

**Hilo, Hawai`i
Tuesday, July 22, 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, July 22, 2008.

Present:

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

Chair Robinson called the meeting to order at 9:35 a.m.

MINUTES OF JUNE 17, 2008

MOTION: Mr. Yoshiyama moved that the minutes of June 17, 2008 be approved as circulated. The motion was seconded by Vice Chair Balberde-Kamalii and unanimously carried.

COMMUNICATIONS

A) Communication No. 08-08, memorandum dated July 9, 2008, from Lincoln S. T. Ashida, Corporation Counsel, regarding Council-Administration Policy for Processing of Council Contingency Relief Requests – Amended July 9, 2008.

MOTION: Mr. Cohen moved to receive and file Communication No. 08-08. The motion was seconded by Vice Chair Balberde-Kamalii and unanimously carried.

B) Communication No. 08-09, memorandum dated July 11, 2008, from Lincoln S. T. Ashida, Corporation Counsel, regarding New Requirements for Notaries Public in the State of Hawai`i.

Communication No. 08-09 was received and filed.

DIRECTOR'S REPORT

Mr. Ben reported the following:

1) Although the County Council did not override the Mayor's veto of the budget, nevertheless, the Mayor thinks that the budget, as submitted, is going to be too optimistic. When the budget was submitted, Council hadn't acted on tax revenues; and they had, in fact, reduced some tax rates, which automatically resulted in a \$2.3 million revenue shortfall. Because of the economic conditions, the Transit Authority Tax (TAT) that all the counties share may decline more than the million dollars originally predicted, and increases in delinquent property tax payments are also anticipated by a million dollars. Therefore, at the start of the budget, the County is already looking at a \$4.3 million shortfall for that year.

The current administration does not want to leave the next administration with no monies, such as the situation they faced when they first came on board. The Mayor has told departments to be prudent in their spending, and they're expecting guidelines soon that will instruct them on certain areas, such as travel. The travel budget is expected to be closely scrutinized, and the Mayor will be taking back authority to approve out-of-state travel, which had been previously left to the department heads' discretion. For intrastate travel, the direction is to avoid sending two people to the same meeting if there's no need to. One person can always share the information.

They are also expecting the filling of vacancies to be restricted somewhat. It's not a total freeze, but the Mayor will more closely scrutinize the filling of vacancies following the guidelines of whether there's an immediate need for services from the position and whether it's in the public's interest to get it filled.

Departments have been asked to start looking at their budgets, and the Mayor realizes that some departments, especially smaller departments, don't have the luxury of big spending accounts to fall back on. Mr. Ben's department, for example, budgets where they think they should be budgeting, and they don't "pad" the budget, but the Mayor has asked all departments to start looking at where possible cuts can be made. The decision on budget cuts may be coming up in October when they finally close the books from last year and determine how much fund balance they are going to have. By then the TAT projections will be out, and they'll also have another Council of Revenues meeting and projection by that time as well.

The Mayor also emphasized the social aspect of County government in that they need to also spend money to help the private sector where they're suffering. He emphasized paying bills on time and if there is a need for certain items, go ahead and purchase those items to get money back into the community, realizing that a lot of businesses are small businesses.

2) They've had an initial meeting with bargaining unit 01 (blue collar), whose contract is up June 30, 2009; and sometime in August, they'll begin meeting with HGEA, which covers all other employees except Fire and Police. Their contract is also up June 30, 2009. With those negotiations coming up and looking at high travel costs now, Mr. Ben is concerned about those funds.

NEXT MEETING DATE

The next meeting was scheduled for August 19, 2008 at 9:30 a.m. Chair Robinson noted that if there are no agenda items requiring immediate attention, the Board will forego its August meeting.

The meeting recessed at 9:45 a.m.

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**APPEAL HEARING – CONTINUED – 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. Joel Cohen, Member
Mr. Henry “Hank” Silva, Member
Mr. Gary Yoshiyama, 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 9:54 a.m.

Chair Robinson noted that the Board had an opportunity to review Mr. Gonzalez’s written motion to dismiss Mr. Hutton’s appeal for lack of jurisdiction.

Mr. Hutton commented that he believes he is suited for police work.

Mr. Gonzalez stated that the County’s reading of Mr. Hutton’s reply to the motion to dismiss is that Mr. Hutton seems to be conceding to the motion to dismiss in the first paragraph; and in

the third paragraph, he's still requesting reinstatement. However, according to civil service rules, reinstatement isn't possible.

