

Hilo, Hawai'i
Tuesday, June 16, 2009

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, June 16, 2009.

Present:

Mr. G. Rick Robinson, Chair
Mr. Gary Yoshiyama, Member
Mr. Brian J. De Lima, Member
Mr. Kenneth M. Rowe, Member
Mr. Michael R. Ben, Director of Human Resources
Ms. Diane A. Noda, Deputy Corporation Counsel
Mr. Julian White, Deputy Attorney General
Ms. Velma Y. Menezes, Secretary-Reporter
Ms. Yumi Nakamura, Clerk III

Excused:

Mr. Henry "Hank" Silva, Member

Chair Robinson called the meeting to order at 9:41 a.m. noting that while Mr. De Lima would be delayed until approximately 11:00 a.m., there was a quorum with himself, Mr. Yoshiyama, and Mr. Rowe.

MINUTES OF MARCH 17, 2009

MOTION: Mr. Yoshiyama moved that the minutes of March 17, 2009 be approved as circulated. The motion was seconded by Mr. Rowe and unanimously carried.

COMMUNICATIONS

A) Notice of Appeal to Circuit Court, Civil No. 09-1-0145, County of Hawai'i, Office of the Prosecuting Attorney, and Jay T. Kimura, Office

of the Prosecuting Attorney, County of Hawai‘i, Appellants/Appellees, vs. Merit Appeals Board, G. Rick Robinson, in his capacity as Chairperson of the Merit Appeals Board, County of Hawai‘i and Teri J. Botelho, Appellees/Appellants.

B) Motion to Stay Enforcement of the Merit Appeals Order Dated April 3, 2009, Civil No. 09-1-0145, County of Hawai‘i, Office of the Prosecuting Attorney and Jay T. Kimura, Prosecuting Attorney, County of Hawai‘i, Appellants/Appellees, vs. Merit Appeals Board, G. Rick Robinson, in his capacity as Chairperson of the Merit Appeals Board, County of Hawai‘i, and Teri J. Botelho, Appellees/Appellant.

C) Declaration of Dean N. Sumida in Support of Appellants/Appellees County of Hawai‘i, Office of the Prosecuting Attorney and Jay T. Kimura, Prosecuting Attorney, Office of the Prosecuting Attorney, County of Hawai‘i’s Motion to Stay Enforcement of the Merit Appeals Order Dated April 3, 2009, Filed on May 11, 2009.

D) Appellee Merit Appeals Board, G. Rick Robinson, in His Capacity as Chairperson of the Merit Appeals Board, County of Hawai‘i’s Memorandum in Opposition to Appellants/Appellees County of Hawai‘i, Office of the Prosecuting Attorney, and Jay T. Kimura, Prosecuting Attorney, County of Hawai‘i’s Motion to Stay Enforcement of the Merit Appeals Order Dated April 3, 2009.

E) Appellants/Appellees County of Hawai‘i, Office of the Prosecuting Attorney and Jay T. Kimura, Prosecuting Attorney, Office of the Prosecuting Attorney, County of Hawai‘i’s Reply to Appellee Merit Appeals Board, G. Rick Robinson, in his capacity as Chairperson of the Merit Appeals Board, County of Hawai‘i’s Memorandum in Opposition to Appellants/Appellees County of Hawai‘i, Office of the Prosecuting Attorney, and Jay T. Kimura, Prosecuting Attorney, Office of the Prosecuting Attorney, County of Hawai‘i’s Motion to Stay Enforcement of the Merit Appeals Order Dated April 3, 2009.

Ms. Noda informed the Board that Judge Hara denied the County’s motion to stay enforcement, so Ms. Botelho returned to the Prosecutor’s Office on June 1 for the three months of her extended probation. Ms. Noda is working with Mr. White and Bill Reece, as the County is wishing to expedite the jurisdictional issue in hopes that Judge Hara will

rule on just the Merit Appeals Board jurisdiction before August 31, which would be the end of Teri Botelho's three month probationary period.

The person who had been in Ms. Botelho's position was terminated, and he has filed a grievance through HGEA.

Mr. White added that there's a good chance that whoever loses before Judge Hara on this issue will appeal it, so he doesn't think they'll see a quick resolution to this issue.

UNFINISHED BUSINESS

Elect Chair and Vice Chair for Calendar Year 2009

Mr. Yoshiyama nominated Mr. Robinson as Chair, and Mr. Rowe nominated Mr. Yoshiyama as Vice Chair.

By a unanimous vote, Mr. Robinson was elected Chair, and Mr. Yoshiyama was elected Vice Chair for the remainder of calendar year 2009.

NEW BUSINESS

A) Communication No. 09-01, petition of appeal, received April 17, 2009, from Lorena D. Kauhi, Union Agent, HGEA, on behalf of Leenelle Tomooka, appealing nonselection to a Contracts Clerk position with the Department of Water Supply.

Ms. Noda, on behalf of Milton Pavao, Manager of the Department of Water Supply, requested that the hearing not be scheduled for July 21, the Board's next meeting date, as Mr. Pavao will be unavailable on that date. He will be available, however, the next two months, August 18 and September 15.

Ms. Tomooka's appeal hearing was scheduled for August 18, 2009 at 10:00 a.m.

B) Annual Evaluation of Director Human Resources

Chair Robinson noted that in the past, the Board's process had been to get input on the director's evaluation from all the other departments, which was laborious; and they hadn't received a lot of response. Chair Robinson suggested that he work on the evaluation and email it to the Board to review. If it's acceptable, they will give Mr. Ben his evaluation at the next meeting. The evaluation is a "pass" or "no pass" type of evaluation, but Chair Robinson believes it should be in a memo form, addressing specific areas of Mr. Ben's employment.

