

**Hilo, Hawaii  
Tuesday, August 16, 2005**

**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, August 16, 2005.**

**Present:**

**Ms. Jeanne E. Yagi, Chairperson  
Mr. Clifford Kaminaka, Vice Chair  
Ms. Kaliko Chun, Member  
Mr. Joel Cohen, Member  
Mr. Michael R. Ben, Director of Personnel  
Mr. Michael J. Udovic, Deputy Corporation Counsel  
Ms. Sandra H. Hamano, Clerk III  
Ms. Velma Y. Menezes, Secretary-Reporter**

**Chairperson Yagi called the meeting to order at 9:30 a.m.**

**MINUTES OF JULY 19, 2005**

**Mr. Cohen stated that in reviewing the minutes, he was concerned that the positive statements he had made about the survey of the Director of Personnel were not included in the minutes, as well as issues such as developing a supervisory management staff and the issues of delegation where things were going to the Director that should be handled by other people.**

**MOTION: Mr. Kaminaka moved to amend the minutes to incorporate Mr. Cohen's comments.**

**Mr. Cohen suggested summarizing the comments so that they would be recognized as having been received and discussed.**

**Mr. Kaminaka withdrew his motion. He stated that he takes this position very seriously. He took an oath. When he gives his word he's going to make sure it's done. He noted that the Commission serves the public and also serves internal customers. Internal customers responded to the survey, and the Commission needs to address their concerns. Whether it be in the minutes or the summary that's about to be prepared, it has to be documented. He thinks there were a lot of omissions from the minutes and is curious to see what the unedited version looks like.**

**Mr. Ben stated that he understands the concerns. The minutes can be prepared verbatim; however, because the statutes state that the minutes don't have to be in verbatim, Ms. Menezes summarizes the minutes. Mr. Ben agreed with Mr. Kaminaka that they have to remember who they are writing for and who's reading it. He believes the resolution would be to defer this matter.**

**MOTION: Ms. Chun moved that the approval of the July 19, 2005 minutes be deferred pending review of the first draft and possible revision of the minutes. The motion was seconded by Mr. Kaminaka and unanimously carried.**

### **COMMUNICATIONS**

**A) Communication No. 05-11, dated August 5, 2005, from Diane Noda, Deputy Corporation Counsel, regarding Memorandum No. 2005-04, Hawai`i County Code, Chapter 14, Article 14, Section 14-84, Friendly Reminder About the Address Numbers on Your Home Mailbox.**

**MOTION: Mr. Kaminaka moved that Communication No. 05-11 be received and filed. The motion was seconded by Mr. Cohen and unanimously carried.**

**B) Communication No. 05-12, dated August 8, 2005, from Harry P. Freitas, Deputy Corporation Counsel, requesting a continuance of Peter Boucher's hearing scheduled for August 16, 2005.**

**Chairperson Yagi reported that when the above letter was received, Ms. Menezes provided her with the set of rules that apply in this case. It was clear that the request for a continuance should be filed ten working days prior to the scheduled hearing, which was not the case at hand; therefore, a denial of the request was processed. She stated that the hearing will proceed as scheduled.**

**MOTION: Mr. Cohen moved that Communication No. 05-12 be received and filed. The motion was seconded by Mr. Kaminaka and unanimously carried.**

### **UNFINISHED BUSINESS**

**Summary of comments on the annual evaluation of the Director of Personnel and changes to questionnaire.**

**Chairperson Yagi stated she struggled with the twenty-six surveys and concluded that there was no fair way to summarize it onto one comment form. She did put some notes together and shared those notes with the Commission for discussion purposes (see attached).**

**She stated that one of the biggest problems that they face is that each of them individually had a set of expectations that they didn't put down and agree to. They did not discuss them clearly with the Director prior to the period of time. They implied them in what they put in the survey because they wanted to know the reactions of the primary constituents of the departments, but they didn't really discuss their expectations, so she is suggesting that they now actually sit down and work it out.**

**Mr. Kaminaka commented that it wasn't what you'd call a perfect survey. They are going to learn by their mistakes. It will be a real challenge for them next year to develop a survey, not so much geared on subjective comments, but more toward the "meet" or "not meet" expectations. That's what they want to look at. Either it meets or it doesn't meet.**

