

COUNTY OF HAWAII
SALARY COMMISSION
December 20, 2002

MINUTES

Chair Inouye called the meeting to order at 1:33 p.m. in the Conference Room of the Department of Civil Service, 101 Pauahi Street, Suite 2, Hilo, Hawaii.

Present:

Mr. Eric Inouye, Chair
Mr. Jason Hashimoto, Vice Chair
Mr. Glenn Hara, Member
Mr. Joel Nye, Member
Mr. Yoshiichi "Joe" Tanaka, Member

Excused:

Mr. Gerald Kita, Member
Mr. J. William Sanborn, Member
Mr. Rodney Watanabe, Secretary
Mr. Michael R. Ben, Director of Personnel

Others present:

Mr. Ivan Torigoe, Deputy Corporation Counsel
Ms. Joney Nitahara, Personnel Program Specialist
Ms. Velma Y. Menezes, Secretary-Reporter

APPROVAL OF MINUTES OF SEPTEMBER 20, 2002

MOTION: Mr. Hara moved that the minutes of September 20, 2002 be approved as circulated. The motion was seconded by Mr. Hashimoto and unanimously carried.

COMMUNICATIONS

A) Communication No. 02-22, dated October 3, 2002, from Lincoln S. T. Ashida, Corporation Counsel, regarding attorney and secretarial assignments, direct telephone numbers.

MOTION: Mr. Hara moved that Communication No. 02-22 be received and filed. The motion was seconded by Mr. Tanaka and unanimously carried.

B) Communication No. 02-23, dated October 1, 2002, from Michael S. Kagami, Deputy Corporation Counsel, submitting opinion on salaries and benefits.

MOTION: Mr. Hara moved that Communication No. 02-23 be received and filed. The motion was seconded by Mr. Tanaka and unanimously carried.

Mr. Hara asked Mr. Torigoe whether the Commission can have a working group on those meeting days where there is no quorum. The group would not make any decisions but just discuss ideas and other things they might want to approach at later meetings.

Mr. Torigoe referred to HRS 92-2.5 which talks about permitted interactions of members and which includes a short laundry list of permitted interactions, such as two members may communicate or interact privately to gather information about official board matters to enable them to perform the duties, as long as no commitment to vote is made or sought. As there are specific permitted interactions, Mr. Torigoe stated he would be reluctant to recommend that the Commission can do more than that.

The statute also says that two or more members, but less than a quorum, could be assigned to investigate a matter and report back to the Commission, so a subcommittee could be formed. However, the scope of the investigation and the authority of each member has to be defined at a meeting and then the result in findings would have to be presented at a later meeting. Then the deliberation and decision making would be done at a subsequent meeting.

Mr. Nye stated that if the Commission has a publicized meeting and there wasn't a quorum, it's his understanding that they'd still be able to talk because it's a public meeting with people in attendance and the minutes and secretary available. They wouldn't be able to vote on anything but should be able to talk while they're here.

Mr. Torigoe stated that he would think about the matter and review some materials, as it seems that the intent of the statute is to spell out specifically what kinds of things a commission can do with less than a quorum.

Mr. Nye stated that he attended a session on the sunshine law via video conferencing, and they had indicated that if you're going to discuss anything, take a reporter with you, then that way it's open and you're not violating the sunshine laws. It's okay as long as the Commission doesn't hold a meeting in secret. If there are only four of them here, this is an open meeting, and there's no violation of the sunshine law. They just wouldn't be able to pass anything because they don't have five votes, but they could talk all they want.

UNFINISHED BUSINESS

A) **Standard of Conduct Compensation for Chief of Police and Deputy Chief of Police.**

Mr. Hara stated that he recalls a previous letter from Mr. Takase defining salaries and noted that now there's a broader reading of what the Commission can award or grant in terms of compensation.

Mr. Torigoe commented that that appears to be what Mr. Kagami's letter (Communication No. 02-23) says. The communication seems to be reexamining that previous opinion saying that the Commission can consider things like standard of conduct.

Mr. Hara asked whether this is now the Corporation Counsel's position as opposed to it being Mr. Kagami's opinion. It may just be a matter of procedure, but he gets concerned when a deputy basically overrides the first deputy and it's not signed off by the Corporation Counsel.

