

**Hilo, Hawai`i
Tuesday, July 17, 2007**

The regular meeting of the Merit Appeals Board, County of Hawai`i, was held in the conference room of the Department of Human Resources, 101 Pauahi Street, Suite 2, Hilo, Hawai`i, on Tuesday, July 17, 2007.

Present:

**Mr. G. Rick Robinson, Chair
Mr. Clifford Kaminaka, Vice Chair
Ms. Kaliko Chun, Member
Mr. Joel Cohen, Member
Mr. Michael R. Ben, Director of Personnel
Ms. Danielle Degele-Mathews, Deputy Corporation Counsel
Mr. Julian White, Deputy Attorney General
Ms. Velma Y. Menezes, Secretary-Reporter
Ms. Yumi Nakamura, Clerk III**

Excused:

Ms. JoAnne Balberde-Kamalii, Member

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

MINUTES OF JUNE 19, 2007

MOTION: Mr. Cohen moved that the minutes of June 19, 2007 be approved as circulated. The motion was seconded by Mr. Kaminaka and unanimously carried.

UNFINISHED BUSINESS

**Discuss Troy Familiar Third Circuit Court Appeal Case with
Deputy Attorney General**

MOTION: Ms. Chun moved to convene into an executive session to consult with the Deputy Attorney General on the above matter. The motion was seconded by Mr. Cohen and unanimously carried.

The Board convened into an executive session at 9:32 a.m. and reconvened into its regular meeting at 9:46 a.m.

NEW BUSINESS

Evaluation of Director of Human Resources for period July 2006 to June 2007

MOTION: Ms. Chun moved to convene into an executive session to consult with counsel on the above matter. The motion was seconded by Vice Chair Kaminaka and unanimously carried.

The Board convened into an executive session at 9:47 a.m. and reconvened into its regular session at 9:53 a.m.

Chair Robinson reported that the Board received 16 completed questionnaires from the departments.

Mr. Cohen stated that in reading through the comments, there appears to have been an evolution where Human Resources had previously handled everything and now there has been a movement toward decentralizing and putting more responsibilities on the part of the department.

Mr. Ben responded that the Human Resources department recently started moving toward training certain large departments, such as Fire, Police, and Public works to review the minimum qualifications for their own internal recruitments. Fire and Police were initially targeted because they have those homogenous classes within their departments. Public Works has a whole range of positions and crosses all the different departments.

Once the system is set up, HR's division chief will periodically meet with the departmental HR personnel to assess how it's working and what kind of problems are being encountered, if any.

Chair Robinson reported that the responses they received were consolidated into a spreadsheet, and one of the consistent themes he saw was the lack of "warm and fuzzy." In order for the Human Resources department to create a relationship with the departments, there needs to be some way that Mr. Ben try to develop the "warm and fuzzy."

Mr. Ben expressed surprise that the Board got 16 comments, because the evaluation was based on experience in working with the Director the past year; and he doesn't he worked with more than one or two department heads the past year. For the Board to get 16 comments tells him they're not paying attention to the evaluation. Mr. Ben reiterated the concern he stated previously that the comments keep going back to previous years and are not focused on the current evaluation period. The process involves Mr. Ben being evaluated on a year-to-year basis based on the last year's performance.

Chair Robinson thought it worrisome that Mr. Ben interfaced with one or two people, as he would have thought Mr. Ben would have interfaced with all the departments to create a good relationship.

Mr. Ben responded that he depends on his staff to do that. He gets involved when big problems or issues come up that staff can't resolve. Mr. Ben is also working in other areas. He noted that if the Board wants to evaluate him on "warm and fuzzy," it needs to be spelled out for him.

Mr. Cohen stated that there were pros and cons on that issue, and as he's said before, some people like Mr. Ben and some people don't. That's the way it is for everyone. One area, though, that seemed pretty consistent was policy interpretation and memos that go out. Some department heads had more questions after receiving them, so there was some concern that whatever went out

in the form of a policy or procedural memo needed more information.