**Ms. Chun commented that everyone's expectations are going to be different, so perhaps it's not a fair guide.**

**Mr. Cohen stated that he feels an evaluation process is almost a sacred process. They are really performing a role of evaluators as in the case of the supervisor-employee relationship. He thinks it would be more appropriate to have discussions like this in an executive session.**

**Chairperson Yagi stated that the means to have an executive session is based on the person whom they are evaluating and that person's request to go into an executive session. The only reason that they can ask for an executive session other than that is if they are seeking the advice of their attorney on some procedure.**

**Mr. Kaminaka stated that if he has something to say, he would say it in front of that person.**

**Chairperson Yagi stated that that's part of her problem with not being able to make identification of the respondent. If someone says your office didn't do something right and doesn't give you any means to know what it is you didn't do right, how do you correct it? How do you even determine if it was something that needs correction?**

**Chairperson Yagi thought that the evaluation form that Kauai County used, although it was an evaluation of a supervisor of one of their employees, was an easy form; but anything the Commission does is going to require that they settle on what their expectations are.**

**Mr. Cohen reiterated his suggestion of an executive session. His concern about having open discussion is that other people in the room, including subordinate staff to the Director, are also present and that makes him a little uncomfortable because he doesn't think they can have a free, open discussion.**

**Chairperson Yagi stated that they are required to have a free, open discussion unless the person who's being discussed asks for a closed session.**

**Mr. Ben clarified that it was open the last time because it was an actual evaluation. The actual evaluation presentation for him is always going to be open. However, the issue that the Commission is presenting now sounds like a preplanning stage; and he doesn't control that. It's not whether he wants it private or not.**

**Mr. Cohen stated that since they are in open discussion, he did have a concern regarding some of the negative comments that were made. There were things that were of a personal nature that he doesn't feel comfortable talking about in an open session.**

**Mr. Kaminaka addressed Mr. Cohen and stated that he (Mr. Cohen) is the messenger. What Mr. Cohen is doing is just interpreting what he got and telling what he sees. These weren't his personal comments; these are the comments from the survey.**

**Mr. Kaminaka stated that he gets a lot of negative comments about himself. He tells people to feel free to call his boss, and they do. If their comments can help him, he takes it in a positive way. He thinks that's healthy.**

**Mr. Cohen noted that that is why he made a motion - basically to accept performances - and because he felt that based on the information, the comments, the questions they were asking were hopefully done in a positive way. Mr. Cohen did ask some questions initially regarding some concern of the delegation issue. The fact is that in Mr. Ben's situation, that's a difficult one to be in. People shouldn't be going to him on day-to-day matters. The department heads or department people should be taking care of those things. That doesn't mean this department doesn't play an advisory role, but the other departments should be taking care of business.**

**Chairperson Yagi noticed that the evaluation of "meets expectations" is missing from the minutes. The summary was the second part.**

**Mr. Cohen asked if could make one concrete suggestion. He had asked Mr. Ben for his job description, and it was long. For**

**somebody at the department head level, it shouldn't be more than one page max, because basically the primary responsibility of a Director, not just for this department but all departments faced with political people, is one of management and leadership and facilitating the activities of other people--not doing classification, not doing recruitment. For the purposes of doing an evaluation, the evaluation should be focused on management and leadership.**

**Mr. Kaminaka stated that he reviewed his last notes regarding time management, and the first one was to learn how to delegate. When a department goes to Mr. Ben asking how do they do this, how do they do that, Mr. Ben refers that individual to another person. That's good, but it's on Mr. Ben to let these people know ahead of time that he has subordinates that do this work, and they are the people they need to go to. It's easy to call up the Director and say, "Hey, how do you do this?" But no, he has to communicate to those people. It's incumbent on him to do it.**

**Mr. Cohen commented that the people Mr. Ben delegates to are not only responsible, but they have five steps. One is "no sweat," I'll do it, I don't have to ask anybody; the second is I have to get this reviewed by somebody else; and another step may be --- boss in trouble here. It needs to be very clear if you don't have to check with people.**