Mr. White asked that Mr. Hutton clarify whether he is opposing the County's motion to dismiss. One of the main points the County is making is that the Merit Appeals Board does not have the authority to hear the case because Mr. Hutton is a probationary employee.

Mr. Hutton stated that he is opposing it.

MOTION: Mr. Cohen moved that the Board convene into an executive session to consult with counsel. The motion was seconded by Vice Chair Balberde-Kamalii and unanimously carried.

The Board convened into an executive session at 9:53 a.m. and reconvened at 10:10 a.m.

Chair Robinson noted that the hearing is being continued from June 17, 2008 for deliberation on the County of Hawai'i's motion to dismiss the appeal filed by Clark E. Hutton, Jr. Deputy Corporation Counsel Brandon Gonzalez filed a written motion on June 30, 2008. Mr. Hutton filed his response on July 14, 2008.

The Board deliberated on the motion.

MOTION: Mr. Cohen moved that the appeal be dismissed for lack of jurisdiction. The motion was seconded by Vice Chair Balberde-Kamalii.

Chair Robinson noted for the record that only three Board members were present at the prior hearing, Mr. Silva, Vice Chair Balberde-Kamalii, and himself, thus the same three Board members will be making the decision. The other two Board members will not be voting.

A vote was taken, and the motion carried unanimously.

Mr. White informed Mr. Hutton that the Board's decision to dismiss his appeal is not meant to dissuade him or persuade him that he can't move to a neighbor island or go to a neighbor island and apply with their police department. Mr. Hutton certainly has that right. Mr. White believes Mr. Hutton would have to meet some residency requirements and he'll leave it to Mr. Hutton to find out exactly what those are. The decision today by this Board in no way has any effect, negative or otherwise, on Mr. Hutton's ability to seek employment as a police officer on a neighbor island.

Chair Robinson asked that Corporation Counsel submit its motions to dismiss ahead of time whenever possible to give the Board time to review them before the hearing.

The hearing adjourned at 10:15 a.m.

The Board reconvened into its regular meeting at 10:18 a.m.

**PRESENTATION ON FUNCTIONAL AREAS BY DIVISION
HEADS
OF THE DEPARTMENT OF HUMAN RESOURCES**

Gabriella Cabanas, Recruitment & Examination Division

Ms. Cabanas distributed a list of the 20 departments in the County of Hawai`i that are their primary clients, whom they service in terms of helping them fill their vacancies.

Ms. Cabanas stated that she has been the division head of the Recruitment & Examination Division since 1987. Refer to handout for information. In addition, Ms. Cabanas relayed the following:

The Recruitment & Examination Division conducts all of the open continuous recruitments that the hiring departments request. When departments want to do an internal recruitment for promotional opportunities for their employees, the respective departments conduct their own internal recruitments.

Ms. Cabanas is training the human resource representatives of the “Big 7” departments to do their own screening for minimum qualification reviews. The Big 7 are the largest seven departments in the County of Hawai`i – Fire, Police, Water Supply, Finance, Environmental Management, Parks and Recreation, and Public Works. They see more movement in these seven departments than in the other 13 departments. Their human resource representatives are doing their own internal posting, they issue out the applications, they receive the applications, and they screen their own applications. Ms. Cabanas is monitoring and training them throughout that process.

For the open continuous recruitments that the division does conduct, for which there are advertisements in the newspapers and on the website as well as radio ads and television ads for police especially, these recruitments are open to the public and County employees can also apply. Eligible lists that are good for one year

are established for these recruitments, and names are referred from the eligible list to the respective hiring departments when the hiring department submits a request to her.

The Recruitment & Examination Division has a very high profile in the community as they're out and about advertising and explaining job information to the public at job fairs at the universities and high schools. Ms. Cabanas conducts a lot of recruitment talks.

They have tried various marketing strategies from participating in the Merrie Monarch parade to having islandwide trailer ads at movie theaters and running specialized radio ads on a range of radio stations. They've gone as far as doing television ads, especially for Police, and they've done some for Fire as well. For Police, Ms. Cabanas is happy to report that they have 26 vacancies remaining. The next Police recruit class will start August 1, and Police is hiring 17, which brings the number of remaining vacancies to 9. They anticipate about 12 police officers retiring at the end of the year, but the next performance test is this Saturday, and they have 101 applicants scheduled to appear.

