

**Hilo, Hawai`i
Tuesday, May 20, 2008**

The regular meeting of the Merit Appeals Board, County of Hawai`i, was held in the conference room of the Department of Human Resources, 101 Pauahi Street, Suite 2, Hilo, Hawai`i, on Tuesday, May 20, 2008.

Present:

**Mr. G. Rick Robinson, Chair
Mr. Joel Cohen, Member
Ms. Joanne Balberde-Kamalii, Member
Mr. Henry "Hank" Silva, Member
Mr. Gary Yoshiyama, Member
Mr. Michael R. Ben, Director of Personnel
Ms. Diane Noda, Deputy Corporation Counsel
Ms. Velma Y. Menezes, Secretary-Reporter**

Chair Robinson called the meeting to order at 9:30 a.m.

MINUTES OF FEBRUARY 19, 2008

MOTION: Mr. Cohen moved that the minutes of February 19, 2008 be approved as circulated. The motion was seconded by Mr. Yoshiyama and unanimously carried.

COMMUNICATIONS

A) Communication No. 08-02, dated March 20, 2008, from Brian F. Jordan, requesting a list of Hawai`i County employees and Hawai`i County vehicles that were involved in wrecks or settlements in 2007, and that the Attorney General's Office request a comparison be made of employees versus citations via the courts traffic abstract division.

B) Communication No. 08-03, dated March 20, 2008, copy of a letter to Diane A. Noda, Deputy Corporation Counsel, from Brian F. Jordan, requesting information on accidents settled against the County of Hawai`i in the year 2007 that might be considered moving violations or the sign of a poor driving record.

C) Communication No. 08-04, dated April 25, 2008, from Brian F. Jordan, expressing his disagreement with Chair Rick Robinson's letter of April 23, 2008 transmitting the Decision and Orders in Mr. Jordan's two appeals, and also expressing his belief that he did not receive a fair hearing, stating various reasons for his belief.

The above communications were considered simultaneously as they pertained to the same matter.

Ms. Noda stated that if the Merit Appeals Board has in its possession and control any of these records, then the Board would turn them over to Mr. Jordan, or consult with its attorney, Deputy Attorney General Julian White, on whether they are public documents and should be turned over as is or if there's any confidential, private information that should be redacted, such as personal home addresses, phone numbers, etc. If it is not within the possession and control of the Board, then there's nothing to turn over.

Ms. Noda added that all of her responses to Mr. Jordan were copied to Mr. White. Her office did provide whatever information they had to Mr. Jordan.

As to Mr. Jordan's claim that he did not receive a fair hearing, Ms. Noda would direct the Board to confer with its attorney should Mr. Jordan file an appeal with the Circuit Court.

NEW BUSINESS

A) Communication No. 08-05, petition of appeal, received May 6, 2008, from Clark E. Hutton, Jr., appealing the Hawai`i County Police Department's field training process.

Chair Robinson noted Mr. Hutton's presence and informed him of the appeal hearing procedures. He also informed Mr. Hutton of the option to get legal representation.

The Board scheduled the appeal hearing for June 17, 2008, at 10:00 a.m., in the conference room of the Department of Human Resources.

B) Elect Chair and Vice Chair for Calendar Year 2008

The Board deferred the above until the arrival of Ms. Balberde-Kamalii.

DIRECTOR'S REPORT

Mr. Ben reported the following:

1) The department has gone through its budget review with the Council. The department's budget is close to \$2 million, primarily due to salaries. When Mr. Ben appeared before the Council, there was some concern about the vacancies that the County has. They explained the department's recruitment process, the efforts that have been made, etc., and noted that they were handling about 29 vacancies in East Hawai`i, with approximately 26 vacancies in West Hawai`i. In Mr. Ben's own personal review of the positions involved, he determined that those positions were not critical vacancies that needed to be filled immediately because public health and safety was going to be jeopardized. At one time, the County had approximately 300 vacancies, but the departments, for whatever reason, were not choosing to fill them, to no fault of the Human Resources department.

Certain Council members wanted COLA and a geographical differential for living in West Hawai`i. Mr. Ben explained his reasons for taking a position against COLA, which he believes

would create a lot of issues and problems, including substantially increasing the cost of running government. He did report to the Council once again that he submitted to the Mayor a recruitment incentive plan to attract people to fill vacancies, which basically amounts to up to 25% of the employees salary for one year only as the recruitment incentive.

