

**Hilo, Hawai`i
Tuesday, June 17, 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, June 17, 2008.

Present:

**Mr. G. Rick Robinson, Chair
Ms. Joanne Balberde-Kamalii, Vice Chair
Mr. Henry "Hank" Silva, Member
Mr. Michael R. Ben, Director of Personnel
Ms. Diane A. Noda, Deputy Corporation Counsel
Mr. Brandon Gonzalez, Deputy Corporation Counsel
Mr. Julian White, Deputy Attorney General
Ms. Yumi Nakamura, Clerk III
Ms. Velma Y. Menezes, Secretary-Reporter**

Excused:

**Mr. Joel Cohen, Member
Mr. Gary Yoshiyama, Member**

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

MINUTES OF MAY 20, 2008

Mr. Ben noted a correction on page 4 of the minutes. The reference to "2,000 eligibles" should be 200 eligibles.

MOTION: Mr. Silva moved that the minutes of May 20, 2008 be approved with the correction. The motion was seconded by Vice Chair Balberde-Kamalii and unanimously carried.

NEW BUSINESS

A) Communication No. 08-06, petition of appeal, received June 2, 2008, from Alton Nosaka, United Public Workers, on behalf of Daniel A. Vares, regarding his termination from a Custodian/Groundskeeper II position.

Chair Robinson briefly went over the hearing procedures for Mr. Nosaka and Mr. Vares, who were present for the scheduling of Mr. Vares's appeal hearing.

The hearing was scheduled for July 22, 2008 at 10:00 a.m.

B) Communication No. 08-06, petition of appeal, received June 9, 2008, from John Ruiz, Jr., appealing the Hawai`i County Police Department's decision that he is not suitable for a Police Officer I position under the Police Department's guidelines.

Deputy Corporation Counsel Brandon Gonzalez, representing the employer, the County of Hawai`i Police Department and the Department of Human Resources, made an oral motion to dismiss this action for lack of jurisdiction.

Mr. Gonzalez stated that this appeal is premature. On the first page of the appeal form, item #6, date notice of action was received by appellant, Mr. Ruiz wrote "not yet received." Mr. Gonzalez confirmed this with the department; there has been no adverse action. Therefore, there is no adverse action to appeal or overturn, and the Board has no jurisdiction to schedule it or listen to it. There has been no official employer action for the Board to review.

Deputy Attorney General Julian White was called in to participate in the discussion and advise the Board. He was apprised of the situation and agreed that the action by Mr. Ruiz is premature at this time.

Mr. Gonzalez noted that the remedy he is requesting is that the Board grant his oral motion to dismiss and follow its normal procedures in notifying Mr. Ruiz. Mr. Gonzalez added that his

motion is pursuant to Rule 100-3, limitation of jurisdiction, HRS 76-14(a).

Chair Robinson stated that the Board will send letter to Mr. Ruiz notifying him that his appeal is premature at this time.

DIRECTOR'S REPORT

Mr. Ben reported the following:

1) The retiree bill, which allows County and State governments to rehire retirees to certain occupations, was signed by the Governor. It's now Act 156. Mr. Ben is having staff look at how to go about implementing or coming up with the parameters for utilizing this vehicle to fill certain hard-to-recruit vacancies.

2) In an interesting conversation with the Police Department recently while exploring recruitment methodologies, Mr. Ben was told by the Police Department that they expect to be back to normal by the end of the year in terms of its normal vacancy count for police officers.

3) With respect to the budget, the Board may have heard or read that the Council's budget had reduced the department's workers' compensation fund by \$400,000, by passing a series of amendments and adding \$5.2 million more in expenses with the expectation that the money would come from the fund balance. In Council's estimation, the savings from this year's budget will amount to \$22 million. The County's experts, however, the Finance administration, are predicting the fund balance will come in at \$16 million. That was cited as one of the Mayor's primary reasons for vetoing the amended budget. They'll have to see how it plays out in terms of whether or not the Council overrides the Mayor's veto. If they don't override it, Mr. Ben gets the \$400,000 back. Under the Charter, if the Council does not override the Mayor's veto, the budget that the Mayor submitted takes effect.

4) The County is preparing to drug test Bargaining Unit 01 employees based on a negotiated agreement with their union.

Mr. Ben has received reports from Maui that the ACLU is making inquiries into this matter, much like they did for the teachers. They're going to contest the constitutionality of the drug testing, and since Hawai`i County will probably be the first jurisdiction to start implementing the drug testing, Mr. Ben suspects that he will hear from them shortly.

Presentation on Functional Areas by Division Heads of the Department of Human Resources

Mr. Ben noted that the division heads are scheduled to give their presentations at 11:30; however, one division head is on vacation and two are out on training today. Since Mr. Yoshiyama is not here either, Mr. Ben suggested that the presentations be postponed.

Chair Robinson agreed to the postponement.

NEXT MEETING DATE

The next meeting was scheduled for July 22, 2008 at 9:30 a.m.

The meeting recessed at 9:50 a.m.

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APPEAL HEARING – CLARK E. HUTTON, JR. – WERE ANY CIVIL SERVICE LAWS, RULES, OR REGULATIONS VIOLATED IN THE HAWAI`I COUNTY POLICE DEPARTMENT’S FIELD TRAINING PROCESS?

Present:

**Mr. G. Rick Robinson, Chair
Ms. Joanne Balberde-Kamalii, Vice Chair
Mr. Henry “Hank” Silva, Member
Mr. Julian White, Deputy Attorney General
Ms. Yumi Nakamura, Clerk III
Ms. Velma Y. Menezes, Secretary-Reporter**

Others Present:

**Mr. Clark E. Hutton, Jr., Appellant
Mr. Brandon Gonzalez, Deputy Corporation Counsel**

Chair Robinson called the hearing to order at 10:00 a.m.

Mr. Hutton requested a closed hearing.

MOTION: Vice Chair Balberde-Kamalii moved to convene into an executive session. The motion was seconded by Mr. Silva and unanimously carried.

The Board convened into an executive session at 10:09 a.m. and reconvened at 10:25 a.m.

OPEN SESSION:

Chair Robinson requested that Mr. Gonzalez put his motion to dismiss in writing, addressing those four points on jurisdictional issues, and submit it to the Board by July 1, 2008, with a copy to Mr. Hutton. In return, Mr. Hutton has until July 15 to submit a response, with a copy to Mr. Gonzalez. The Board will continue the hearing to July 22, 2008, at 9:45 a.m., after the Board's regular business has been completed.

Mr. Gonzalez reported that he might be on the mainland doing depositions on another case. If possible, he will see if someone else can fill in. If the hearing needs to be continued, he will so inform Ms. Menezes.

ADJOURNMENT

The meeting adjourned at 10:30 a.m.

Respectfully submitted,

Secretary, Merit Appeals Board

APPROVED:

**G. Rick Robinson
Chair**

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