Mr. Ben responded that he is unaware of any problems with application or interpretation. They're not being brought to his or division heads' attention. If they're not going to raise it with Mr. Ben or his staff, in their minds it's okay.

Mr. Cohen inquired into how the policies and memos are presented to the departments.

Mr. Ben responded that if they're standard policies and memos, they usually just issue it, depending on what the topic is. Others are brought to the HR people for review, as developed. Mr. Ben noted that he would be able to respond better if he had been given an example of a bad policy.

Vice Chair Kaminaka noted that the Board cannot go into specifics, and he just looks at the overall trend. He noted there was a consistent comment that Mr. Ben is unapproachable. Vice Chair Kaminaka stated that they talked about that last year, and he asked what Mr. Ben has done to build bridges to correct that.

Mr. Ben responded that he hasn't done anything. If a department head has issues and problems that they need to work out, Mr. Ben will work with the department head, but he doesn't go out to "talk stories and make friends."

Vice Chair Kaminaka noted that they're not asking Mr. Ben to do that; but some department heads are frustrated to a point where they don't want to call Mr. Ben anymore, and they're saying they'll do it on their own.

Chair Robinson stated that Mr. Ben should at least make people feel comfortable. It concerns him when someone says they'll do it on their own, because they may do something wrong and they'd wind up with an appeal before the Board.

Vice Chair Kaminaka stated that they "either love you or they don't." Some people think Mr. Ben walks on water, and other don't want to bother with him.

Mr. Cohen noted that the sixth question related directly to the Board. He's expressed many times the responsibility of departments to work together with HR, as the Board has had some appeals where it appears a department hadn't handled the situation as well as it could have. Mr. Cohen asked whether the supervisor, when he/she comes on board, is prepared to handle these problems. Are they given training that is structured as far as orientation and other issues?

Mr. Ben stated that it's something they need to work on. They understand the issues they have in terms of getting positions filled. But by the same token, if this is a real issue for the department, why is the department promoting employees who don't have the capability to learn the skills? An employee might be a fantastic worker, but management or supervisory positions require a whole set of different skills that the department needs to look for. Instead, they promote on how good the employee was in the former position.

Chair Robinson stated that he views this as Mr. Ben selling services. As the human resources department, he is selling a service to assist the other departments in understanding the recruiting process and promotion process, and to understand how they can make it work for themselves. It's important and requires facilitation. It's a concern that Mr. Ben is representing the Human Resources department, which is selling a service so that people don't make mistakes or promote and hire people correctly. Then there would be a better coordination.

The Board recessed at 10:14 a.m. to hear the scheduled appeal.

**Hilo, Hawaii
Tuesday, July 17, 2007**

**APPEAL HEARING – PAUL S. PAIVA – DID THE FIRE CHIEF
VIOLATE ANY CIVIL SERVICE LAWS, RULES, OR REGULATIONS
IN DENYING THE APPELLANT “BUREAU OPPORTUNITY
BENEFIT INCENTIVE” PAY RETROACTIVE TO JULY 1, 2005?**

Present:

**Mr. G. Rick Robinson, Chair
Mr. Clifford Kaminaka, Vice Chair
Ms. Kaliko Chun, Member
Mr. Joel Cohen, Member
Mr. Julian White, Deputy Attorney General
Ms. Yumi Nakamura, Clerk III
Ms. Velma Y. Menezes, Secretary-Reporter**

Excused:

Ms. JoAnne Balberde-Kamalii, Member

Others Present:

**Mr. Paul S. Paiva, Appellant
Ms. Carolee C. Kubo, Union Agent, HGEA, MCEC
Ms. Danielle Degele-Mathews, Deputy Corporation Counsel
Mr. Darryl J. Oliveira, Fire Chief**

The following were sworn in and testified:

**Mr. Paul Paiva, Appellant
Mr. Darryl Oliveira, Fire Chief**

The following exhibits were entered into the record:

**Exhibit No. 1 – Letter dated January 20, 2006
Exhibit No. 2 – Letter dated February 1, 2006**

Exhibit No. 3 – Letter dated February 17, 2006
Exhibit No. 4 – Letter dated February 17, 2006
Exhibit No. 5 – Letter dated February 27, 2006
Exhibit No. 6 – Letter dated March 7, 2006
Exhibit No. 7 – Letter dated May 16, 2006
Exhibit No. 8 – Letter dated May 16, 2006
Exhibit No. 9 – Letter dated June 1, 2006
Exhibit No. 10 – Letter dated June 21, 2006
Exhibit No. 11 – Letter dated July 7, 2006
Exhibit No. 12 – Letter dated July 13, 2006
Exhibit No. 13 – Letter dated July 14, 2006
Exhibit No. 14 – Letter dated July 28, 2006
Exhibit No. 15 – Letter dated July 28, 2006
Exhibit No. 16 – Letter dated February 26, 2007
Exhibit No. 17 – Position Description
Exhibit No. 18 – Executive Order No. 146
Exhibit No. 19 – HFFA Collective Bargaining Agreement
Exhibit No. 20 – Fire Department 2005 Organizational Chart
Exhibit No. 21 – Session Laws of Hawaii, 2005, Act 2
Exhibit No. 22 – Memorandum of Agreement
Exhibit No. 23 – Budget Information

Chair Robinson called the hearing to order at 10:20 a.m.

The Appellant requested a closed hearing.

As Ms. Degele-Mathews indicated she would be generating a memorandum on her jurisdictional objection, Chair Robinson stated that they will give Ms. Kubo an opportunity to review it and respond. Therefore, the Board will defer deliberations to its September meeting, which has been scheduled for September 18, 2007.

The Board recessed at 12:03 p.m. and reconvened at 1:05 p.m. into its regular meeting.

**Evaluation of Director of Human Resources for period
July 2006 to June 2007 - Continued**

Mr. Ben noted that when the Board was developing the evaluation procedures, he had made specific requests that 1) the time period be specified, and 2) they give examples of things that have transpired. Regarding the issue of “warm and fuzzy,” when Board asked him whether he has made any efforts to go out, his answer was no. What he has done, however, knowing how people perceive him, is remove myself and have his deputy handle the bulk, with the division chiefs working with the departments. Mr. Ben is in the background consulting with them as they work out decisions. That’s why Mr. Ben is able to tell the Board that in the past year that this evaluation is supposed to cover, he’s only interacted with just a handful of department heads.

Again, the evaluation was to cover this specific period. If Mr. Ben was going to be evaluated on “warm and fuzzy” then the Board was obligated at the last evaluation to tell him that he had to do certain things, which the Board did not. If that is going to be an issue now, then for his next evaluation he needs to know exactly what the Board expects.

While he doesn’t know exactly what is wanted from him, at the point the other department heads do talk to him, Mr. Ben knows he’s supposed to be respectful and courteous; but if there are specific issues that occurred during the evaluation period, Mr. Ben will be glad to discuss it with the Board. He just asks that they not talk about old issues that have already been covered in previous evaluations.

Mr. Cohen commented that this issue wasn’t overwhelming in the responses they received. They did get some responses that may very well be old, and he believes that Mr. Ben is conscious of the situation and recognized it, however method he uses. That doesn’t mean it’s a continuing thing. They’re all in that situation. He used to work in human resources and thinks it’s very important to have that human aspect of it.

Mr. Cohen commented that it took some time for him to understand the dynamics of the County. It's a culture that perhaps needs some change, and whether it be the Mayor or the Human Resources Director or the Board, they need to play into that as he believes change is necessary. The leadership has to come from Human Resources.

Mr. Ben explained that they tried to go down that route perhaps five to six years ago. It's very difficult to change government culture, because of the whole bureaucracy and the size of government, etc. The County has excellent departments, and they have poor departments; and he doesn't know if they can get everybody on the same page, because next year the culture is going to change again.

Chair Robinson commented that the departments may look to Human Resources to set the standards and sometimes may hold them to that higher level, to judge themselves against the standard that may not apply to others but is one step above.