The other issue that Council brought up was training for people applying for Police Recruit because of the high number of applicants failing the test and impacting Police vacancies. The Council wanted Mr. Ben to put money in the budget to offer training to these people so that there would be a more successful rate of passage on the exam. Some Council members felt that even if applicants didn't pass the exam, at least with this training, it would make them better citizens or they could qualify for other jobs. While that is beyond the scope of what Mr. Ben's department is supposed to be doing, nevertheless, they recently announced a class to help people prepare for the Police exam. The department will track that and determine how successful they are.

When personally questioned by one Council member on the situation, Mr. Ben had explained that although they still have these vacancies, the department did refer 200 eligibles to Police. However, many are not passing their background checks, etc., so Police continues to have these vacancies. The good news is that Police vacancies have dropped to approximately 40+ vacancies from 70+ vacancies. They're just not getting the quality applicants.

The Council also talked about increasing Police Officers' pay, but that involves collective bargaining, and Mr. Ben doesn't know if they realize that the Police Officers received substantial pay increases this last time around where they will come in at \$43,000 and at the end of four years will be making \$53,000.

The department asked for a supplemental budget to continue this training next year, but the administration did not approve it. The community college will be doing the classes for the County, and it's expensive, approximately \$4,000 for 20 students, once a week for six weeks.

2) Mr. Ben is starting to prepare for negotiations again with HGEA and UPW, which are the County's white collar and blue collar employees, as well as professional and scientific employees. Those bargaining units had only a two-year contract the last round. SHOPO and Fire had a four-year contract, so they are in a hiatus period for those bargaining units.

3) They have finally signed the drug testing agreement with UPW and are preparing now to random test all Unit 01 employees, but before doing that, they've had to design a course and will have to deliver training to each UPW member before starting the drug testing program. That was the condition that they agreed upon with UPW. They hope to start the drug testing by July 1.

4) The retiree bill is sitting on the governor's desk right now for signature. That's the bill that will allow for the rehiring of retirees for certain occupations without loss in benefits, including their medical benefit. This would be for specific, hard-to-fill positions; and that is left to the director to decide. That would conceivably be for positions such as Police Recruit, Water Safety Officers, some Planners, etc., those positions that have been on continuous recruitment for over a year. However, it won't really affect the County, because these positions are not the positions that people are retiring from and wanting to return to work for.

Mr. Ben's original intent behind this bill two years ago was to take advantage of the fact that if an employee retires and wants to come back to work, let the employee come back to work, because if the employee doesn't come back to work for the County, the employee will find work somewhere else. Mr. Ben questioned why the County can't use them, and he felt it should for any job they are best qualified for. The procedure still requires they go through the competitive process. Once the retiree returns, the retiree doesn't lose retirement benefits. They can continue drawing retirement pay and continue receiving medical coverage.

5) ERS just explained to the County that there is going to be an opportunity for certain employees to buy back service for retirement purposes. The retirement system is made up of noncontributory members, contributory members, and now new

hybrid members. The difference is that the formula for noncontributory members is 1.25% X years of service X average monthly salary. For contributory members, it's 2% X years of service X average salary. There are other categories in there for police officers, fire fighters, sewer workers, water safety officers where the percentage is even higher, and elected officials are higher. If an employee is under the hybrid plan, the employee can purchase credits, and convert noncontributory years to contributory years. The buy back, however, will be at the employee's current pay. ERS hopes to have the software designed and everything ready by next June or July.

6) Council did get a 22% adjustment in their salaries. Mr. Ben noted that since 1990, adjustments to employees' salaries increased far greater than what was given to the Council over the same period of time.

Chair Robinson requested that Mr. Ben have his division heads give a presentation at the next Board meeting on their functional areas, as it would be very helpful to the two new Board members. The presentations were scheduled for the Board's June 17 meeting at 11:30 a.m.

STATEMENTS FROM THE PUBLIC

Chair Robinson noted Mr. Jordan's presence at this time and allowed him to present a statement to the Board.

Mr. Jordan stated the following:

He went to the Legislative Auditors Office and gained more information. His assumption that there was a double standard wasn't an assumption. County employees have had accidents, ramming people from the back, and things like that. He hasn't had an accident since the 80's where he was hit by another vehicle. It wasn't his fault, but he was in an accident.

That was one thing Chair Robinson had said that the Merit Appeals Board couldn't decide on, so he'd like to put that in front of the Board. As far as he's concerned, that's proof of a double

standard. They've got people on the Fire Department, Police Department, and Civil Defense that have been involved in these accidents. One of them was backing into the flow of traffic with a truck.

