

**Hilo, Hawaii  
Tuesday, February 23, 2007**

**The regular meeting of the Merit Appeals Board, County of Hawai`i, was held in the conference room of the Department of Liquor Control, 101 Aupuni Street, Suite 230, Hilo, Hawai`i, on Tuesday, February 23, 2007.**

**Present:**

**Mr. G. Rick Robinson, Chair  
Mr. Clifford Kaminaka, Vice Chair  
Ms. Kaliko Chun, Member  
Mr. Joel Cohen, Member  
Ms. JoAnne Balberde- Kamalii, Member  
Mr. Michael R. Ben, Director of Personnel  
Mr. Joseph Kamelamela, Deputy Corporation Counsel  
Ms. Velma Y. Menezes, Secretary- Reporter**

**Chair Robinson called the meeting to order at 9:48 a.m.**

**MINUTES OF DECEMBER 19, 2006**

**KC: ...it was appeal hearing for Troy Familiar, on page 10, 7<sup>th</sup> paragraph, it starts off Mr. Udovic stated, and it goes and it says shall defer to other authority if the action/complaint does not constitute a prohibitive act that was subject of the jurisdiction of another appellate body or administrative agency or the grievance procedure under collective bargaining agreement.**

**... I remember having a question at that hearing, and wanting it explained when we went into executive session, and now that I see it written it out here, is there any way to explain this meaning here more clearly?**

**I know you weren't here that day (Joe) but you being an attorney present at the moment, and if you, this is what Mr. Udovic stated as the.**

**JK: Let's see if I can explain and uh**

**CK: Is it a comma that belongs, constitute a prohibitive act of the subject, okay, of the jurisdiction of another appellate body or administrative agency. When it switches to the or in the grievance procedure, it's as if it changes the subject. I've lost it as.**

**JK: Yeah, sounds like there should be a comma.**

**CK: In other words, the board shall not act on the appeal but defer it to an other authority if the action or complaint blah- blah- blah, then when it switches to or the grievance procedure, is there another word or phrase that belongs in front of it, is there a.**

**JK: It sounds like should be a comma, administrative agency, comma. But essentially what it means there is that there are certain kinds of subject matter that this Board can hear and given the nature of this type of case, he's basically saying that this body do not have the jurisdiction.**

**CK: Our body?**

**JK: Yeah, \_\_\_\_\_.**

**RR: So he was saying that if this body does not have jurisdiction, that there's three other avenues could possibly be one is another appellate body, two another administrative agency, or three grievance procedure under collective bargaining.**

**JK: Because under the collective bargaining agreement there's certain procedures that they have and one of them is to go through different steps and then go to arbitrator. I'm not sure if this person could do all of those steps here. The other body that I could see would be HLRB or ... I'm not sure if there's any discrimination claim, but if there is you would have those Hawaii**

**Civil Rights issues. But this wouldn't be the body \_\_\_\_\_. I guess the essence of it is that the, given the type of employee this person is, he wouldn't have the same type of protection given to a permanent employee in the civil service. Does that help?**

**KC: Yes, because he was the one with the probational status if I got that correct. What do probationary employees have? Do they have any rights, I guess, or provisions open to them?**

**JK: There are certain kinds of rights probationary employees would have, but that would be avenues dealing more with the constitutional rights. For example, there are certain kind of, you know like we wouldn't be able to discriminate against him because of race, sex, things like that, and neither could we also retaliate against them if they had reported, for example, something illegal and then try to use that as a reason not hiring him, because then the whole set of different rules that come into play, but those kind of issues should be dealt with the Hawaii Civil Rights Commission. So that's where \_\_\_\_\_. So yes, probationary employees have some rights, but it wouldn't be a total rights to mean as guarantee to permanent status civil rights employees.**

**KC: My last comment is, I would hope then that the, when they're doing the recruiting and going through the process because these hearings that we had that day had to do with complaints filed regarding recruiting and then being hired either on a probationary basis or not getting hired and questioning the recruitment project process because did they get enough, were they notified that they, for instance, one was closed and he wasn't notified, then within this that it be very clear that when they recruited that what they're probationary status is... and that they have just what their rights are during the probationary status and what they aren't, because I don't think it's.**

**RR: I think speaking to the reason that Mike wants to appeal that right?**

**KC: Well, that's the reason he's giving, and I don't think that the person making the complaint is understanding. And they don't**

even understand what probationary means versus hired. They're just thinking I've been hired and I get to make a complaint.

**MB:** Mr. Chair, may I interrupt? You folks are discussing a case which is improper at this time. It's an ex parte among yourselves, and it hasn't been agendized.

**RR:** No, but it's within the minutes, Mike, so that's \_\_\_\_\_.

**MB:** No, it's to discuss what should be in the minutes. Now you're discussing about what should be afforded probationary employees, etc., etc. That's going towards the case, not the minutes, and I think it's improper. It's not on the agenda.

**RR:** Point taken.

**KC:** Okay, so in any event, in the minutes, while this might have been the word for word that Mr. Udovic stated, I don't think it's very clearly stated for understanding.

**JK:** That's why I suggest a comma there in between agency and or.

**RR:** Actually you need a comma and you need a semi-colon, right? ...prohibitive act of the subject of the jurisdiction of another appellate body comma or administrative agency semi-colon or the grievance procedure under collective bargaining agreement. I'm no English teacher, but that's how I would abbreviate it, hyphenate it.

**JK:** Yeah, I think you need some kind of a punctuation. It really doesn't matter at this stage how it's punctuated \_\_\_\_\_.

**KC:** I think with a semi-colon, you do the pause because otherwise you've lost track that it's the complaint and the prohibitive act that's governing.

**RR:** Or we could even number those, Kaliko.

**KC: I think numbering would be even better. Okay, why don't we do that.**

**RR: \_\_\_\_\_.** Right after complaint, the action/complaint, Velma, just put whatever it is, two dots (colon), one, after that starts with one, thus constitute a prohibitive act of the subject of the jurisdiction of another appellate body; two, or administrative agency; three, or the grievance procedure under collective bargaining agreement, so it's clear there's one, two, three avenues. Would that work, Kaliko?