Mr. Ben stated that when he thinks of his department in those terms, he thinks he has a great department. Everyone exemplifies HR the way it's supposed to be, with the human element that the Chair referred to. Notwithstanding that, they still have these issues.

Chair Robinson noted that there were also responses that were very complimentary. He will draft an evaluation to circulate among the Board members, and they will give him the written evaluation at the next meeting.

Mr. Ben noted that the rules just say "meets expectations" or "doesn't meet expectations" but if the Board wishes to elaborate on it, that's fine. Again, his only request is that whatever has been cited as examples be limited to the evaluation period; and if the Board can't pinpoint it to the year, please don't address it.

In response to Chair Robinson's concern about Mr. Ben removing himself from involvement, Mr. Ben explained that he is

not saying he's not going to get involved. He does get involved at the point he needs to be. He believes it's good practice for his own employees' development to take the lead and to take charge. Mr. Ben serves as a consultant to them, and he's there to remove any barriers or difficulties that they're experiencing. In his opinion, he hasn't had to be that involved the past year, as there were no major issues with the departments that needed resolving. Mr. Ben himself has had to do the negotiations and the privatization issue, which involved working with the legislation and unions. Those were the two major things this past year.

Mr. Cohen commented that realistically if there are people that have been there a long time and have developed an attitude, it's not likely to change; but on the day-to-day matters, he realizes that Mr. Ben does what he can to have professional contact with people. Department heads should not have to be in a position of making contacts with all the staff here. He does think it important that the department heads work together, but he thinks it's actually more appropriate for somebody else to handle the day-to-day operations, which is what he's hearing from Mr. Ben—that he has a great staff who handle the day-to-day operations.

Mr. Ben stated that he has no problem if the Board wants to include in his evaluation expectations “continue to build relationships.”

Vice Chair Kaminaka stated that he will be making that recommendation. He thinks Mr. Ben is a good administrator, he has a great staff who do a good job, and there have been good, positive comments. Mr. Ben can promote a better relationship with some of the other departments as well, and he has the Board's support.

Mr. Ben added that when he discusses things with his division chiefs, one of the key questions he repeatedly asks is whether it's time for him to get involved; does he need to talk to the department or the Mayor, or whatever it is that needs to be done. When Mr. Ben has to deal with the department heads, he realizes he has to do it a certain way.

Mr. Ben also noted that the Board's rules say they need to discuss with the Director the expectations for the upcoming year.

Mr. Cohen stated that the evaluation process is not just a piece of paper; it's actually an ongoing process and should be a positive process. It lends itself to elements like communication, people working together, teamwork, and leadership too.

DIRECTOR'S REPORT

Mr. Ben reported the following:

For pay increases for Unit 1 (blue collar) and the Police Officers, Mr. Ben recommended to the Mayor that they take the calculated risk and pay them the negotiated raise. Technically they are not supposed to act upon it until all the legislative bodies act on it, but when Mr. Ben discovered in late June that Kauai and Maui had not acted on it yet, he talked to the Mayor and made the recommendation. They are also the only jurisdiction that has provided pay increases for excluded managerial employees. They do meet the requirements of law because these groups got exactly what the bargaining units got.

In response to Mr. Cohen's question on whether they're still experiencing a recruitment problem with Police Officers, Mr. Ben responded that the number of vacancies is slowly going down. He noted, however, that it spikes again toward December or June, when people retire. They haven't seen anything very noticeable as a result of the new video marketing tool that they have, and it's too early to tell what effect the pay increase will have, but he has told the Recruitment division chief to publicize that a starting Police Officer, on July 1, will make the same as a starting teacher. After one year the Police Officer gets a 4% increase and next July they will get a 6% increase, conceivably a 10% increase after working one year; and at the end of four years a starting Police Officer will make \$53,000.

NEXT MEETING DATE

The Board scheduled its next meeting date for August 21, 2007 at 9:30 a.m., followed by Mr. Randolph Kai's appeal hearing at 10:00 a.m.

The meeting adjourned at 1:36 p.m.

Respectfully submitted,

Secretary, Civil Service Commission

APPROVED:

**G. Rick Robinson
Chair**

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