Ms. Cabanas also conducts interview training and employment reference check training for the departments. She generally does two sessions a year, but will do more upon request from the respective hiring department. This is to train those individuals that serve on interview panels so that they're not asking unlawful inquiries and to ensure that they're doing what they're supposed to be doing in accordance with what the federal and state laws are in terms of non-discrimination.

They do, on occasion, have employees who become medically injured and cannot return to their usual and customary jobs. At the request of the employee's hiring department, with written documentation from their doctor stating the employee cannot return to his or her usual and customary job, a job search is initiated. If the internal department does not have a suitable vacancy for that employee then the department may request a county-wide job search. The job search is for a period of six months from the date that the department met with their injured

employee during which time they try to place the employee into suitable work. At the end of six months, if there is no suitable job, they notify the hiring department; and the respective employee may, depending on the situation, face termination by that department. In the course of the six month period, however, they do meet with the employee to go over various options – whether the employee can retire either through service-connected retirement or through a disability retirement, apply for promotional opportunities elsewhere in the County, or seek a demotion if need be elsewhere in the County.

Joney Nitahara, Classification & Pay Division

Refer to attached for Ms. Nitahara's presentation.

In response to Mr. Cohen's question on pricing of classes, Ms. Nitahara added that management does meet and discuss all of the issues. They propose pricing and send out their new classes of work to the unions, who will express their concerns, if any.

When the Classification & Pay Division reviews departments' operations, they will make recommendations accordingly, as with the recent change in the Wastewater Division where they recommended a supervisor and a division head over the East Hawai`i and West Hawai`i sections to improve the operational workflow. Classification & Pay would then assist the department with possible reallocations or help them get a new position.

Charmaine Kamaka, Health & Safety Division

Refer to handout for Ms. Kamaka's presentation. Ms. Kamaka noted that the mission of her division is to create an educated, safety conscious, accident-free workforce.

Ms. Kamaka reviewed the charts plotting 10 years of data. The first chart is a listing of claims for the last 10 years. Ms. Kamaka noted that in their heyday they were up to 223 claims; now they're down to 168.

The second chart shows new claims versus the number of County employees. The intention was to show that in spite of the escalating number of County employees, the number of new claims coming in is actually dropping.

The next is a chart of open claims. In 2001, they had 848 open claims on the books. They're down to 385, which means they're closing out old claims that need to be resolved through settlements, decisions, etc.

The next chart is cost vs. number of employees, and this is the total workers' compensation cost versus the number of employees. It shows that the cost is coming down in spite of the number of employees rising.

For the next chart, Ms. Kamaka took the total number of County employees and the annual cost of workers' compensation, and spread that out per employee. Basically, it's at the lowest it's ever been. When Ms. Kamaka first came to the division, they had 800+ open claims. They made a conscious decision to start closing claims because that's too many open claims to have on the books. The price escalated as they closed existing open claims, and now they're seeing the results of that.

Closing claims involves cash settlements if they're entitled to it, such as a permanent partial disability settlement. Not all claims have cash settlements involved. If a claimant reaches a level that's as good as they're going to get, they're considered well, and the claim is closed. Some of them involve being rated for permanent partial disability, some don't involve that.

Ms. Kamaka noted that safety training also makes it work.

Teri Spinola-Campbell, Equal Opportunity Officer.

See handout for Ms. Spinola-Campbell's presentation.

Vice Chair Balberde-Kamalii inquired into the push button for the gentleman in the wheelchair. Ms. Spinola-Campbell explained that the push button was placed at the bottom so the

gentleman has access to it. It only requires one pound of pressure. They also looked at microwave systems and infra-red technology that has a system placed under a mat so the system knows when someone is standing on it, but the cost of that would have blown her budget for the next two years. The Traffic Division had talked to Seattle who had tried all the available technology, and the most success they had was with the button installed at the bottom.