**KC: Yes, thank you.**

**MB: I think the complaint does constitute a prohibitive act of the subject of the jurisdiction of what the colon should be after the word of, because it's the subject of the jurisdiction of one, an appellate body; two, administrative; or three, grievance procedure.**

**RR: We'll move that down again, one, other subject of jurisdiction, okay, or, or, right? (yeah) Okay.**

**MOTION: Mr. Cohen moved that the minutes of December 19, 2006 be approved as amended. The motion was seconded by Ms. Chun and unanimously carried.**

**RR: ... skip communications, go to item #6, which is unfinished business, performance evaluation and we had invited, sent out memos to all the department heads, correct, Velma? (yes) Inviting them to come and discuss their relations and performance with Mr. Ben and the past years. Today we have Mr. Pavao from the Water Department.**

...

**RR: I guess at this point, we just have some questions and I guess you saw from the memo what we're trying to do is do a performance evaluation for Mr. Ben, so maybe we could let you start off with any opening statements you wanted to make regarding the Water Board and Board of Water Supply, Department**

**of Water Supply, and your relationship with Civil Service department.**

**MP: Well, as you know our office \_\_\_\_\_ are governed by applicable laws, and the Human Resources department assists us by recruiting employees. We have our own personnel clerk and our relationship with Human Resources under Mr. Ben's leadership has been wonderful. The staff has been very, very cooperative. We have a very good working relationship. We don't deal directly with Mr. Ben, but if his leadership is any indication of the wonderful relationship we have with his staff, then I say it's wonderful. I mean, our personnel clerk is able to get responses and information, everything we need..., I mean, I would like it to go faster, but I'm sure our department is accused of that also. It's just inherent in the system.**

**I have nothing but positive things to say about our working relationship. We don't work directly with Mr. Ben, but as I said, his leadership is any indication, it's great.**

**KC: Do you have presently vacancies?**

**MP: Lots of vacancies, yes.**

**KC: In any particular area, or.**

**MP: Yeah, we're having a hard time finding qualified electricians, and I think a lot of that has to do with we acquired our best electricians from the old plantation days and since the plantations are no longer available, there's really no industry that trains people to be electricians, because what we basically need is electricians knowledgeable in controls, because all our pump stations, well, has a lot of controls, so we having a hard time finding electricians with that type of experience. We're also having a hard time finding entry level, we call it water work helpers, but it's basically laborers. And I think a lot of that is due to the fact that the economy is so great that everybody has a job, and it used to be where people wanted to come to the County for the security, well now with all the jobs available, people want the money first**

**before they got the security, and I think that's what's happening. But we fill in some positions. Mr. Ben's department puts out notices, and we don't have any applicants. Sometimes we don't have any.**

**KC: What would you say that number is, you know, approximate amount of the entry level needed, half dozen, or a dozen?**

**MP: About a half dozen, yeah.**

**KC: Is that around the whole island or in a particular area?**

**MP: The whole island. We got four different baseyards. We have a baseyard in Ka`u, Hilo, Waimea, and Kona. ...**

**KC: But do you think then with these vacancies at the half dozen and your entry level and I don't know, would it be approximately that many in other divisions, do you think that you're able to, I mean, I would say I haven't heard any complaints about your department, so I think you're fulfilling what you need to do, but do you think so?**

**MP: Do I think that we're doing what we're supposed to do? Yes, of course. If you turn on the water, and it comes out, and it tastes good, we're doing our job. No, but seriously, \_\_\_ we've been having problems is engineers. All branches of engineers, especially the civils, because we hire so many civils. That's another area that we're having hard time \_\_\_\_. We once inquired with the University of Hawai`i. The problem is there are very few graduates in the civil engineer program. This is about two years ago; I don't know about now. We acquired two engineers from the mainland that decided to relocate to Hawai`i.**

**KC: I was going to ask you about the university and do you therefore go and do a recruitment here, you know, program to say \_\_\_\_.**

**MP: \_\_\_ pretty much leave that up to Mr. Ben's department, and they have done, they have been very proactive in how they recruit. There's a lady there, Ms. Cabanas, along with our personnel clerk that went to job fairs where they go to different places to recruit people and to get them interested working in the County of Hawai`i, and I think that may have helped some. At least the presence of human resources people out in the community inquiring for employment helps. I think it has a positive impact on our ability to hire.**

**KC: So it's just a shortage then.**

**MP: I think basically it's the wonderful economy we're enjoying with unemployment rates so low. That has a lot to do with it. After this cycle, the wonderful economy, everything goes in cycles. I think eventually it'll be back to the days where everybody wants to get in the County again, but it's not there now. It's not today, and that's the reason why I think we're having a hard time have applicants. It's kind of funny cause sometimes we have the same applicants applying for the same job that we didn't want to hire to begin with. They appear, appear, appear.**

**KC: But they're basically not qualified, which is why you didn't hire them.**

**MP: We have an interview panel, and obviously the interview panel does not feel that that particular person is suitable for the job.**

**RR: During the course of operations of the Department of Water Supply, you folks can have disciplinary actions among your personnel, something may happen, and have you folks had a good relationship with the Human Resources department as far as referring the disciplinary actions?**

**MP: You know this \_\_\_ we've had a wonderful relationship. In fact I think Mr. Ben has kept me out of trouble many times, because I just, Mr. Ben's advice to us was what we should have done. Because I'm not familiar with all the rules and regulations,**

**you know, I tend to do a different direction, but fortunately they keep us steered in the right direction. And so far everything has worked out well. And thank God we have a very few disciplinary problems, very few.**

**JC: Thank you very much for coming down this morning, and it is good news to hear that because I think I once made a comment that I'd like to put ourselves out of business so we didn't have problems that were coming down regarding hiring decisions and disciplinary matters. It sounds like your department is doing an excellent job of doing your own human resources function and with the support of Human Resources is preventing these things from coming to our body.**

**MP: One of the things that really helps us out, we have our own personnel clerk, personnel specialist, and she is wonderful. I mean, she is worth her weight in gold. She is just a fantastic employee, and she takes it upon herself first off to keep in contact with Mr. Ben's department. We are on top of everything and the fact that we run so smoothly I'm sure is very much credited to our personnel specialist. It's not me; it's her.**

**...**

**All of you have been in business, and you know how valuable a conscientious employee is. I'm just real thankful that we have her.**

**JBK: So Mr. Pavao, between your department and Human Resources, you feel that you're getting the support and guidance if needed at times in dealing with issues like health and safety, employment training, employee assistance program, so on, so forth, cause even in light of our wonderful economy we do have some problems in our community that does affect our workers and in turn that can affect their job performance.**