DIRECTOR'S REPORT

Mr. Ben reported the following:

1) As the Board may have noticed, the format of the activity report has been changed. While it still turned out to be nine pages long, it now contains highlights with more data and measurable items rather than day-to-day reports.

In response to Chair Robinson's question about the hiring freeze, Mr. Ben responded that the County is hiring selectively now. A committee has been established to review requests to fill positions, and positions are authorized to be filled on a case-by-case basis.

As for the continuous recruitments, notwithstanding the restricted hiring, the department is still recruiting because they don't know at what point positions are going to be authorized to fill, or at what point the restricted hiring will be lifted. Once it's lifted, the departments will want their positions filled right away, and rather than crank up recruiting at that point, the department will be prepared immediately upon receiving the requests.

The continuous recruitments are for positions that are usually difficult to fill such as engineers.

2) The budget passed with one person voting against it, but in the process, the department's workers' compensation claims specialist position was unfunded. When that position became vacant, Mr. Ben had wanted to turn it into another HR professional position to service various areas in the HR

department, primarily grievance and EEO areas, to handle complaints and other work, but the administration decided to unfund the position.

To make up the shortfall in the workers' comp side, one of the lower level positions was reallocated to a paraprofessional workers' comp. She is being trained to assume the full journeyman workers' comp claims specialist, which will put the department back on track. While the department is not hurting by that action (unfunding the position) right now, studies have shown that in a downturned economy, increases in grievances, appeals, EO charges, etc., can be expected, which the department had looked at in trying to do the reorganization to change that position to service other areas. The expected increases haven't occurred yet, however, as Hawai'i County is stable this year with a balanced budget. There are no plans for pay cuts, furloughs or layoffs at this time.

As a note of interest on the medical benefits side, the EUTF Board of Trustees still has not made a decision and is continuing to extend the old plan. The counties have decided that under the existing contract the employer share is still 60% even though the rates went up. The State is maintaining it's a flat dollar amount so there's a difference now between what the State is reimbursing and what the counties are reimbursing. Once the new plan year is established, then it's open for negotiations again.

3) Negotiations have suddenly picked up, and the mayors are now involved. They've been meeting to come up with an employer package, but the State keeps changing its position. The State's plan is to furlough its employees from July 1.

Come July 1, there is no contract. The counties have gone on record and sent notices to its employees indicating they will continue the provisions of the contract, except for arbitration. There will be no change in pay, but because the step movement language is tied in to approval of cost items by the legislature, which doesn't exist anymore, there will be no step movements (movement on the pay schedule with years of service).

Departments will be advised that they need to entertain contract grievances. However, any grievances that arise after July may be heard but will not go to arbitration. Step III will be the last step.

EXECUTIVE SESSION

Chair Robinson stated that at this point, the Board will go into an executive session to discuss with counsel Ms. Noda's request to disqualify Mr. Rowe from hearing the DeVera appeal.

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

The Board convened into an executive session at 10:09 a.m. and recessed at 10:17 a.m.

The Board convened into its regular meeting at 11:00 a.m. upon the arrival of Mr. De Lima.

Chair Robinson noted the presence of Mr. Alton Nosaka at this time and informed him that they're discussing the County's declaration of Warren Lee objecting to the participation of Mr. Rowe in the hearing.

MOTION: Mr. De Lima moved to file the objection and find no merit in the objection. The motion was seconded by Mr. Yoshiyama and carried with aye votes from Mr. De Lima, Mr. Yoshiyama, and Chair Robinson. Mr. Rowe abstained from voting on the motion.

NEXT MEETING DATE

The Board scheduled its next meeting for July 21, 2009 at 9:30 a.m. The following meeting will be on August 18, 2009 at 9:30 a.m. followed by Ms. Leenelle Tomooka's appeal hearing at 10:00 a.m.

The meeting recessed at 11:04 a.m.

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APPEAL HEARING – 10:00 A.M. – TROY DEVERA – WERE ANY CIVIL SERVICE LAWS, RULES, OR REGULATIONS VIOLATED IN THE APPELLANT'S TERMINATION FROM EMPLOYMENT WITH THE DEPARTMENT OF PUBLIC WORKS?

Present:

Mr. G. Rick Robinson, Chair
Mr. Gary Yoshiyama, Member
Mr. Brian J. De Lima, Member
Mr. Kenneth M. Rowe, Member
Mr. Julian White, Deputy Attorney General
Ms. Yumi Nakamura, Clerk III
Ms. Velma Y. Menezes, Secretary-Reporter

Others Present:

Mr. Alton Nosaka, UPW
Ms. Diane Noda, Deputy Corporation Counsel

Chair Robinson called the hearing to order at 11:04 a.m.

Mr. Nosaka requested to withdraw the appeal on behalf of his client, Troy DeVera. A settlement agreement was reached with the County.

Ms. Noda stated that she has no objection to the request to withdraw. Mr. Warren Lee, Director of the Department of Public Works, has agreed to allow the resignation of Mr. DeVera in lieu of termination. No moneys are involved.

MOTION: Mr. De Lima moved to accept the withdrawal. The motion was seconded by Mr. Yoshiyama and unanimously carried.

The hearing concluded at 11:06 a.m.

Before adjourning, Chair Robinson reminded everyone that the Board had scheduled its next meeting for July 21 and had scheduled Ms. Tomooka's appeal hearing for August 18. Chair Robinson noted that as no appeal hearing had been scheduled for July 21, Mr. Ben's evaluation can be continued to the August 18 meeting if no other pending business comes up.

ADJOURNMENT

The meeting adjourned at 11:07 a.m.

Respectfully submitted,

Secretary, Merit Appeals Board

APPROVED:

**G. Rick Robinson
Chair**

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