that she received an overpayment based on calculations that included overtime/compensatory time hours as service credit instead of vesting credit. Addenda at 19, ECF No. 853-1. Ms. Camacho timely appealed on April 21, 2016. Mot. Enforce at 2, ECF No. 850. When mediation was unsuccessful, the appeal was submitted to the hearing officer. *Id.* During the administrative appeal, the issue of COLA payments was raised for the first time, prompting the NMISF to seek this court’s guidance with regard to interpreting the term “Full Benefits” under the Settlement Agreement. Ms. Camacho then filed her Cross Motion and asserted that this court should likewise determine whether overtime should be used to calculate Ms. Camacho’s “Full Benefits” under the Settlement Agreement.

The court agrees with the NMISF’s contention that the filing of the Cross Motion was improper since the issue raised in her Cross Motion with regard to how overtime/compensatory time

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<sup>5</sup> The Appeal Rules and Procedures can also be found on the Settlement Fund’s website: <https://www.nmisf.com/wp-content/uploads/2015/11/Exhibit-14.-NMI-SETTLEMENT-FUND-APPEAL-RULES-AND-PROCEDURES-Final-version-of-the-Appeal.pdf>. On December 18, 2015, the court approved the implementation of said rules. *See* Order, ECF No. 739.



1 should be used to calculate retirement benefits was already a matter before the administrative  
2 hearings officer. The filing of the instant Cross Motion attempts to avoid the administrative appeals  
3 process, and this court has already confirmed that “the process set forth in the appeal rules is the  
4 exclusive remedy for resolving a dispute between a member and the Settlement Fund.” Order at 4,  
5 ECF No. 855). Having read the Cross Motion and Ms. Camacho’s Reply, the court finds that  
6 Ms. Camacho fails to raise a genuine issue that requires this court’s interpretation of the Settlement  
7 Agreement. Rather, the dispute at issue arises from an alleged miscalculation of Ms. Camacho’s  
8 retirement benefits with regard to overtime/compensatory time. The court declines to get involved  
9 in every dispute between the Settlement Fund and the Class Members over the calculation of their  
10 retirement benefits; that is what the administrative appeals process was intended to address.

11 Accordingly, the court denies Ms. Camacho’s Cross Motion in its entirety. The court orders  
12 the parties to address the merits of said motion, including any defenses she has raised, in the  
13 pending administrative appeal before the hearing officer.

#### 14 **IV. CONCLUSION**

15 Based on the above analysis, the court grants the NMISF’s Motion to Enforce and confirms  
16 that the terms “Full Benefits” and “Full Benefit Payment” in the Settlement Agreement do not  
17 include COLA payments and confirms that the Settlement Fund is not required to pay COLA under  
18 the Settlement Agreement unless it has been appropriated by the Legislature. Additionally, the  
19 court denies Ms. Camacho’s Cross Motion and orders the parties to continue with the administrative  
20 appeals process where the merits of the Cross Motion and any defenses raised may be fully  
21 addressed.

22 **IT IS SO ORDERED.**



23 /s/ **Frances M. Tydingco-Gatewood**  
24 **Designated Judge**  
25 **Dated: Jul 12, 2023**