**MP: the answer is definitely, we have wonderful support, as a matter of fact, we have a situation now where we trying to reorganize because I lost our secretary, and we're trying to see**

**what's the best way and we consulted with the Human Resources department, and they willingly agreed to meet with us, to discuss the issues, discuss what's the better way of doing it. They've always been there for us, always, as far as I know, I mean, in my tenure here. They've always been very, very cooperative. ... cooperation is fantastic. We couldn't ask for more wonderful people to work with.**

**...**

**JC: Just make a couple of comments ... this is kind of disappointing only one person comes, and I think it's, actually I hate to be this extreme in saying this, but I think it's a sign of disrespect for both the department and also for this Board. What I was personally hoping, and we were talking about the process and so forth, is develop communication, extra communications going between the departments because there's been some issues that have come up where questions have become communication and so forth, but it's really hard to talk about these subjects unless these folks are here.**

**I know, as a person that's spent 18, 19 years as a profession in human resources field that I'm very, very impressed with the staff presentations we had and I concur with Mr. Pavao it takes leadership, that's the most important role of the Director, I think.**

**I'm very concerned that we're not getting the feedback that we requested. Now I know it's a day after a holiday, realistically people coming back to work off their holiday \_\_\_ emergency and so forth. And there are certain departments, I think, if we look back, I can only look back on almost three years now, and in looking back in the last few years, there's certain departments that seem to pop up with more of these appeals, and so there's maybe some areas of improvement with the support of the Department of Human Resources to prevent these problems from happening cause nobody wants to have those happen. I mean we're here, an impartial body, we try to be as fair as possible. Sometimes that puts us in a difficult position of making decisions that trying to interpret the law the best that we can and the policies of the**

department, of the County, and then seeing things as far as the practices that are happening within a department, maybe not, I don't know if we could use this in all cases, but due process, or good supervision and management. We don't see that happening, and as an impartial body sometimes we need to make decisions that maybe even are real difficult to make, and I was hoping that we could talk about these subjects with people. I put together some quick and dirty questions here, you've seen, ... suggestions anyway. I don't think it should end at this point. I think we're representatives of the, we're officials of the County, and have responsibilities to do our job here. It's not just about evaluating the Director, taking a look at the whole picture and making things better if we can. In fact supporting the department. I think we have an obligation to do that.

I know as far as the process itself ... I'm thinking maybe we need to continue this process, not to linger and create any more headaches for Mr. Ben cause you know you like to get these things over with, but I really think that we need to pursue this. I think I had mentioned previous meetings regarding maybe working through the I guess the Managing Director and making sure that the players, the department heads or whoever representatives were going to be involved in this process. I think we need to do that. I don't know about sending out questions similar to these, and if we can't get people here to provide some testimony or some feedback or \_\_\_ discussion perhaps we can get them to fill out a questionnaire like we did before, I think using the right parties. The last time we did this we weren't quite sure who were filling them so it wasn't really valid. That's my feeling.

KC: Thank you for your notes. Your comments and your notes always reflect and in fact your always persistent concern about what we do, and I appreciate that, and making it one of integrity, always you want to be above board and be very thorough. Like you, I think we should continue it because I don't think one is enough, and out of the discussion, I was hoping to develop more from the responses questions that might be, that we could come up with that might be better than just how do you like your process and it's fine, and delve into it and find out how we can really have

**something that matters. So basically I would agree with you that we should continue it and hope that we get more response and this would be to support Mr. Ben.**

**JBK: It's just of accountability and the fact that Mr. Pavao emphasized that even though he does not work directly with Mr. Ben it appears that the effect of Mr. Ben's leadership has filtered down to his staff and they in turn have represented their department above and beyond Mr. Pavao's expectations.**

**I agree with you all that the fact that one department head showed up makes me wonder how lethargic is everyone else, and I don't mean to paint a broad brush on everyone because there are meetings and schedules and I understand all that, but this also takes priority too, and if they're unable to show up I think they should submit something in writing as a representation and I guess my training was with nonprofits and working with the State and County is like you know people don't show, that's a red flag. What's going on there, what's happening. Is it just status quo on their part? Are they not comfortable coming forward? I mean, who knows. I'm a newbie on this one, but definitely accountability from department heads, I don't think that's a really extravagant expectation. I mean it does impede this Board's ability to conduct the business as set forth.**

**KC: It makes it a question mark. ...**

**JBK: I think that the advance notice was adequate. I also believe whether or not it's the day after a holiday that if it's on their calendar, it's something to tend to, and it does go back to why the not showing up. We can fill in the blanks but we don't want to assume things too. Because this is a wonderful opportunity. I mean my goodness, this is like gold to people to come and explain and express and also gives the department heads an opportunity to even look at ways of improving. Even if it's going wonderful, you can always improve. You never want to \_\_\_\_\_. Sorry, Mr. Ben, but I think it should continue. We need more representation, and right now it's bad enough \_\_\_\_\_, but there's so many questions and I don't know, can we make it mandatory?**

**KC:** Well, that's what we did with the questions. We wanted to make it mandatory, and then we sent it out so that we'd get the responses, and then we got \_\_\_\_\_.

**JBK:** turnout was 50%?

...

**KC:** We had 26 I think responses. We could have had 56, and we still wouldn't have known whether we had touched the right bases, and maybe we should have had 56. At this point, I don't know. ...

**JBK:** I'm just not one at this level, I mean we're dealing with a County division, and people are hired based on their experience and ability to lead and to do the job and to enforce the budget and things like that, so I guess I'm just not one for anonymous questionnaires when you're at this level. Come forward and speak, and that's how things get resolved, because by not coming forward that makes me question well what's their working relationship like. Not necessarily Mr. Ben but just the department head and their workers, because out in the community you hear a lot of hakaka. You hear a lot of grumbling about certain departments from the higher ups all the way down to the workers. But you know come speak your mind and start working on the game plan to move it forward because the department head's responsibility is to have the best department he or she can possibly guide and support and create.

And I do agree with you though, it's a level of disrespect in one way.

