

Hilo, Hawaii
Tuesday, January 21, 2003

The regular meeting of the Civil Service Commission, County of Hawaii was held in the conference room of the Department of Civil Service, 101 Pauahi Street, Suite 2, Hilo, Hawaii, on Tuesday, January 21, 2003.

Present:

Mr. Bill Thibadeau, Vice Chair
Ms. Diana Kahler, Member
Mr. Clarence Souza, Member
Ms. Jeanne Yagi, Member
Mr. Dudley Akama, Deputy Corporation Counsel
Mr. Michael R. Ben, Director of Personnel
Ms. Velma Y. Menezes, Secretary-Reporter

Excused:

Mr. G. Rick Robinson, Chair

Vice Chair Thibadeau called the meeting to order at 9:32 a.m.

MINUTES OF DECEMBER 17, 2002

MOTION: Mr. Souza moved that the minutes of December 17, 2002 be approved as circulated. The motion was seconded by Ms. Yagi and unanimously carried.

COMMUNICATIONS

A) Communication No. 02-23, dated December 27, 2002, from Lincoln S. T. Ashida, Corporation Counsel, regarding gift reporting requirements.

Communication No. 02-23 was received and filed.

B) Communication No. 03-01, dated January 7, 2003, from Reed D. Becker, appealing the removal of his name from the Fire Fighter Recruit eligible list.

MOTION: Ms. Kahler moved that Communication No. 03-01 be received and filed. The motion was seconded by Mr. Souza and unanimously carried.

C) Communication No. 03-02, Petition of Appeal, received January 9, 2003, from Reed D. Becker, appealing the removal of his name from the eligible list.

MOTION: Ms. Kahler moved that Communication No. 03-02 be received and filed. The motion was seconded by Mr. Souza and unanimously carried.

The Commission decided to take up the scheduling of Mr. Becker's appeal hearing under New Business.

NEW BUSINESS

A) Elect Chair and Vice Chair for Calendar Year 2003

MOTION: Mr. Souza moved that the matter be deferred to the Commission's next meeting. The motion was seconded by Ms. Yagi and unanimously carried.

MOTION: Mr. Souza moved that Ms. Kahler chair the Commission's next meeting. The motion was seconded by Ms. Yagi and unanimously carried.

B) Schedule the appeal hearing date for Reed D. Becker.

The Commission scheduled Mr. Becker's appeal hearing for February 18, 2003 at 10:30 a.m.

Ms. Yagi noted that the second page to Mr. Becker's letter was missing from the Commission's sets.

The Commission recessed at 9:47 a.m. to obtain copies of the second page and reconvened at 9:51 a.m.

MOTION: Ms. Yagi moved to add the inadvertently missed second page to make the record whole. The motion was seconded by Ms. Kahler and unanimously carried.

DIRECTOR'S REPORT

Mr. Ben reported the following:

1) Mr. Becker's appeal should be the last appeal the Commission hears concerning the topic of removing names from the eligible list. Departments can now get the whole list if they want; and if they want to remove a name from the list, it will be their decision, not Mr. Ben's.

2) The estimation for the workers' comp shortfall is now \$700,000, attributable primarily to settlements that have been negotiated in closing cases. The cost of an audit on workers' comp functions is also being paid from that account. The audit preliminarily shows that the Workers' Comp Division is doing a good job in terms of what they do; it's just that the amount of work is overwhelming.

3) Ted Hong, the County's former Assistant Corporation Counsel, has been selected as the Chief Negotiator for the State. Kathleen Watanabe was appointed Director for the State Department of Human Resources Development.

4) Ron Takahashi will be leaving Civil Service for two years to take an appointment as Deputy Director for Public Works.

NEXT MEETING DATE

The Commission scheduled its next meeting for February 18, 2003 at 9:30 a.m., followed by Mr. Reed Becker's appeal hearing at 10:30 a.m.

The meeting recessed at 9:59 a.m.