The second thing is that in the Board's own paperwork, it says that Mr. Jordan received an informal administrative review. He's sorry that he didn't get the formal administrative review per Ms. Noda's jurisdictional appeal, but he didn't realize certain things until he went through all the steps of the process again and read all the information. If they looked at the way the law is supposed to work for civil servants, what's happened here is they've turned the situation on its head. In other words, he's the defendant instead of the plaintiff. They have the whole team, and it's just him.

The human resource person should have, at that point, said no, you have a right to a merit appeal, but without the administrative review in writing what they had just spoken about is no good. Nowhere in the Board's deposition does it state that she recommended that. The only thing in her deposition was that she gave him five minutes for the three applications. There's a doctrine in law called an estoppel, which says "if somebody should give you professional information and service, he has to do it." Mr. Jordan stated that "it's real hard to hold you accountable as the plaintiff."

He's turning this over to Civil Rights and EEOC. The concern is not for him. His concern is that everybody gets a fair shake. He's also going to ask for demographic surveys for the 500 new jobs and hopes they come somewhere within the alignment of the demographics of this island.

Chair Robinson stated to Mr. Jordan that he has every right to seek whatever venue he wants to choose for his appeal, and if Mr. Jordan wants to appeal the Board's decision, he has every right to do that.

Mr. Jordan stated that what floors him is that he just got called from the people in the Republic of China to do work in

Xiang-Du where almost 15,000 people are dead. Yet, he's not good enough to get a job here in the County of Hawai`i. They have an issue.

NEW BUSINESS

B) Elect Chair and Vice Chair for Calendar Year 2008

Mr. Cohen commented that both his and Ms. Balberde-Kamalii's terms end on December 31, 2008. If they're looking at a long-term transition, having a new person come into the mix might be a good idea because eventually they're going to be in the same situation. He would nominate Mr. Robinson to the same position, as he has done an excellent job in conducting hearings, as well as in facilitating and presenting.

MOTION: Mr. Cohen nominated Mr. Robinson as Chair. The motion was seconded by Ms. Balberde-Kamalii and unanimously carried.

Chair Robinson was re-elected to once again serve as Chair.

Mr. Yoshiyama and Mr. Silva both expressed their inclination to have someone experienced to serve as Vice Chair.

MOTION: Mr. Cohen nominated Ms. Balberde-Kamalii as Vice Chair. The motion was seconded by Mr. Yoshiyama.

Discussion:

Ms. Balberde-Kamalii stated that her full-time job as a school-based therapist at Hilo High School involves dealing with crises, such as the crisis she dealt with today, which was the reason she was late to the meeting. While she is committed to give her 100% to the Board, if a crisis does occur versus being late for a meeting, she would take care of the student need first.

Ms. Balberde-Kamalii informed the two new members that when the Board has appeal hearings, they do have a Deputy

Attorney General, Julian White, advising the Board at the hearings. Mr. White is a very capable and competent counsel, is easy to work with and prudent in his approach, but is also very thorough.

Mr. Silva commented that it'll be the sixth month soon, the time element is not that long, and they'll be having elections again. By then, the new members will have a taste of things and will be more comfortable, so he suggested that the more experienced member carry on.

The motion was voted upon and carried unanimously.

Ms. Balberde-Kamalii was elected Vice Chair for the remainder of calendar year 2008.

Chair Robinson brought up the matter of new appointments, as Mr. Cohen's and Ms. Balberde-Kamalii's terms end this year.

Ms. Noda informed the Board that while the Mayor's Office usually takes care of filling the boards and commissions, their executive assistant had retired, so Lincoln Ashida had been filling in. Mr. Ashida works very hard year-round at filling the vacancies, but it's become increasingly more difficult to fill them. While Mr. Ashida could start the process now, having the person recommended by the Mayor and approved by Council, would probably occur after December 31.

Mr. Ben noted that politically, making recommendations now wouldn't be a good position to place the current Mayor in. The new Mayor should have the option of making the recommendations.

Mr. Cohen noted that the website is not always up-to-date on vacancies.

Ms. Menezes stated that she has been in contact with their Data Systems person to update MAB information as soon as the new members were sworn in, so she is prepared to submit the new information after today's meeting.

NEXT MEETING DATE

The next meeting was scheduled for June 17, 2008 at 9:30 a.m. with Mr. Clark Hutton's appeal hearing at 10:00 a.m. and a presentation by Human Resources' division heads at 11:30 a.m.

ADJOURNMENT

The meeting adjourned at 10:31 a.m.

Respectfully submitted,

Secretary, Civil Service Commission

APPROVED:

**G. Rick Robinson
Chair**

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