**RR:** Well, for me, I'm disappointed. I thought we were going to get 4, 5 people to show up today, at least 4, 5, people. That's why we're holding it in this large conference room, so we have Mr. Pavao, but beyond that your point's right on. It's a sign of disrespect. It's kinda like, ah, waste time, you know. I think we need to on behalf of our Merit Appeals Board write a letter to the

**Mayor, express our disappointment that we're doing what we can to try to make the process better within the County, and we look to his appointed folks to help us out. We got no response, and ask the Mayor what he intends to do about it, because you know, Mike, it's not only what happens in your division is what happens with outside and you only get, poor fellow, that Mr. Familiar who was like nobody told me, I mean, what did they say, I'm busy, I've got too much stuff going on, that shows that she wasn't calling somebody in your division and saying how can I do this correctly. She was just doing it on her own, so I think we need to formulate a closer working relationship with the other divisions in your department so we don't get those kind of appeals. I'd like to just write a letter to the Mayor, express our frustration and ask for his support for doing this. We're just not shoving it into a bucket. That's my position.**

**KC: I think it's a good response to let him know so he can talk with them. He can have a staff meeting and say...**

**RR: Mike, when you guys have your staff meeting with the Mayor, does he ever bring this up?**

**MB: No. Not that I'm aware of. I'm hardly ever at staff meetings.**

**RR: I mean when he has a staff meeting, there's a bunch of people there, right?**

**MB: Yeah, he has it every other Thursday, I just, my schedule is, I haven't been around. It's never in the minutes, so I assume it's no. But I would suggest you guys instead of writing a letter (tape trouble). I think he would like that much better.**

**Tape trouble.**

**KC: I'm trying to recall the letter we sent out. Was it informal sounding? Did we ask them to come, that we were holding a meeting?**

**RR:** And we were looking for their opinion or wanted them, wanted to formulate a closer working relationship, and.

**KC:** Do we have a copy of the letter?

**RR:** Yeah, it's. They sent us a memo.

**JBK:** Kaliko, you think maybe the approach is too informal?

**KC:** Yes, you know, I'm not remembering \_\_\_\_\_ and if we even have it here, and I'm wondering if you know when I just casually read it and said oh I'm sure it's okay and did I read the whole letter when I saw a copy of it and if we were too informal in that letter.

**VYM:** Basically it said we invite you to have a conversation with us.

**RR:** But you know, regardless of the format, the fact that no one showed up is really disappointing. So, Mike, you don't think writing a letter to the Mayor is.

**MB:** You should request an audience cause I think it's, performance evaluation is personal, and to just write letters, I mean this is one of the bad things about our society, all we do is write stuff and expect replies. It's easier to go in and talk about it. Cause then you can ask questions and whatnot, just exactly what you're asking right now.

**RR:** What if we wrote him a letter and told him what we've gone through. We were initially going out with a questionnaire then we asked for folks to come in, express their concerns. You know so he has some background instead of us just showing up cold.

**MB:** Yeah.

**KC:** But given the two, you think we should just make an appointment and go in, a group of us, or all of us, or one?

**MB:** Whichever way, but ... If you want a response from the Mayor addressing the issue, I think you need to go in and talk to him rather than say this is a problem, what's your answer. Basically what you do when you send a letter.

**RR:** No, Mike, if we send a letter, we would say this is our problem, we'd like to speak with you.

**MB:** Yeah, that's what I'm suggesting.

**RR:** So we give him, so he's forewarned as to why we want to come here, and he has some background ahead of time. Hopefully, when he gets the letter, he would pick up and call you and say what's the background on this before he meets with us.

**MB:** That's exactly what I'd do.

**RR:** Maybe we can invite him to come to our next Merit Appeals Board, all gather together and chat or you think it's a matter of protocol that we go over to his office?

**MB:** I know he would prefer that you folks go to him.

**RR:** Okay, we'll let him know when we're expecting our next meeting and ask if we could have an appointment with him shortly thereafter. ...

**JBK:** So we're requesting a meeting prior to our next meeting?

**RR:** Since we don't have any appeals on the agenda for next meeting, we'll probably through \_\_\_\_\_.

**MB:** But, Joe, how does that affect sunshine if all of them go in, or two, or whatever the magic number is?

**JK:** I think one can go but not two.

**RR:** If we have two, we have to publish it in the paper and go by sunshine law.

**KC: It's considered a meeting?**

**JK: Yes.**

**RR: We'll just ask for a meeting. Who'd like to go? ... If we go as a group, we'd have to invite him to come to our Board meeting, follow all the sunshine procedures.**

**JK: One of you can go and meet with him separate.**

**JBK: I think it might be good too that way because of the nature of the concern.**

...

**JC: Motion regarding the performance evaluation of the Director of Human Resources that as a follow-up to today's meeting that we schedule a meeting with Mayor Kim between our Chair and Mayor as quickly as possible.**

**RR: And in the letter you want to state that give him the background of what we did so he's forewarned. (yes)**

**CK: Second.**

**RR: It's been moved and seconded that we write a letter to the Mayor that we give him a background of the reason why, what we've been doing as far as the performance evaluation of Mr. Ben and what our process has been and ask for a meeting with him by the chairperson to discuss how we can move forward and get greater involvement by his cabinet.**

**Motion passed unanimously.**

## **COMMUNICATIONS**

**Communication 07-01, dated January 3, 2007, from Douglas L. Halsted, Attorney at Law, requesting a continuance of Ralph Kuheana's appeal hearing scheduled for January 16, 2007 at 10:00 a.m.**

**RR: ...requesting a continuance, and that's April 17, right, Velma? (yes) Oh, Mr. Kamelamela, one question. If the chairperson meets with the Mayor and then has consequence to that meeting develops information that he'd like to pass on to the balance of the Board members and writes an email, is that okay?**

**JK: No, you'd have to**

**RR: Do that at a meeting. (yeah)**

**JK: And you \_\_\_ can't have serial communication so get information and report it at the meeting.**

**RR: how about email?**

**JK: Not even email.**

**...**

**RR: We'll just receive the letter and note it.... Yeah, we already have it rescheduled for April 17.**

### **NEW BUSINESS**

#### **Election of Chair and Vice Chair for Calendar Year 2007**

**KC: I move that we have our same chair and vice chair. Nominate Rick to again be chair and Clifford to continue serving as vice chair.**

**JC: I second that.**

**Carried unanimously.**

**KC:** Under new business and upon reflection of minutes and these little green reports we get every month, I would just like to comment that I hope in the recruiting process that help is given to the applicants regarding what is a probationary status and what is not and what avenues are open to them when they are applying for jobs and undergoing recruitment. I would like to make that comment and have it included at this time.