**Chairperson Yagi asked how do they translate that to specific expectations that they would want to measure.**

**Mr. Ben stated that what he thought they came away with at the last meeting was that there was going to be a summary of the things that were going to be presented to him so that he could look at it and comment on them. He would report back to the Commission, then subsequently, out of all that, the Commission would have their expectations for the evaluation period.**

**Chairperson Yagi stated that she thought she could do it easily, but it didn't happen. Her suggestion was that they use the survey responses for that process and turn it over to Mr. Ben to look at them and comment.**

**Mr. Kaminaka asked whether the summary of the responses would be going to the departments, as they might want to see what the results were of the survey.**

**Chairperson Yagi commented that if people are interested in specific responses to specific concerns, then they should identify themselves.**

**Mr. Cohen stated that the minutes are a vehicle, if a person who completed a survey looked at them, to at least know that this body showed some concern. They could read the comments made on expectations, and if in fact there were specific things that the Commission talked about--maybe policies that need to be written easier for people to read, or maybe there is a need for preparation for people for promotion, or training. Of course, they are always welcomed to attend these meetings too.**

**Mr. Cohen also suggested that somehow the people at the second level from the department heads be required to complete the survey through direction from someone in authority, such as the Managing Director.**

**Mr. Kaminaka commented that if you put the cart before the horse, it's not going to work. If they make it a requirement for them to do next year, and they don't get a response this year, it might not work.**

**Ms. Chun felt another reaction might be, "I don't want to, I'm wasting my time, I didn't get a response, I really don't think I should reveal myself."**

**Mr. Cohen stated that those in human resources know that when they talk about evaluations of somebody, this is a cultural thing that needs to be said, and that evaluations are not initially taken in a negative vein but in a positive way. In almost all cases, proving somebody's performance and whatever the case might be are making things a better product for the department. It's a positive situation. Unfortunately, he thinks they start out with the lowest level of classification where, in his opinion, it should be the other way around. They should set the tone at the department**

**head level or the supervisory management level, make that a requirement so the whole organization is on the same playing field. However it's done, there has to be some type of feedback.**

**Ms. Chun stated that if they're going to do what they've been discussing, given their role and promise to be conscientious and dedicated, it's going to mean more time and work on their part to get involved in more areas of the department, especially in terms of learning what Mr. Ben does. Then they can clarify their role and their development within the department. She sees it as a learning process that will change and improve as they develop more.**

**Mr. Cohen responded that there is some confusion on the survey. Are they evaluating the performance of the Director or, in this situation, are they evaluating the performance of the Director as a personnel evaluation? That doesn't mean that the Director is not accountable for all the things going on, again getting back to management and leadership.**

**Ms. Chun questioned what exactly are those two terms-- management and leadership. Human resource is the management of the people there and how he/she leads them. She doesn't see how they can get away from dealing with perception and what is called subjectivity, when people's feelings are involved and they give an opinion.**

**Mr. Cohen stated that he thinks it comes down to communication, to which Ms. Chun agreed.**

**Ms. Chun explained that she thinks people call on Mr. Ben because this is a small community. They know him; and within the community of the County, people are going to say, "I think I'll call Mike Ben and ask him how to do this; I'm not going to call somebody else in the department." To her, it's a reasonable reaction of the community of the County to do this. It would be difficult to get them to not do this any more.**

**Chairperson Yagi noted that Mr. Ben suggested that he would take the Commission's summary and come up with responses. Because Chairperson Yagi had found it impossible to summarize**

**it, she suggested at that point that they simply turn over the materials to Mr. Ben and let him do it. It feels like they're throwing up their hands, but they are not really, because out of the process, each of the Commissioners has said what they think is most important.**

**Mr. Kaminaka responded that that's why they should have something they can agree on. Number one is did he or did he not meet the expectations, which they agreed on at the last meeting. The second thing would be the areas of concern that may have been brought up or put in the survey that weren't addressed. The areas of concern should be discussed and a solution reached. In addition, the Commission is still trying to identify specific expectations. If a respondent feels strongly about a concern and possibly feels it wasn't addressed adequately, the Commission can give the respondent an opportunity to talk to the Commission about it. The Commission has always had an open door and can remind the respondents about that.**

