

1/27/12

As though to prove my point re the CNMI being an overly litigious society (see last week's column), the administration went to court last week to protest the announcement by the Internal Revenue Service that FICA (Federal Insurance Contributions Act) taxes should indeed be levied against contract workers in the CNMI. The government filed suit in District Court against both the U.S. Department of the Treasury and the IRS, charging that the IRS interpretation violates not only the Covenant but also the Consolidated Natural Resources Act, which sets out the treatment of foreign workers in the CNMI.

There was no indication that any attempt had been made to appeal the decision, to seek negotiation, try to find other ways of resolving the issue. There's been no mention of the 902 process - provided in the Covenant for occasions when issues arise that affect the relations between the CNMI and the federal government.

Nor, unfortunately, would there seem to have been any communication with the CNMI's non-voting delegate to the U.S. Congress, which, to the innocent observer, might have seemed a logical first step in any issue dealing with the federal government.

As Kilili, the CNMI delegate, has since revealed, the action by the CNMI government makes contact with relevant federal officials more difficult, since the issue is now in the court, and both sides are now wary of compromising the sanctity of that process.

It will definitely cost more to resolve the question in court - of whether it is at all fair that contract workers have to pay FICA taxes when they are not eligible for its benefits - than to seek resolution via negotiation. Not only can the CNMI not afford the costs - but it could take much longer to resolve as well.

The clock continues to tick as the deadline approaches for appointing additional members to the Commonwealth Public Utilities Commission. There's only one member now, and beyond a 90-day limit, the law prohibits the CPUC from taking any actions without additional members. That 90-day period ends at the end of the month.

P.L. 17-34 requires that members be nominated by the governor, and be approved by both houses of the legislature. There's been no word that any nominations are pending before the legislature. Nor is there any provision in the law as to what happens if the governor does not act.

CPUC's suspension will severely hamper CUC operations. According to CUC Executive Director Utu Abe Malae, "We have to wait for the [C]PUC to review all key decisions at CUC. For example, CUC may not execute a contract to purchase power poles and transformers (in order to prepare for the typhoon season) over \$350,000 without the PUC approval."

Moreover, according to a detailed report in today's *Marianas Variety*, 18 recommendations related to CUC operations have been submitted to the CPUC for action. They range from rate-adjustment decisions and refunds to customers to the introduction of new tariffs. All will be put on hold if not acted upon before the deadline by CPUC's single commissioner, Viola Alepuyo. It is truly incomprehensible, unfathomable, that the needs and requirements of the most critical agency of government - after all, how can the government operate without power? - can be so cavalierly ignored.

The clock has also begun to tick towards the deadline for reapportionment or redistricting to accommodate the 2010 census. One suggestion has already surfaced: Representative Joseph M. Palacios' legislative initiative that calls for all members of the House to run as at-large delegates for the entire district of Saipan. Before everyone gets on that band-wagon - tempting because it would save money - the House should allow for broad discussion as well as public input into the debate. While Saipan is small, still the villages and the precincts do have individual needs, particular identities, distinct characteristics. It would be a shame to erase all of that, and it could be difficult, as well, for legislators to willingly give up their interest in their own villages for the good of the whole.

Palacios' initiative would also reduce the number of representatives for Saipan from 18 to nine. Obviously, that would also save money. Opponents argue, however, that the number must be directly proportional to the CNMI's smallest election district. Strictly interpreted, Palacios' initiative would only reduce the number of Saipan representatives from 18 to 17. The CNMI Constitution, on the other hand, says that the reapportionment or redistricting plan "shall provide for contiguous and compact districts, and for *representation by each member of the house of representatives of approximately the same number of residents to the extent permitted by the separate islands and the distribution of the population of the Commonwealth.*" In theory, at least, one should be able to argue that the discrepancy between the islands of Saipan and Rota is too large to be reasonably applicable, and that other criteria can and should be used to determine the size of the House membership, the previous court ruling notwithstanding.

Speaking of public participation, it's been interesting to watch as groups of all sorts, around the world, begin to adopt and adapt the strategy, rhetoric, campaign of Occupy Wall Street for their own purposes. It has given the anonymous, mostly powerless, small unseen clog in the wheel, a way to become visible, to be heard, to make his/her presence known that has not been available to the vast majority of people in the world, who live remotely from - and heretofore unacknowledged by - the sources of power.

People who had become apathetic, no longer went out and voted, no longer attended public meetings, who had given up any hope of influencing the people or the world around them, appear to have found, in the Occupy Wall Street phenomenon, a safe and effective way to reach an audience, to have their concerns heard, to find others with whom to share their points of view. It works, in populous societies, where it is still possible to remain largely anonymous. Unfortunately, the phenomenon does not work as well in small communities, where anonymity is not possible.

Short takes:

- Not one, but two new phone books are out and available for free: IT&E's *2012 CNMI Phone Book* is available from the IT&E office in Gualo Rai. Among other things, it includes village maps, zip and area codes, tide charts and a Guam Yellow Pages section; it also provides not only the phone numbers, but also the e-mail addresses for members of the legislature. Docomo Pacific's *CNMI 2012 Island Telephone Directory* (which I found at the local post office branch, but should also be available from Docomo offices) contains much the same sort of information,

but its larger type font makes it easier to read. It also has a separate restaurant section and considerable health-related information in its introductory section.

- The *Commonwealth Register's* table of contents is once again available on line, at < http://www.cnmilaw.org/commonwealth_register.htm >. Complete copies are available "for review upon request" from the Law Revision Commission, located within the Larry Hillblom Library in the Guma Hustisia in Susupe. Copies are also available for consultation at the JoeTen-Kiyu Public Library. December's issue includes two legal opinions from the AG's office regarding DPH-CHC issues, and one dealing with the governor's authority re applying austerity measures to federal employees, as well as an executive order transferring the responsibility for Medicaid from CHC to the governor's office. The issue also includes proposed regulations dealing with the fire safety code, the Retirement Fund's Group Health Life Insurance Program, the Board of Professional Licensing, and PSS.

- Both of today's newspapers carry a lengthy letter to the editor on Medicaid - well worth reading in its entirety - from Dr. David Khorram. He explains that the cap on Medicaid spending set by the governor at \$5.3 million - as opposed to the \$9 million of last year - will have a devastating effect on both the medical services provided to the entire CNMI, and on the health of the individuals who cannot afford medical care on their own. He offers a strategy for coming up with the matching money required by federal regulations: increase the cost of cigarettes by up to \$5.00 a pack, and of beer by \$.25 per can - since they are the cause of most of the illnesses of Medicaid patients - and assign those funds to Medicaid. Khorram writes that the Centers for Disease Control have found that the cost to the economy of each pack of cigarettes is actually \$10.47 - \$5.23 in actual medical costs and \$5.24 to related costs of productivity. He proposes increasing their cost to consumers by the actual medical costs. This will not only reduce consumption, but generate the funds necessary to support Medicaid treatments to those who need it. Excessive as such an increase might appear at first glance, it certainly makes a lot of sense, and, furthermore, is eminently do-able - provided the legislature has the backbone to do pass the necessary legislation.

I also liked the *Variety's* piece in its Thursday "Forum" section on learned helplessness. It's concluding paragraph says it all, "Do you vote? If not, is it because you think it doesn't matter because things never change or politicians are evil on both sides, or one vote in several thousand doesn't count? That, my friends, is learned helplessness." The article was written by Dr. Vincent T. Akimoto, a family practitioner based in Barrigada, Guam.