**CK:** I think that's a very good point.

**MB:** Sorry, but I don't understand what's being requested.

**RR:** Mike, what's being requested is, and I think Kaliko states it very clearly, because we see this in a lot of our appeals. Whenever people are retained by the County, they get that six-month probationary period, correct. At some point they're given a booklet or something along that line, and they're told to read that. We heard that very clearly with Mr. Familiar. It wasn't explained to him. Nobody held his hand in that sense and said this what your rights and remedies are in the course of your six-month employment prior to your passing your probationary period and becoming permanent.

I think Kaliko's point is very well taken is that if someone's going to be probationary for six months, I mean it would not be untoward to not only explain to them originally what they're rights and remedies are in that six-month period but also at a three-month period into that, sit down, explain it to them again. ... I don't think that's out of line. Do we do that now?

**KC:** I wasn't even aware of this until listening to various hearings and information and reading what I've read that, I mean I remember raising the question in my mind, but it's been a repeated process.

**JC:** May I ask you a question, Mr. Ben? Is there a uniform County orientation policy or program or anything sort of like that or does each department sort of do their own thing or modify it?

**MB:** We conduct a monthly organization, and it's a generalized, it crosses all departments. Each department then, they conduct it's own orientation from the unique items within their department.

**JC:** Is there any checklist that things that are required?

**MB:** Not from our department. Each department has, I think we've advised them of what needs to be included, but they devise their own checklist because they're working with the employee. Our orientation does have an agenda as to items we cover. I don't know if that's what you're referring to but again it's the HR person in the department that's responsible for making sure all the eyes are dotted and t's are crossed.

**RR:** But it's the responsibility of this Board whenever we get the appeals if it's been done incorrectly by the HR person in the department to make a decision regarding the process, would it not be to the best interest of the Human Resource division to ensure that those human resource folks with their divisions are doing what's right? You folks provide them any kind of training?

**MB:** We do provide training. We also have a quarterly meeting with all of them to go over items, new items, and to have an open dialogue as to what issues may be arising, what things they're concerned with.

**JC:** My gut feeling is that regarding orientation programs, it's not the specialist with the problem, it's the management of the department that oversees that function that is not requiring their supervisors, middle managers to be doing that in a quality manner. I've heard discussions at meetings stating, you know, I sent the form out, but they don't come back. I think it's probably frustrating for those people that are working at that specialist level in fact, and I don't know how many departments do that. ... So I don't think the issue is with the specialist. I think, it sounds like you're having regular meetings and providing discussion ... and that's another reason with all these empty chairs here, it's not a very good situation.

**RR: Mr. Ben, let me ask you this. If those human resource specialists, and I'm assuming there's probably 15 or 20 of them out there, one in each department, correct?**

**MB: Well, only seven departments have what we call HR professionals. The others are people who have been assigned the function.**

**RR: But let's say that those persons were assigned to Human Resource division, would be like having a navy corpsman assigned to a marine fire team. In this case we would have a human resource person that would be part of your staff assigned to Public Works or Water Supply or whatever. Now I think if that were the case, you can assure that there'd be uniform application of civil service laws back to their departments, correct?**

**MB: If you're saying you want us to have a staff holding somebody's hand, yes.**

**RR: Isn't that what human resources do is hold folks hands?**

**MB: No, we in essence enable them to do their work. We don't do the work or guide them along on every item that may come up. We might do audit and when issues come up go back and address the issues. We're not paper pushers anymore. We're more strategic. We work with them for them to resolve their issues, not for us to resolve the issues for them.**

**KC: But you only get the issues if you do an audit?**

**MB: Or as they stumble and they need help, they call us. But we can't afford the luxury of giving them one- on- one mentoring.**

**JC: I'd like to make a comment in support of my HR brother here. The human resources function is not solely the Department of Human Resources. The human resources as Budget and as Purchasing and all the rest of these are functions of the management of each particular department. And then our role is**

basically as consultant, I would see, rather than, and so it needs to be made clear, again, the seats are empty, that if this is the way we see it, this is the way it's presented.

**KC:** I agree on that. Also, I think what we don't know, and by their not appearing today, is exactly how well versed they are in personnel. If they are not, then indeed they may be looking to this department for that complete orientation themselves and if they are not versed in it, then management themselves have to go through an orientation of what all the rules and whereabouts, you know, what they have to do. And if they think they say I'm just going to manage this, you know, I came up the ranks, I started as laborer in the Water Department and went through and now I'm the boss and we just dealt with all our human relations problems and now we have a specialist so I'm going to leave it to that person, and that's it. I've got other things to do. I've gotta get water out to the County, boom, boom, boom. Well, he's not going to be concerned, or she, with what he or she now feels that the niceties of human resources and is going to depend on the Human Resources department with whomever is there.

**MB:** But again that person is listening to what's happening out there. I mean, you know, at that level you're not dealing with the day-to-day stuff. You leave it to your human resource, and if there are issues you expect that professional to call it to your attention or bring it up to you, and you work through them. And part of that process is reporting to him that's what, assistance in that example you used, is she has gotten from and worked with us to resolve, but certain things, I'm sorry, you don't bring to the executives.

**RR:** Mr. Ben, if you have a human resource person, what is that, a clerk level position or something like that?

**MB:** No, like I said there's seven what we call personnel management specialists.

**RR:** So it's a specialist position.

**KC:** And what does that specialist...

**MB: All the HR functions, the seven areas, compensation and benefits, recruitment, classification, health and safety.**

**RR: They do all that?**

**KC: And that specialist knows all that you do? I mean all that you know, what you've just told us today?**

**MB: They should.**

**RR: Now the question is if you have a human resource specialist in the department and one of the executives went on the \_\_\_\_\_ do something that's not right, does the human resource specialist have the ability to say no, that's incorrect, or would they have undue influence from the person who told them to do something? Such as get rid of Mr. Familiar. ...**

**MB: They have their internal conflicts as to this is what the boss wants. Now whether or not the specialist is gutsy enough to say no you can't do that and I'm not going to do it, again, that's their responsibility. They might ask us for assistance and what we normally do is try to ascertain exactly what the person wants and what is the proper way to go about doing it. We would advise. As to whether or not that person goes back and implements our advice, it's a 50/50 proposition. I know in fact sometimes they just, they try to advocate, but the department head won't listen, or the supervisor won't listen and they proceed whichever way they want anyway.**