**Mr. Cohen commented that he would be very careful on that. They need to be careful about an individual nitpicking and faulting the Director. The Commission can just take everything that they have and have general categories and say they responded to those and they are concerned about those, but not get too specific.**

**While it did cross Mr. Ben's mind to have the materials turned over to him to review, he had to remind himself this is really the Commission's project. Give him a chance to respond to the summary, then the Commission can come up with a response to all the survey takers thanking them for their evaluations, stating that the Commission went through the process of discussing it and give the details – such as the evaluation was held on a certain date and it was open. They could have attended that meeting. Based on the Commission's review of all the submittals, the Director will be addressing these issues in the coming year. The Commission can send it to the departments. It needs to be done quickly because that would address all the concerns. The Commission can inform them that they have highlighted the following areas that will be addressed or needs to be addressed by the department in the next**

**fiscal year. That way, they will know what specific areas are being looked at.**

**The Commission highlighted the following areas they would like to address:**

- 1) communications (responding to department inquiries)**
- 2) training and development of staff for specified outcome**
- 3) leadership training for supervisors/managers**
- 4) delegation of responsibility to departments**

**Chairperson Yagi asked what the direction is on communications.**

**Mr. Kaminaka stated that he is looking at how to better respond to certain requests of department heads.**

**Ms. Chun commented that the survey seemed to indicate that communication was poor between the Director and departments.**

**Mr. Cohen stated that what communication really comes down to is effective working relationships. It's more than just responding to inquiries.**

**Mr. Ben stated that the Commission needs to identify the issues, then turn it over him. It shouldn't be what the Commission thinks the solution is.**

**Chairperson Yagi concluded that the Commission will give Mr. Ben a summary of accomplishments and a list of concerns. Mr. Ben will respond to that, then the Commission will prepare a report.**

**Mr. Cohen noted that there were a number of people who commented on clarity and absorbing internal policies with the County relating to personnel issues.**

**Mr. Kaminaka suggested that they include a statement such as "Your comments in these areas will enable us to discuss with the Director so improvements can be made."**

**The Commission recessed at 10:38 a.m. and reconvened at 10:55 a.m. into the appeal hearing of Mr. Peter Boucher.**

Hilo, Hawaii  
Tuesday, August 16, 2005

**APPEAL HEARING – PETER BOUCHER – WHETHER OR NOT  
THERE WERE VIOLATIONS OF ANY CIVIL SERVICE LAWS,  
RULES, OR REGULATIONS IN ANDREW LEVIN'S DENIAL OF  
THE APPELLANT'S APPEAL OF THE DISCIPLINARY ACTION  
TAKEN BY BARBARA BELL, DIRECTOR, DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT.**

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**Present:**

**Ms. Jeanne E. Yagi, Chairperson  
Mr. Clifford Kaminaka, Vice Chair  
Ms. Kaliko Chun, Member  
Mr. Joel Cohen, Member  
Mr. Ryan Roylo, Deputy Attorney General  
Ms. Sandra Hamano, Clerk III  
Ms. Velma Y. Menezes, Secretary-Reporter**

**Also Present:**

**Mr. Peter Boucher, Appellant  
Mr. Ted Hong, Attorney for Appellant  
Mr. Harry Freitas, Deputy Corporation Counsel  
Mr. Joseph Kamelamela, Deputy Corporation Counsel  
Mr. Michael Udovic, Deputy Corporation Counsel  
Mrs. Claudia Wilcox Boucher**

**The following exhibits were entered into the record:**

<b>Appellant's Exhibit No. 1 -</b>	<b>Resume of Peter J. Boucher, P.E.</b>
<b>Appellant's Exhibit No. 2 -</b>	<b>Letter of Discipline</b>
<b>Appellant's Exhibit No. 3 -</b>	<b>Letter to Hiroshi Matsubara</b>
<b>Appellant's Exhibit No. 4 -</b>	<b>Letter to Yolanda Miura</b>
<b>Appellant's Exhibit No. 5 -</b>	<b>Letter to Debbie Chartrand</b>
<b>Appellant's Exhibit No. 6 -</b>	<b>Letter to Lawrence/Jan N. Kim</b>
<b>Appellant's Exhibit No. 7 -</b>	<b>Job Performance Report</b>