Mr. Torigoe stated that unless there is some indication to the contrary, the Commission can consider this his office's opinion. However, to be certain, the Commission can ask Mr. Ashida or Mr. Takase to review Mr. Kagami's opinion and verify that this is the office's official position.

Mr. Hara raised the issue of reducing salaries for positions for the future and whether the Commission is permitted to do that.

Mr. Torigoe stated that his initial impression is that it would not involve the same kinds of due process rights as Mr. Kagami was concerned about in his opinion; however, he will review it.

Mr. Hara stated that the Commission is at a point now where they're going to be looking at all the positions to downgrade or upgrade them; and there are concerns on whether or not they can downgrade.

Mr. Nye noted that the caveat in the letter says that before one's salary can be reduced that individual must be given an opportunity to be heard on the issue of salary reduction.

Mr. Torigoe stated that what Mr. Kagami had in mind, at least at this level, is something along the line of an administrative hearing where the Commission gives the person an opportunity to hear out what is being proposed and to respond to it by presenting his side. The Commission would then make a decision, which could be appealed by the person in court.

Mr. Hara noted that if the Commission has the power to go ahead and basically set a new salary for a position, they could make it prospective--in other words, have it take effect after the person leaves. That would obviate the whole problem of what they're trying to address here, and there would at least be notice of the new person taking the position at a lower salary.

Mr. Nye raised the issue of the Commission looking at minimum qualifications for a particular job and setting the starting salary accordingly.

Mr. Hara stated that the Commission should be looking more at positions and responsibilities of positions and assigning the salary for those positions. As far as what the administration can do to fill those positions at that salary, that's the Mayor's job.

The Commission further discussed the issue of minimum qualifications and various scenarios in setting salaries.

Regarding the standard of conduct compensation, Mr. Nye stated that they should leave that up to the Police Commission to assess the Police Chief after six months or a year and if the Police Commission likes what they see, then give him the money; if not, don't give him the money. It would be like a bonus.

Mr. Torigoe noted that the Police Commission's duties are fairly limited, and the powers that they have are limited. The Police Commission is basically an advisory commission. They may not be able to make the final decision on compensation, but they could submit a recommendation to the Salary Commission.

The Commission discussed awarding the standard of conduct compensation upon a satisfactory evaluation of the Police Chief by the Police Commission.

The Commission called in Mr. Ron Takahashi of the Department of Civil Service for information on standard of conduct pay (SOCP).

Mr. Takahashi informed the Commission that the SOCP is an automatic differential that is paid depending on what grade the officer is in. PO-8s and below receive \$75 a month, and PO-9s and above receive \$85 a month. The differentials are reflected on the paychecks as a separate item. PO-8s and below are the police officers; PO-9s are the sergeants and detectives and specialized police officers. The gun and uniform allowance was transferred to the standard of conduct differential and was negotiated through a proposal by the Union. The compensation was initially given as a differential to recognize that the police are held to a different standard of conduct. They're subject to discipline on and off duty.

Mr. Torigoe informed the Commission that the Charter says that the Police Commission is to evaluate at least annually the performance of the Police Chief and submit a report to the Mayor, Managing Director, and the Council.

The Commission discussed what would constitute a satisfactory rating.

Mr. Torigoe asked whether the Police Commission had been consulted regarding this aspect of the compensation or not, as the Charter does say that the Salary Commission shall consult with the boards and commissions which have appointing authority for department heads.

MOTION: Mr. Hara moved that the Commission consider giving the \$1,020 subject to a determination to be decided next on whether it's performance based or not, and that the Commission gives it as a separate item of benefit to the Police Chief and Deputy Police Chief. The motion was seconded by Mr. Hashimoto.

Discussion:

Mr. Tanaka noted the motion on page 11 from the minutes of September 20, 2002, which states the Commission would recommend \$1,020 as a standard of conduct pay to coincide with the annual standard of conduct pay received by all personnel in the department. The Commission was going to follow that up with whether to make it performance based or not. Mr. Tanaka asked whether the Commission needs to pass that motion first.