Nick Hermes, Labor Relations Division

There are three primary things that the Labor Relations Division does. The first is collective bargaining. Mr. Hermes is Mr. Ben's and Mr. Takahashi's primary staff for representing the County at negotiations with its employees' exclusive representatives – United Public Workers, Hawai`i Government Employees Association (HGEA), SHOPO, and the Hawai`i Fire Fighters Association. This entails participating as part of the employer group with members of the other counties and state agencies and meeting with the unions periodically to essentially create new collective bargaining agreements. For instance, the County's Unit 01 employees, that are represented by United Public Workers, and HGEA employees have two-year contracts, which means that in the present year, they will ramp up negotiations for a new contract that will be effective next July 1. It's almost a continuous cycle of doing that where there's a year for ramping up for a new contract, and in essence a year off in a two-year contract where Mr. Hermes is doing other types of negotiations where he's creating or helping departments create supplemental agreements that are more specific to their operations.

Mr. Hermes also prepares executive orders for the excluded employees and excluded managers relative to what's in the contract. He serves on different ad hoc committees, such as the HGEA stewards training committee where a couple times a year they have training for stewards and management from all the jurisdictions on this island – the County, State, Judiciary, DOE, and HHSC – to learn the “art” of labor and employee relations. It's very important for stewards to know what their duties are at their workplace, and it's been increasingly valuable for managers and supervisors to be involved at the training so that they know how to

interact with these individuals and develop a relationship with the goal of resolving issues at the lowest level possible rather than have everything rise to an employer-level grievance or worse, arbitration.

The Labor Relations Division also represents the Mayor, or the County, at Step III grievances, which is the employer-level grievance. There's a grievance procedure in every collective bargaining agreement, and the last step before an arbitration is the Mayor's decision. Mr. Hermes represents Mr. Ben and Mr. Takahashi, as that authority has been delegated to them from the Mayor, and Mr. Hermes is essentially the hearings officer. He'll meet with the union agent and grievant to hear their case. However, the process begins much earlier where a department and/or a union agent will be calling him almost from the onset of a situation in the workplace. Sometimes things can be resolved and sometimes they cannot. If they cannot, it usually results in a hearing after which Mr. Hermes will develop a recommendation to Mr. Ben and Mr. Takahashi and from there they'll render a decision to the union. From that point, it's the union's decision on whether or not to pursue their case to arbitration.

Another aspect of what they do on a daily basis is administering contracts and providing interpretations to the departments. Departments, primarily the department human resource representatives, although it could be executives, department heads, or division level managers as well, are calling about inquiries on contracts, interpretations, or just assistance in navigating through whatever scenarios they have pertaining to collective bargaining or specific language in the contract.

On the formal side, Mr. Hermes develops and delivers written contract interpretations and advisories. Typically, what triggers that are landmark arbitration decisions or critical operational issues that require something more formal to guide their operational departments, although by far the most common are the daily phone calls, emails, and meetings to advise departments on how to use their contracts appropriately.

Mr. Cohen asked about guidelines in disciplinary areas and how Mr. Hermes interacts with departments on those issues.

Mr. Hermes explained that each contract has a section in it devoted to discipline. Essentially, the standard in each contract is that discipline is not something that is subject to just cause. There is a litany of ways in which to analyze that. Four years ago there was a specific arbitration decision that created a certain seven-step process that many like to follow, but it's not necessarily required. The way Mr. Hermes typically gets involved in almost all cases is that a human resource representative or a union representative will notify him and ask for his advice; and Mr. Hermes will work with them on the case. In the case of discipline, Mr. Hermes gets involved as it arises. The advice he gives the departments is that the earlier they call the better so that they can deal with it appropriately and not subject themselves to an unfavorable decision at the end. Of course, the ultimate goal is to settle a situation, although that's not always possible.

Mr. Yoshiyama asked about employees not covered by collective bargaining in relation to the labor relations area and appeals.

Mr. Hermes related that he writes the executive orders for excluded employees that grants what the included employees are granted.

If an excluded employee is disciplined and wants to appeal it through the internal complaint process, Mr. Hermes would more than likely have been involved in the department's decision in whatever action they decided to take. Mr. Hermes further explained that every department has its own internal complaint procedure under law, and at no point is he a hearings officer like he would be during the grievance procedure. The typical process in a department's internal complaint procedure involves the division head first, department head, then the Mayor, or more likely one of his executive assistants that actually will hear the appeal. Throughout the process Mr. Hermes serves in an advisory capacity.

Dee Ann Sadayasu, Administrative Services Division

Ms. Sadayasu stated that she oversees the administrative and fiscal operations, and the activities that occur within the Department of Human Resources. She administers the rules, policies, and procedures for programs such as the County's leave sharing, flexible spending, and family leave, as well as temporary disability insurance, retirement, and other legally mandated programs.