- Appellant's Exhibit No. 8 - Memorandum to Barbara Bell, Director, from Peter Boucher, Division Chief**
- Appellant's Exhibit No. 9 - Section 92F-24**
- Appellant's Exhibit No. 10 - Memorandum to Barbara Bell, Director, from Peter Boucher, Division Chief**
- Appellant's Exhibit No. 11 - Email**
- Appellant's Exhibit No. 12 - "Just Cause" Guideline**
- Appellant's Exhibit No. 13 - Memorandum to Mayor from Andy Levin**
- Appellant's Exhibit No. 14 - Letter to Jeanne E. Yagi, Chairperson, Merit Appeals Board, from Galen M. Kuba, PE**
- Appellant's Exhibit No. 15 - Resume of Claudia Wilcox-Boucher**
- Appellant's Exhibit No. 16 - Progressive Discipline**
- Appellant's Exhibit No. 17 - Disparate Treatment**
- Appellant's Exhibit No. 18 - Memorandum to Peter Boucher, Wastewater Division Chief; Larry Capellas, Solid Waste Division Chief, from Barbara Bell, Director**
- Appellant's Exhibit No. 19 - Letter to Peter Boucher from Barbara Bell, Director**
- Appellant's Exhibit No. 20 - Letter to Peter Boucher from Barbara Bell, Director**
- Appellant's Exhibit No. 21 - Email**
- Appellant's Exhibit No. 22 - Letter to George Thomas, HGEA, from Barbara Bell, Director**
- Employer's Exhibit No. 1 - Complaint filed by Tiffany Edwards/West Hawaii Today**
- Employer's Exhibit No. 2 - Memorandum to All Department Employees from Barbara Bell, Director**
- Employer's Exhibit No. 3 - Memorandum to Peter Boucher from Barbara Bell, Director**
- Employer's Exhibit No. 4 - Letter to Peter**

- Employer's Exhibit No. 5 - Job Performance Report**  
**Employer's Exhibit No. 6 - Memorandum to Barbara Bell, Director, from Peter Boucher, Division Chief**
- Employer's Exhibit No. 7 - Email**  
**Employer's Exhibit No. 8 - Email**  
**Employer's Exhibit No. 9 - Memorandum to File from Barbara Bell, Director**
- Employer's Exhibit No. 10 - Memorandum to File from Barbara Bell, Director**
- Employer's Exhibit No. 11 - Job Performance Report**  
**Employer's Exhibit No. 12 - Letter to Peter Boucher from Barbara Bell, Director**
- Employer's Exhibit No. 13 - Letter to Peter Boucher from Barbara Bell, Director**
- Employer's Exhibit No. 14 - Memorandum to All Interested Parties from Peter J. Boucher, Division Chief**
- Employer's Exhibit No. 15 - Memorandum to Mayor from Andy Levin**  
**Employer's Exhibit No. 16 - Letter of Discipline**

**The following witnesses were sworn in and testified:**

**Mr. Galen Kuba, former Acting Director of Environmental Management and employee of Department of Public Works**  
**Mrs. Claudia Wilcox-Boucher, Appellant's Wife**  
**Mr. Peter Boucher, Appellant**

**Chairperson Yagi called the hearing to order at 10:55 a.m.**

**The Appellant requested an open hearing.**

**Chairperson Yagi stated that the issue in this case is whether or not there were violations of any civil service laws, rules, or regulations in Andrew Levin's denial of the Appellant's appeal of the disciplinary action taken by Barbara Bell, Director, Department of Environmental Management.**

**Chairperson Yagi asked whether there were any matters or disputes concerning the Commission's jurisdiction over this matter.**