MOTION: Mr. Hara moved to amend the motion on page 11 of the September 20, 2002 minutes to state that instead of the \$1,020 standard of conduct pay being an additional salary that it be received as a benefit to coincide with the standard of conduct pay received by the other personnel in the department with the benefit to commence with a satisfactory rating by the Police Commission upon its initial review of the Police Chief and Deputy Police Chief. The motion was seconded by Mr. Hashimoto.

Discussion:

Mr. Hara noted that the gist of it is that the Police Chief gets the \$1,020 subject to the initial satisfactory evaluation and from then on it's just part of his benefit.

Mr. Torigoe asked whether this motion is intended to be the Commission taking action without any further consultation with the Police Commission.

Mr. Hara restated the motion.

MOTION: Mr. Hara moved that the Commission have department staff consult with or write to the Police Commission asking them to respond to a proposal to grant the Chief of Police and the Deputy Chief of Police an annual benefit of \$1,020 to coincide with the standard of conduct pay received by other personnel in the department to be awarded upon the satisfactory initial evaluation by the Police Commission. The motion was seconded by Mr. Hashimoto.

Discussion:

Mr. Torigoe noted that the motion is fine in its general intent, but the Commission should make sure that the specifics are spelled out.

Mr. Hara clarified that if the Police Chief gets awarded a “C” the first year and then the second year he gets a “B,” then he gets the benefit. When he gets the initial satisfactory evaluation of B or better, he gets the benefit. If he gets a “C,” he’s not precluded from getting it the next time. It’s an incentive. The benefit will continue until he leaves office. Satisfactory will be defined as a “B,” but upon conferring with the Police Commission, the Police Commission can tell the Salary Commission exactly what method they use to evaluate.

Mr. Nye stated that the wording standard of conduct and performance is basically what it ought to be based on. That’s what it was originally intended to be.

Mr. Tanaka noted that there would be evaluation, holding them to a higher standard, as opposed to those in collective bargaining who get the SOCP automatically.

Mr. Tanaka and Mr. Nye were inclined to have it on an annual basis.

Mr. Hara amended his motion.

MOTION: Mr. Hara moved that the Salary Commission consult with the Police Commission as to the granting of a benefit of \$1,020 to the Police Chief and Deputy Police Chief to be awarded annually upon a satisfactory review by the Police Commission with a rating of "above average" or better. The motion was seconded by Mr. Hashimoto, and after further discussion, carried unanimously.

B) Discussion of hierarchy and setting of priorities in establishing appropriate salaries for County executives pursuant to Section 13-28 of the County Charter.

MOTION: Mr. Hara moved that if there is less than a quorum of the Commission present at a publicized meeting, those present shall be constituted an investigative committee to investigate matters on the agenda and report back to the Commission at its next meeting as to the matters they have investigated. The motion was seconded by Mr. Tanaka.

Discussion:

Mr. Hara stated that by doing this, the Commission is setting a procedure if they don’t have a quorum. Minutes wouldn’t be required, as it wouldn’t be a meeting. It’s an investigative committee, and then the committee would give the results of its discussion back to the group.

Mr. Torigoe opined that the intent of the statues is that the duties and respective authority of the committee be set up at a duly constituted meeting as part of the business of that meeting. What the Commission is really doing is a blanket amendment to the sunshine law.

Mr. Hara stated that they're doing it in conformance with the law.

Mr. Torigoe asked whether the Commission is going on the record then, stating that any time there isn't a quorum on this particular issue of hierarchy and setting of priorities, that whoever's present will function as a an investigatory committee, to report back at the next meeting.

Mr. Hara stated that they're establishing a committee, such as the Finance Committee in the County. Whoever's at the meeting is a committee.

As Mr. Hashimoto indicated that he would have to leave, Mr. Hara suggested that the Commission act on the motion while they still had a quorum. If Mr. Torigoe determines later that the action isn't legal, the Commission can correct it at the next meeting.

The motion was voted on and carried unanimously.

NEXT MEETING DATE

The Commission scheduled its next meeting for Friday, January 17, 2003, at 12:30 p.m., in the conference room of the Department of Civil Service.

ADJOURNMENT

MOTION: Mr. Hashimoto moved that the meeting be adjourned. The motion was seconded by Mr. Hara and unanimously carried.

The meeting adjourned at 3:18 p.m.

Respectfully submitted,

Eric Inouye, Chair

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