**RR: Have you ever had to intercede in cases like that?**

**MB: yes! I think they have been wrong, I either go and talk to them if I'm not getting satisfaction. I still think they're wrong, then I go see the Mayor. That's the kind of work that I'm supposed to be doing as a department head.**

**JC: You know when it really comes down to it, and people are busy, ... suggestion that department heads need to be running**

**the human resources function. 95% of the \_\_\_\_\_ don't. But the department head, I'm sorry to be preachy here, but you said it and I'm just going to reaffirm what you said, they're accountable for everything that happens in that department. They're a leader. They get to look bad and ugly. I mean you get compliments like you did this morning, and \_\_\_ they're part of it. I think meeting with the Mayor, that ...**

**KC: Cause he's ultimately accountable, that's why...**

**JC: Yes. Things are going on, break the law, we're not going to put the County in a courtroom.**

**RR: If I talk to each other Board member one on one, is that permitted? Like if I see Kaliko and I say hey Kaliko, how you feel about this; if I see Clifford, hey Clifford, how're you feeling about this?**

**JK: As long as you don't communicate with two of them.**

**RR: With two of them.**

**MB: You can't say, you can't go to Cliff, oh when I met with Kaliko I discussed blah- blah- blah. ...**

**RR: So if the Mayor gives his appointment, right, I could call each one and say okay, we got, you know, what do you think.**

**KC: without referring to what he may or have not previously, you know. You can't say you talked to Cliff and then call me.**

**RR: I can't say what JoAnn said ...**

**JC: The suggestion that I would make is we have a continuing process here. It hasn't been completed. And that we refer for public, an open session, and any comments then that came from \_\_\_ discuss openly, and synergy of the group would actually create something positive.**

**MB:** Getting back to what started all this, the question on the probation, I don't know of anybody that informs the probationary employee that in essence if you don't like what we're doing or first screwing up, this is where you file something against us.

**RR:** They give regular rights to convicts, they should.

**KC:** that wording, but I think they should know that as a probationary person you can or cannot make a complaint? And if you're telling the probationary person if you get through a probationary period and you become permanent, then you can make a complaint, but if you're on probation for six months, it's a wash, no complaints. You've learned what we have to give you and then you can walk away if you don't like it. To me that's. If you're not divulging, I mean other than what, I mean I don't think you need to know.

**MB:** It is still general because they can file complaints in a variety of manners and if you guys asking us to advise them where they should be filing the complaints, I mean we already do that like when we conduct discrimination training, we tell 'em where you can file your complaint. The internal complaint procedure, which everybody has access, describes who can file and what and then the law itself explains what matters and who can file before the Merit Appeals Board.

**KC:** But you saying the probationary hire or potential applicant and hire does not have an access to that internal complaint.

**MB:** At this point I don't know. I would have to go back and check the definition or the scope of the internal complaint procedure. But I think the internal complaint procedures cover certain instances.

**CK:** See what our objective is, looking at the Familiar case, in your opinion, what could we have done, or what could the County to prevent that from happening when the person doesn't really know if he has appeal rights or not as a probationary employee.

**What could have done to prevent that? Cause it cost a lot of money.**

**MB: He could have asked his personnel person, he could have asked his union, he could have asked us. We normally don't advise people on litigation matters because we are subject to then being open to suit ourselves for giving the improper advice or whatever, or we might be the persons involved in the litigation, so we don't want to be providing advice on how to attack us.**

**CK: Mike, you said that he could have asked, but what could we have done. What could the County have done. What could have his boss, his manager, could have done.**

**RR: To provide them with options.**

**CK: Yeah, we want to act, not react.**

**JC: Just a comment cause I think \_\_\_\_, but I would agree with Mr. Ben. I would kind of add something too. I think every employee, new employee that comes on for the benefit of the employee and also for the County, has a right, and we have an obligation to provide a good orientation package and explain it to the best of our ability. Not going line per line, detail, you could spend days doing that, but to ensure that they have that, and when they sign it, just give them a piece of paper to fill out \_\_\_\_\_. Some time needs to be spent per each new employee that's for a number of reasons, including the fact that they're valuable people, they come in with no excess baggage, and turn out to be great people. It's just a good start and also I think \_\_\_\_.**

**JBK: Maybe not holding your department responsible for telling them where to go to fill out a complaint or appeal or whatever, but you know I think as an employee I'd like to know if I have a concern or an issue, who would that point person be that I can call in order to get more information. I don't expect that person to do the work for me and stuff like that, and we're dealing with human beings and some people will be proactive, some people won't, some people will just be so giddy and excited to get a County**

**job, they'll sign anything that's in front of them and then when something comes up they're like (I neva know), but that's human nature, you know what I mean kind of deal.**

**Just really briefly, working with the State, my position has gone through five things from exempt to temporary permanent to probation to permanent, cause it was all the classifications by HR. So the second time rolled around, I guess you show up, I guess we're okay. By checking with our local people, our district, and even with HR on Oahu, they didn't know when to send us and what to do, so you know that was hunting on our time, but it was okay cause we learned the maze, but that's just one thing. And another thing too is like for an orientation, instead of taking one person out of your staff to sit down individually with people, you know how other businesses are doing with 15 or more people is that they invest in a minimum cost to do like an orientation tape covering the basics and the generalizations. It's just like when you go for unemployment. I don't know if they still do it, but before people would say that when you go file your claim or whatever, you sit down in the room and they show you a video about it, what you're entitled to, what you you're not, what you're responsible for. That might be something down the line, but I think what I find more disturbing is we are assuming that the supervisor, the personnel, and the department head are well trained in matters of HR, and even an HR specialist, if they're asked to cover this position, they may or may not be aware of all that is going on, so to me this whole issue is a matter of education, communication, and just providing ongoing support, and I don't think it's fair to say yes you gotta pull a person out of your staff and help with this, but maybe just developing better communication with the seven departments' personnel management specialists, maybe instead of quarterly, maybe a little bit more until they know what they're doing. And in terms of department heads and supervisors yeah, they the old school, it's gonna be like no worry, you know that kind of stuff. But it's just the education and the communication piece because they can't always talk to you because you're, you guys are the umbrella, and everybody else gotta take care of their hale. That's what it boils down to, so I think you looking at education, communication, and accountability on their part, and if department**

**heads don't feel that HR is an important part of their department, then.**

...