**Tuesday, January 21, 2003
Hilo, Hawaii**

**WADE P. AMADOR - WHETHER OR NOT THERE WERE
VIOLATIONS OF CIVIL SERVICE LAWS, RULES, OR REGULATIONS
IN THE NONSELECTION OF THE APPELLANT TO A POSITION
WITH THE DEPARTMENT OF PUBLIC WORKS.**

Present:

**Mr. Bill Thibadeau, Vice Chairperson
Ms. Diana Kahler, Member
Mr. Clarence Souza, Member
Mr. Jeanne Yagi, Member
Ms. Sarah Hirakami, Deputy Attorney General
Ms. Velma Y. Menezes, Secretary-Reporter
Ms. Lori Nagao, Clerk III**

Also Present:

**Mr. Dudley Akama, Deputy Attorney General
Mr. Wade P. Amador, Appellant
Ms. Ann Ignacio, Personnel Management Specialist II, Department
of Public Works
Mr. Casey Yanagihara - Civil Engineer IV, Department of Public
Works**

Excused:

Mr. G. Rick Robinson, Chairperson

The following exhibits were entered into the record:

**Appellant's Exhibit 1 - Handwritten Note by Curtis
Hatada**

Appellant's Exhibit 2 -

**Amador's Pay Stubs and
Timesheets Dated 1/31/00
Through 7/31/02.**

Vice Chairperson Thibadeau called the hearing to order at 10:30 a.m.

Chair Thibadeau stated that the issue in this case is whether or not there were any violations of any civil service laws, rules, or regulations in the nonselection of the appellant to a position with the Department of Public Works.

Mr. Akama raised an issue on jurisdiction. Mr. Amador has raised the issue of three separate incidents in this case, but according to the Civil Service Rule 104, there is only one decision within the rules that the Commission has jurisdiction over and that is the nonselection of Mr. Amador for Mark Yamaguchi's position. The other matters Mr. Amador raised were not appealed from and therefore Mr. Akama objects to any references concerning those other decisions made by the department.

Mr. Akama asked the Commission to limit its adjudication today to that issue.

Mr. Akama believes that Mr. Amador is saying that there is a pattern, but what Mr. Akama is objecting to is based on the fact that the jurisdiction of this Commission is only as to an adverse action filed within 20 days of the date the adverse action was taken.

While Mr. Akama does agree that it's within the Commission's discretion to consider the background of the two other positions in terms of the non-selection, he objects to any considerations as to whether or not those actions concerning the other two positions were proper.

Mr. Thibadeau noted Mr. Akama's objection.

Mr. Amador stated the following in his opening statement:

He has a written letter from Curtis Hatada. Although it's not the words Richard Nishimura said to him, the Commission should clearly see that something had been said. Richard, Mel Hayashi, Curtis Hatada, and Mr. Amador were at that meeting. Mr. Hayashi is the number one board member for the interview process. Mr. Amador asked Mr. Hatada to submit a letter on what was said at that meeting.

Mr. Amador feels that as far as Lance Tanaka's position is concerned, he wasn't even given a chance for an interview for that job. Instead, right off the bat, Lance got the job.

Mr. Amador wants to know what the routine practice on hiring an employee is. If an employee has the temporary position and the job becomes permanent, does that employee automatically slide into that position? Or does everybody on the list get a chance for an interview for that job? If that's the case, Mr. Tanaka's job didn't even come up for an interview.

If it is the practice that an employee in a temporary position automatically gets the permanent position, he cannot see why he didn't get Mark Yamaguchi's permanent position.

Mr. Yamaguchi first letter of resignation was on May 16. For a reason unknown to Mr. Amador, Mr. Yamaguchi had to re-write his resignation letter. The department clearly knew that Mr. Yamaguchi was going to resign.

Mr. Tanaka and Mr. Hatada both were both in positions that changed from temporary to permanent. Those employees automatically became permanent employees without the department doing interviews. As for Mr. Amador, they clearly knew Mr. Yamaguchi was going to resign from his position but they chose to post the job and do interviews. Although he was there for four years, someone else was chosen off the eligible list.

A year prior to this, Mr. Amador and the person who now holds Mr. Yamaguchi's old position were both on the eligible list. When Mr. Yamaguchi's position was open for a limited term position, it was Mr. Amador who was chosen. He now questions why they didn't ask the other person to fill the limited term appointment back then but now he's hired to fill that position permanently.

Mr. Akama stated that things are not as they appear, and the testimony will show that there were three positions that were not equally situated.

Using a whiteboard, Mr. Akama illustrated a series of events leading up to Mr. Amador's nonselection. See attachment. Refer to tape recording for testimony.

Mr. Akama was questioned by both the Commission and Mr. Amador. Refer to tape recording for further testimony.