**Mr. Freitas responded that he believes there are. One of his objections is that he's not sure whether or not Mr. Boucher takes the position that the issues in the internal complaint procedures have all been followed. He's not only looking at the timeliness of the filing or responses of documents, but whether or not Mr. Boucher was afforded all of the steps that would have been appropriate to him.**

**In his letter to Mr. Levin, he mentioned not having the opportunity for informal meetings and other things. If that has not been allowed and he takes the position that he was denied those matters, Mr. Freitas doesn't think it should be before this Commission at this time. It should go before HLRB to make a determination as to where they're at. He's also of the position that Mr. Boucher can waive any of that and they can proceed to where they're at at this point. That just limits him from going back to saying that whatever was ruled here was improper because they should have been dealing with something else first.**

**Mr. Hong responded that their position with respect to violations of the internal complaint procedure are two-fold. The first is that they're saying the department director did not respond according to deadlines set forth in their own internal complaint procedures. His understanding is that Mr. Ben advised the department director that those rules or guidelines don't matter with respect to the employer, and what they can do is just go to the next step, which is, if Ms. Bell didn't respond in the appropriate time, they just go to the next step of the appeal process. That is what they followed from day one. They'd relied essentially on those particular provisions of the internal complaint procedures. They're only pointing out in their complaint that Ms. Bell didn't respond in a timely manner, and obviously they all know what the remedy is for that. You just go to the next step.**

**The other point that Mr. Freitas brought up was the informal complaint resolution process where they sit down informally and**

**speak. His understanding is that that actually did occur. It occurred between Mr. Boucher, Ms. Bell, and Hugh Ono, who is the chairperson of the Environmental Management Commission. So in terms of that particular issue, they don't think that's an issue to be raised at this point.**

**Mr. Roylo stated that to be clear, in the event the Appellant receives an unfavorable decision from the Merit Appeals Board, he's not going to come back and say that it doesn't count because the internal complaint procedure wasn't followed, therefore, this decision is void.**

**Mr. Hong responded that they relied on the complaint procedure. He doesn't think necessarily that that is an appealable issue for Chapter 91 purposes regarding the director not following the particular deadlines; but Mr. Roylo is asking them whether they intend to raise it on appeal if they get an unfavorable decision, he would think they're going to have to, at least to make sure the record is preserved on appeal. He doesn't know that HLRB would even have jurisdiction over that particular issue.**

**Mr. Roylo requested that Mr. Hong put on the record what the other issue is.**

**Mr. Hong read a portion of the third paragraph of Chapter 76-47e:**

**. . . if finds that the reasons for the action are not substantiated in any material respect, the board shall order that the employee be reinstated in the employee's position without loss of pay. But if the board finds that the reasons are substantiated or are only partially substantiated, the board shall sustain the action of the appointing authority provided that the board may modify the action of the appointing authority if it finds that circumstances of the case so require and may thereupon order such disposition of the case as it may deem just.**

**What they're bringing to the Commission's attention is the first sentence. If the board finds that the reasons for the action are not substantiated in any material respect, they think that under Chapter 76, the burden is actually on the employer. They have to**

**substantiate their action before the Appellant has to put on any particular presentation or evidence of the case.**

**Mr. Hong's position is that Chapter 76 supersedes other provisions of the law, specifically Chapter 91, in terms of contested case hearings or appeals because the merit principles, specifically 76-1-4, sets aside or carves out special jurisdiction for the merit appeals board and the personnel process. That's Mr. Hong's position on that. In other words, the County has to go first.**

**Mr. Freitas responded that according to Section 91-10 that addresses the rules that this board is required to follow in these contested hearings, it states at subsection 5 that the party initiating the proceeding shall have the burden of proof including the burden of producing evidence as well as the burden of persuasion. He also takes the position that Mr. Boucher moved to have this appeal, and he believes Mr. Boucher should go first in this matter. If the board decides otherwise, his other position is that he has already informed this board that Ms. Barbara Bell would not be available today. She is in a committee meeting with the Finance department addressing issues of the dump.**

**If the board feels Mr. Freitas should go first, he believes that this board also has the ability to take the hearing in whatever order would be appropriate. He would ask that this board have Mr. Boucher go first and then at the next hearing or at the continued hearing date, which he will request, that he be allowed to present Ms. Barbara Bell at that time.**