Ms. Sadayasu also provides technical assistance to the director and deputy, helps to coordinate the development of the departmental budget, oversees the policies and procedures for the human resource module in FRESH, which is the computer system that the County uses for its financial, accounts payable, human resource, and payroll. It's fairly new, and they are still working through improvements.

Within the Administrative Services Division, there are three clerks and a personnel assistant who provide clerical and technical support to other divisions within the department - Classification & Pay, Equal Opportunity, Labor Relations, and Personnel and Organizational Development. There is also a transaction and records section within the division consisting of a personnel management specialist II and two personnel assistants, and they audit payroll certifications involving personnel appointments, in-service changes, and separations to ensure that departments have followed all federal, state, and local laws, as well as the County's own rules. They maintain personnel records, files, and statistics; administer compensation laws; provide assistance to line departments and agencies as far as interpreting laws and the contract provisions; audit departments for compliance, again with laws, rules, policies, and procedures; and also provide departments with recommendations for improvements.

The division also coordinates the County's incentive and service awards program and works with agencies that provide employees benefits, such as the Employees Retirement System, the Employer-Union Trust Fund for health benefits, and ING for deferred compensation.

Suzanni Hopp, Personnel and Organizational Development Division

Ms. Hopp reported that the function of her division is basically to coordinate County-wide training activities to increase employee efficiency by enhancing the skills, the knowledge, and the abilities necessary for the successful accomplishment of County objectives.

She determines the training and development needs of County employees by conducting a training needs assessment which starts with a need that is identified in several ways. The gap is described as something that is identified between what is currently in place and what is needed now and in the future. So the gap could be discrepancies or differences between what the organization expects to happen and what is happening, current and desired job performance and also existing and desired competencies and skills.

The results of the needs assessment allow Ms. Hopp to set the training objectives by answering two very basic questions: 1) who needs to be trained; and 2) what do they need to be trained in. Assuming that the needs assessment identifies more than one training need, Ms. Hopp would then prioritize those training needs based on the urgency or timeliness of the need, the extent of the need, how many employees need to be trained, and also the resources that are available to have the training available for them.

It is based on this information that she actually develops instructional objectives for the training and development program. What that means is she plans, develops, conducts, and coordinates training programs to meet those identified needs. She personally designs, develops, and trains those training programs, or for some others, she would outsource them to external consultants.

The final phase is to actually evaluate the effectiveness of those training programs. This is done by evaluating the reaction that participants have towards a training program, how much

learning they have experienced, and most importantly whether they are able to transfer that knowledge to the workplace, because essentially the aim is to improve the efficiency of the organization or the department that they belong to.

Earlier this year Ms. Hopp had developed a training program that she conducted in the month of March called How to Be a Great Employee which basically is about positive attitude. Currently she's working on developing a supervisory program, which at this point consists of five different modules. The first module is a basic overview of supervisory skills, the second is on communication, and the third module is on employee development. It is also in this module that she will train supervisors on how to do a training needs assessment. She also has a module on performance management, and the final module is on discipline, which Mr. Hermes will be helping her conduct, as that is his area of expertise.

Ms. Hopp also organizes such events as the annual Office Support Staff Conference and the pre-retirement workshop.

Mr. Cohen was pleased to see supervisory and management/leadership type of training, especially since the Board has seen some weak links in that area in a lot of the issues that have come before them.

Ms. Hopp further elaborated that for positions such as lifeguards, for example, if their need has to do with customer service and communicating with the public, she could conduct those kinds of training. However, for training more specific to their job duties, such as teaching them to swim, as an example, she would outsource such training.

Anything to do with safety falls under Ms. Kamaka's area, and anything to do with anti-discrimination and harassment would be in Ms. Spinola-Campbell's area. As an outcome of the training needs assessment, if training is identified that falls under another division's area, Ms. Hopp would refer them to the appropriate division. However, at some point, she would like to also evaluate

the effectiveness of training, such as safety training, as an example, because that's easier to measure and evaluate.

Mr. Ben noted that the common theme in the division heads' presentations is that they're all here to work with the departments, and they are all focused on that.

ADJOURNMENT

The meeting adjourned at 11:30 a.m.

Respectfully submitted,

Secretary, Merit Appeals Board

APPROVED:

**G. Rick Robinson
Chair**

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