**MB: I've got no issues. We will put in our orientation session a wrap up statement about filing complaints and to go see their personnel rep, because personnel reps know automatically they don't have the answer, they come to us, and we will assist them.**

**RR: Thank you.**

**JBK: That's a good message to reiterate too.**

**RR: that's what we were hoping for.**

**MB: But no, what I'm saying is, I'm guessing, we're gonna do a summary, what I'm guess, we already covering it. You know, whether these people remember or not is another issue. Everybody knows they have a union rep. You supposed to go see your union rep. I mean 99% of our workforce is covered by unions. We can accomplish it. We'll do a wrap up statement.**

**CK: In the Familiar case, the person wasn't a union ... didn't have union representation.**

**MB: They didn't want to represent him.**

**JBK: yeah, so if someone's on probation, are they entitled to union rep? But that's up to the union to decide, right? If considering the situation or**

**MB: They're entitled to a union rep, whether the rep will take the case because of its merits is a subject of their evaluation.**

**KC: And the union rep said no to him.**

**MB: then the recourse, and it's not up to us to advise them that you have the right to sue your union rep under I forget what**

**case law that said, dealt with the duty of failure of representation. That's not my position. That's what they can do.**

**RR: Understand that when we have an issue that we think is pertinent as a Board, and we express that to you, we're not attacking your system, we're offering our suggestions or ways of making improvement.**

**MB: No, I understand that. That's why I came to the conclusion that I did. I mean, you have a suggestion, okay this is the way I'll do it.**

**RR: thank you. I guess we're still at Director's Report.**

### **DIRECTOR'S REPORT**

**Mr. Ben reported the following:**

**1) We have a budget review. Our budget review went well. We were questioned about one of our new things that we practice. We allow department heads to hire at any rate in the salary schedule, and one of our departments were playing games. An employee took a demotion but got more money out of it, and he was saying it's our responsibility to stop and police that, and we said no, it's the department's responsibility. We enable them to get the person that they want on board for the position. We advise them what kind of areas they should be concerned about, but ultimately it's the department's decision, and while that person was questioning us on that, his deputy department head was thanking us for allowing departments to do that. So internally you have a high-level excluded managerial talking exactly what the department wanted us to do and he was speaking out against it saying we should be controlling that and stopping it.**

**JC: Is there any kind of personnel action report \_\_\_\_\_ where the department head can sign off of that?**

**MB: Yes, ever personnel transaction.**

**JC:** The issue that you brought up, is that something that could be reviewed by \_\_\_\_\_.

**MB:** We review it to make sure it complies with rules, policies, and procedures, but this is one that we've allowed, this practice we've allowed, because departments were getting hard time filling positions at the entry level rate, so we said we going allow you hire at any other rate. You negotiate with the employee what rate you going hire him, but you should be aware of morale factors, what your other employees are making, those kinds of things, but it's ultimately your decision, because it's your department. You have responsibility for your department.

**JC:** When somebody moves from one classification to another with a pay increase, is there any guidelines on pay increase \_\_\_\_?

**MB:** Yeah, we have specific compensation rules, well, not rules anymore, but the collective bargaining agreement specifies exactly what you get upon certain types of movement and likewise our policies cover the same thing. So it is spelled out, yes.

**RR:** So a laborer in Hawaii County makes the same as a laborer in Maui County makes the same as a laborer in Honolulu? (yes) So there's parity for all positions throughout all the islands?

**MB:** With respect to laborers.

**RR:** I mean with respect to classification and ...

**MB:** Our classes may be titled the same but they may not necessarily reflect the same duties and responsibilities, and likewise we'd have a different pay grade.

**RR:** But the titles and positions would have the same pay grade.

**MB: No. What I'm saying is, a good example of our personnel management people. Although we have a PMS II, our PMS II is SR-22 versus the State is SR-20. But you know the duties are different although they're called PMS IIs. But for our series, we have a different series than what they do. They have more levels, us we only have three levels I think. They have six. So our PMS II is actually a higher level than their II because of the number of levels that they have. That's an example. They call it the same thing, but they not equal. They have that throughout the system \_\_\_\_\_. We have undergone looking at all our classes of work and identifying based on the duties and responsibilities which classes we think are equal to other classes in jurisdictions, so that's been done.**

**But back to the original, our budget review.**

**2) Legislation, it's interesting this year. Hawaii County if the first to go in to request hiring of retirees. We submitted again this year and surprisingly there were four bills addressing this, five bill addressing this, four in the House and one in the Senate. One came from us, one came from the City and the rest we don't know where, who actually introduced those bills, but there is more interest. Whether or not we get something is still up in the air.**

**ERS testified that they would like us to continue paying retirement contributions for those positions even though those employees are not gonna have any additional benefits or whatnot.**

**JBK: You're talking about when you rehire retirees? So that they want you to pay twice for the one.**

**MB: The bill proposes that when we rehire a retiree, they don't lose their retirement benefits. They continue to draw their retirement pay, but they're no longer entitled to additional credits or more deductions or whatnot because they already met their 30 year requirement.**

**ERS is saying, and I've been told it's been put in a new draft, that for that position, notwithstanding the fact that this person is not going to draw any extra, they want us to continue contributing.**

**JBK: So they're tying it in to the position.**

**MB: Tying it in to the position rather than the incumbent.**

**JC: There is any limitation on the number of, I'm a little confused on that one cause it's been a long time since I did this, but usually there's a limitation on the number of hours that you can work regarding retirees.**

**MB: Well, that's what we're trying to get around. One of the arguments that I've put forth is we have a loophole, and everybody does it. 89 days, terminate, one day; 89 days, terminate, one day; 89 days, terminate... So all we doing is processing paperwork to get around this loophole.**

**KC: And so why not just hire the person for (MB: for what it is, yeah), and have no limit on hours.**

**JC: The other option is to have a maximum per year that person can work \_\_\_\_\_.**

**KC: But I think the idea is to not have any limits.**

**MB: My impetus for this was everybody's living longer, they want to work longer, second careers and whatnot. I mean, if I want to go drive the elderly around, I don't have to make decisions and whatnot other than what I going have for lunch, I should be able to do that. Plus it's an advantage to us cause if we rehire, well, prior to this last change we weren't making contributions to the ERS, we weren't paying for their medical anymore cause they already getting it as part of their package, so it's actually cheaper for us. Now whether or not in the long run it helps us because eventually we still going to have to fill that position with somebody else down the road.**