**Mr. Hong responded that because the County has to substantiate its action, the Appellant is not obligated to put on any evidence or any witnesses. All they have to do is challenge the County's witnesses and evidence in terms of whether or not they substantiate the suspension.**

**Mr. Hong's second position is that this is the second time that Ms. Bell has made herself unavailable to appear at the hearing. The Appellant has been pressing this forward at all points in time, and they have been following the rules that they're supposed to. Ms. Bell was not available the previous meeting, and she's not**

**available this meeting. If the board rules that they have to go first and present their case and that the Appellant doesn't have to present his part of the case at this point, then Mr. Hong's request would be to grant the appeal that Mr. Boucher should win and overturn the suspension because they've been here at all points in time proceeding in good faith. The Appellant is here and ready; the opposing party is not, and as a result the Appellant's side should prevail.**

**Regarding Ms. Bell's failure to appear today, Mr. Freitas explained that he was only made aware of it on the date he made the request to the board. This matter was not before the committee previously and that's why he was under the impression that she would be here. It wasn't until contact was made with the committees and their agenda was modified that Ms. Bell came up with the fact that because it was such an important issue she needed to be present there. Mr. Freitas can try to contact her, but he doesn't think she'll be able to extract herself from those committee hearings, again, because of the issue before them. However, if the Commission requests that he proceed first, he will proceed with whomever he can and at that point he will then ask for a continuance or ask that Mr. Hong put on his testimony and he be allowed to bring back Ms. Bell at the end.**

**Mr. Hong stated that the sunshine law applies on boards and commissions. The agenda must be posted 10 days in advance of the hearing, and it has to have a reasonable description of what's being discussed on the agenda. Ms. Bell knew at least 10 days in advance of this hearing that that issue was going to be on the agenda for that council committee, so Mr. Hong doesn't understand why it took till last week Thursday to bring up the issue of her being unavailable. She knew at least 10 days in advance that this was going to be before the council and one of the council committees.**

**Mr. Freitas stated that Ms. Bell was given the 10 days notice. Unfortunately, Mr. Freitas had to notify the Commission of the 10 days also, so while Ms. Bell had provided him with the information late Friday afternoon, he had already left. He made the request the**

**first thing Monday when he returned to work, as quickly as he could.**

**MOTION: Ms. Chun moved to convene into an executive session to obtain legal advice from their attorney. The motion was seconded by Mr. Kaminaka and unanimously carried.**

**The Commission convened into an executive session at 11:09 a.m. and reconvened into the hearing at 11:39 a.m.**

**Chairperson Yagi started the proceeding with the Appellant making the opening statement first.**

**Mr. Freitas asked to address one more issue before starting. The agenda states the issues as whether or not there are violations of any civil service rules or regulations in Andy Levin's denial of the Appellant's appeal of the disciplinary action taken by Barbara Bell. His question is whether they are addressing Andy Levin's actions or Barbara Bell's actions.**

**Chairperson Yagi stated that according to the Merit Appeals Board appeal that was filed by Mr. Hong, they're addressing Mr. Levin's action.**

**Mr. Freitas stated that his position then would be that the Merit Appeals Board doesn't review Andy Levin's review. The Commission's authority is to review the appointing authority's actions and whether the appointing authority did what was proper, which would be the director of the Environmental Management. If the issue is differently as stated, then Mr. Freitas would raise another question as to whether or not there's been proper notice as to what the issue is actually before the Merit Appeals Board.**

**Chairperson Yagi directed Mr. Freitas back to the appeal form. It lists Andy Levin, but in the statement of legal wrong which is alleged or appealed, it does go further to the disciplinary action taken by Barbara Bell, and it goes back to October 8.**

**Mr. Freitas asked whether there would be problem then with the agenda that's posted and the notice that's given.**

**Chairperson Yagi stated that she doesn't believe there's a problem. It covers both Mr. Levin's denial of the appeal and the disciplinary action taken by Barbara Bell.**