Ms. Yagi interrupted, stating that the Commission should still be in opening statements and Mr. Akama is going into too much detail for what should be presented as part of his case.

Mr. Thibadeau allowed Mr. Amador to continue with his opening statement.

Mr. Amador stated the following in the continuation of his opening statement:

Mr. Hatada had been involved in three separate work-related accidents while a temporary hire, yet he was never disciplined for them and it appears that they weren't considered when he was given the permanent position.

Mr. Yamaguchi put in his first letter of resignation on May 16 so the department was clearly aware that he was going to resign, yet they held off until Mr. Amador's appointment ended. In the past, Mr. Amador's position had been extended several times. There was no extension in March. He feels that they

didn't extend his appointment because they knew that once he was out they could pick anybody that they wanted to off the eligible list.

Mr. Souza reminded the Commission that with all the information Mr. Amador is bringing forth, he should be sworn in.

Mr. Amador was sworn in by Mr. Thibadeau.

Mr. Amador explained about how his overtime wasn't being paid by the County and that he has timesheets and pay stubs to prove it.

Mr. Souza stated that the issue he's looking at is why Mr. Amador was not promoted.

Mr. Amador stated that he feels that his bringing up the issue of not being paid overtime may have caused his non-selection.

Mr. Thibadeau asked if Mr. Amador had brought the witness that he had mentioned at the last meeting.

Mr. Amador explained that he was unaware that he had to notify the witness of the continuance of the previous hearing so the witness had appeared for nothing. Mr. Amador decided that he didn't want to drag the witness into this, since it was his problem. There will be no witnesses.

Mr. Thibadeau interrupted to apologize to Mr. Amador for not asking earlier if he wanted a closed hearing or an open hearing.

Mr. Amador stated that he'd prefer a closed hearing, but felt "bush wacked" because he should have been asked this in the beginning. He objects to the way the hearing was handled. From the beginning of the hearing, things weren't said in the right order and he feels that it isn't fair to him.

The Commission recessed from 11:30 a.m. to 11:44 a.m.

Mr. Amador stated that the Commission should just deny his appeal. He doesn't feel that he was treated fairly. He requested a copy of the taped proceedings and said he has nothing further to say.

Mr. Thibadeau informed Mr. Amador that he'd like to enter Mr. Amador's exhibits into the record.

MOTION: Mr. Souza moved to convene into an executive session to consult with counsel. The motion was seconded by Ms. Kahler and unanimously carried.

The Commission convened into an executive session at 11:47 a.m. to consult with counsel and reconvened at 11:57 a.m.

Mr. Amador asked if the best thing would be to have another continuance.

Mr. Souza asked Mr. Amador if he also filed a case with the Civil Rights Commission. When Mr. Amador confirmed that he had, Mr. Souza stated that in that case, the Civil Service Commission has no jurisdiction to hear his appeal.

Mr. Akama disputed the suggestion that the Commission doesn't have jurisdiction. The Commission does have jurisdiction as far as Mr. Amador's non-selection.

Ms. Hirakami explained to the parties that if there is any kind of dispute regarding jurisdiction, the Commission cannot act on the appeal until the Hawaii Labor Relations Board decides whether the Commission has jurisdiction.

MOTION: Ms. Yagi moved to have the Deputy Attorney General submit a letter to the Labor Board to have a decision made as to whether or not

the Commission has jurisdiction over Mr. Amador's appeal. The motion was seconded by Ms. Kahler and unanimously carried.

Mr. Thibadeau explained to Mr. Amador that because he's claiming discrimination and filed with the Hawaii Civil Rights Commission, under law the Civil Service Commission doesn't have the authority to hear jurisdiction issues filed with another body. Mr. Akama doesn't agree, and therefore there are jurisdictional questions. To resolve that, the law requires that the Commission go to the Hawaii Labor Relations Board and let them decide who has jurisdiction in this case.

Mr. Amador will receive a copy of the letter that the Attorney General's Office submits to the Hawaii Labor Relations Board.

Ms. Yagi noted that the appeal is now held in abeyance. It is not canceled. The Commission will await the Hawaii Labor Relations Board's decision.

ADJOURNMENT

The meeting adjourned at 12:08 p.m.

Submitted by,

Secretary, Civil Service Commission

APPROVED:

Chair

vym/lmn