**CK: What's wrong with that bad word, contract works.**

**MB: Well, there's only certain kinds of contracts you can contract out for, and it's something that civil service normally does. You can't contract unless there's a specific exemption, which usually there isn't and right now we're allowed to do that under Act 90, what we call Act 90, but the union's seeking to get that sunseting it. The basic premise is it's cheaper to contract out for the same or better services. That's what Act 90 says. Act 90 says notwithstanding any other law, if it's cheaper to contract out for the same or better services, you can go ahead and contract out. That's what we're trying to get made permanent. But it was interesting too because there was an article in the paper that discussed another reason why I wanted to allow this. Basically it's because if you're not going to work for us, they're going to work for somebody else if they want to work. So why aren't we use one of the \_\_\_ who we know by experience are good workers \_\_\_. I mean there's all kinds benefits to it, but...the concern about the people who abuse it, it just so happens Jim Dooley did an article about these employees again just when the bill was being heard, and I said okay, there goes our bill. But it hasn't, it has made the first cut so it's still on the agenda. But right now it's being limited to hard to fill shortage, but like anything else we'll take the foot in the door if we can, because we leave it to my discretion as to which jobs are hard to fill.**

**3) There's another legislation kind of ticked me off. Finance Committee is hearing this key legislation that all the employers are against, and that's negotiating criteria for promotions, transfers, demotions. It would allow for that, and we're totally against it. D - - if they haven't scheduled the public hearing for Friday at 5 pm. That's another key legislation we're working against.**

**4) Our training officer just resigned. Decided to give up his position because I would imagine his health has not improved and his condition will only worsen, so I think he decided at this point release the position. We're currently evaluating what kind of person we want in there now, what we're going to focus our training on. Before somebody who could actually perform or do certain kinds of training and we've been spoiled with our last two people, they were training professionals who could run the whole**

gamut, could learn how to present classes, take a subject, learn about it, and convert it to a training. I mean that's the kind of talent we had, but now I don't if they're still out there, but we'll evaluate, do we want to concentrate on safety training where we hire somebody to specifically do safety or if we hire more like a contract management person whose responsibility is to go out and get training on contracts, so we evaluate that. We're not going to fill it right away cause that person was on leave for one year and because of that we started doing other things, hired additional people, doing more temporary assignments, using that funds to \_\_\_\_\_ to do that so we don't want to put an end to that right now. So we're going to leave it vacant for awhile.

5) We are going through a reduction-in-force of our Family Support Division in the Corp Counsel Office. These are the people who go after the deadbeat dads. The State ...

JK: The State wanted to take the Family Support Division back again. In a \_\_\_\_ what happened is that they didn't have the resources to handle all of it, so actually the \_\_\_ counties were doing it for awhile, but now they're reintegrating these outer island offices back with the Attorney General's office, so our County like the last one that they looking at reintegrating.

MB: And the way they were doing it led us to conclude that we're in a reduction-in-force situation because they were only seeking funds and not having any legislation that would carry the function over with all the employees and guarantee the benefits and whatnot. They were only seeking funds, which means they would have to go through the whole process of hiring employees, meaning come June 30<sup>th</sup>, we don't have work, so we've been working Corp Counsel office and through our suggestion, they've been working with the State people and the unions and we're hoping to have the legislation amended so that they'll take the whole function with all the employees and guaranteeing them all their benefits and whatnot so then it wouldn't be a reduction-in-force, everybody would still be employed, there would be no bumping and whatnot. We have met with the employees, our position as to, has been to keep them fully informed as to what's

**happening, whether it's good news or bad news, the key thing is to make sure that they know information, otherwise it's hard for them to decide what they want to do and whatnot. Naturally some people already looking for other jobs and one or two accepted other jobs knowing what's coming down, but anyway we're working on that right now.**

**We haven't had any real issues involving the unions. We brought the unions on board right away and all the unions are working with us on that.**

**6) Newspapers announced that the fire fighter negotiations arbitration decision, fire fighters have four-year contract, 5% raise in each of the four years, plus what they call step movements along the way, so it's the pay package is higher than the 5% that was reported. It's more like 6% each year.**

**7) We just went through a week of arbitration with HGEA. We're pending a decision on that, but during that week and the week prior I've been extensively involved in working with the State in trying to resolve all the other outstanding issues involved in the HGEA, and we were able to do that, so that only the issue of wages were being arbitrated. And again even during that period we were still trying to settle the contract. We meaning me and the State Director was meeting with head of the HGEA negotiating in the back door trying to get a settlement. We weren't able to, but we're very close and we still hopeful settling it before the decision comes out. I was requested to assist the State by all the other jurisdictions. ...**

**8) All the executives got a pay increase from the Salary Commission. It ranged from anywhere from 8% to about 16%, I believe. The 16% went to the Fire and Police Chiefs. They implemented a new salary schedule which resulted in those pay increases.**

**RR: How much did you get, Mr. Ben?**

**MB: I got the 8%. As most department heads got. It was totally unexpected.**

...

**RR: I got this green sheet, is put together by who?**

**MB: The division chiefs complete it, and Velma compiles and sends it out to you folks.**

**RR: I just got a few items ... under performance test administered, Fire Recruit and Police Officer, Fire had 111 scheduled, 82 showed up to take the test, that's all that showed up. Out of that 52 passed. Are they still meeting their goals here as far as getting the recruits for the Fire Department?**

**MB: Fire Department, yes.**

**RR: Police Officers, 47 scheduled, 30 showed, 23 passed. Are they meeting their goals?**

**MB: No, they still have a significant amount of vacancies. I think the County has 30 or 40 something vacancies. Even though they had 23, after they go through the background checks and what they'll be lucky if they get 5.**

...

**RR: So are the Police having trouble because of their background checks or because people don't want to be Police Officers?**

**MB: I think it's a combination of both. I mean, those aren't bad numbers to have that many applicants for a position. Not as good as in the past when we had hundreds, but that is something that's being experienced by all the Police Departments.**

**CK: Looks like we're the only ones on television, though.**

**MB: Right now.**

**CK: Very effective.**

**MB: Yeah, we specifically designed it to focus on lifestyle since we can't compete with Henderson and that other county in Washington.**

**JBK: King County.**

**MB: I could make \$120,000 a year if I was human resources for the library system.**

**NEXT MEETING DATE**

**The hearing adjourned at 4:10 p.m.**

**Respectfully submitted,**

**Secretary, Civil Service Commission**

**APPROVED:**

**G. Rick Robinson  
Chair**

**vym**