**Mr. Freitas stated that he wants to make sure that he is addressing the issue, whether or not it's Andy Levin's decision that is being critiqued, or whether or not it's Barbara Bell's decision.**

**Chairperson Yagi stated that they would hear the Appellant's case and decide on that.**

**Mr. Freitas stated that he'll put it on the it on the record that that may be improper because the Commission may not have authority for that.**

**Mr. Hong stated the following in his opening statement:**

**The whole purpose of this particular hearing is to challenge Mr. Boucher's one-day suspension. In the greater scheme of things, one day may not be portent or a devastating kind of circumstance, but for somebody like Mr. Boucher, who is a professional and is recognized in his field as a professional, it is a very devastating thing for him to have to experience a one-day suspension.**

**They're here today to challenge the decision of Barbara Bell, that was confirmed by Mr. Levin, because that decision to suspend Mr. Boucher was based on "he should have known better." Mr. Hong's point in presenting this case is to show that there were conflicting policies and guidelines for employees in the department. Mr. Hong will specifically highlight three of the letters that were sent out. One letter that was sent out a little over a month before the letter that he was suspended for contained the identical language for which he was never disciplined. He was never warned, never counseled, and never advised that sending out that kind of a letter would be inappropriate. It was only until he sent out this other letter where they got a complaint when all of a sudden it was inappropriate, and they immediately suspend him.**

**If people are expected to abide by certain types of behavior in the workplace, the rules have to be clear. The rules, as established by Ms. Bell, were not clear. They were inconsistent, and they were sometimes contradictory. Mr. Hong is going to ask at the end of his presentation to reverse Mr. Boucher's suspension and wipe his slate clean, and to inform the department that if they're going to hold people accountable, make it clear up front.**

**Mr. Freitas stated the following in his opening statement:**

**Basically, the position that the department is taking is that Mr. Boucher holds a position of division head in the wastewater management department. It's not like he is a line worker or anything else. There is one person above him, or maybe two, the director and the deputy director, nobody else. He is the head honcho in the wastewater division. Mr. Boucher should know things that are going on and which matters are controversial and which matters are not. Mr. Boucher wrote a letter basically indicating that he had the authority of the director to take such a position and to write such a letter when in essence he did not have that authority. It's their position that Mr. Boucher was informed of what was going on. He knew that this issue in the subdivision regarding the hook ups to the sewer line was a controversial issue. Nevertheless, he just wrote the letter basically saying that he had the director's authority to do this.**

**They believe that the one-day suspension is fair. Mr. Freitas' understanding is that this Commission also has the ability to make other recommendations in this matter. The bottom line here is that Mr. Boucher and Ms. Bell personally just don't get along together. Mr. Freitas believes that this Commission also has the ability to subject this out to mediation. Because of their personality clash, Mr. Freitas thinks there will continue to be conflicts in this matter and in everything else, and a mediation would be the best way to try and correct everything at one time. This matter should be sent to mediation prior to addressing this issue before the Commission.**

**In presenting his case, Mr. Hong called upon Mr. Galen Kuba who testified on his experience supervising Mr. Boucher when he was the acting director of Environmental Management.**

**Mr. Kuba was cross-examined by Mr. Freitas and questioned by the Commission. Refer to tape recording for further testimony.**

**Mr. Hong called upon Mrs. Claudia Wilcox Boucher who testified on how the seriousness of the suspension impacted her husband, Mr. Boucher.**

**Mrs. Boucher was cross-examined by Mr. Freitas. Refer to tape recording for further testimony.**

**Mr. Hong called upon Mr. Boucher who testified on the events and impact of the suspension.**

**The Commission recessed at 12:46 p.m. for a lunch break and reconvened at 1:36 p.m.**

**Mr. Boucher continued to testify.**

**As one of the Commissioners had to leave, the Commission recessed at 2:00 p.m. with the intention of continuing the hearing on August 22, 2005 at 9:30 a.m.**

**ADJOURNMENT**

**The meeting adjourned at 2:00 p.m.**

**Submitted by,**

**Secretary, Civil Service Commission**

**APPROVED:**

**Jeanne E. Yagi  
Chairperson**

**vym**