

**HAWAI'I COUNTY POLICE COMMISSION
MINUTES – REGULAR SESSION
JANUARY 17, 2003
WAIMEA CIVIC CENTER CONFERENCE ROOM**

CALL TO ORDER

Chair Horace Hara called the meeting to order at 10:00 a.m.

ROLL CALL

Present: Horace S. Hara, Chair
Dwight K. Manago, Vice chair
John M. Bertsch, Member
Paul M. de Silva, Member
Peter L. Hendricks, Member
Betsy Mitchell, Member

Also Present: Lincoln Ashida, Corporation Counsel
Josie Pelayo, Secretary
Lawrence K. Mahuna, Chief
Harry S. Kubojiri, Deputy Chief
Wendell Paiva, Assistant Chief

Absent: Phoebe M. Lambeth Member
Walter Moe, Member
Peter P. Muller, Member

A quorum was present.

APPROVAL OF AGENDA

Vice Chair Manago moved to approve the agenda. Commissioner Hendricks seconded the motion, and it carried unanimously.

INTRODUCTION OF COMMISSIONERS BETSY MITCHELL AND PAUL DE SILVA

Chair Hara introduced new commissioners Betsy Mitchell, representing Council District 6, and Paul M. de Silva, representing Council District 3.

STATEMENTS ON AGENDA ITEMS (Open to the Public)

Corporation Counsel Ashida stated that statements may be provided to the commission in either an open session or a session closed to the public. However, with regards to complaints against police officers, if the officer requests that statements be made in open session, then it has to be done in open session.

GWYNETH WRIXON spoke on her complaint, HPC 02-64. She stated that when she pulled out of the Waikoloa shopping center, she was almost hit by an SUV, so she flipped her finger at the driver. About a mile down the road, she heard a siren. There were no blue lights. She pulled over and it was a police officer. She understood that he was off-duty and wasn't sure if she should have filed the complaint with the commission. The officer was shaking and screaming at her and told her that she was stopped for waving. She realized the person she flipped off was the same guy. He asked for her driver's license and insurance card. He grabbed the insurance card and scrunched it up. She was scared and phoned for help because he was out of control. When she gave the officer the registration, she asked if he was going to scrunch it up, too. He said, "Fine, refusing to give it." She told him that she was not refusing to give it, just that he may not destroy it. He cited her for failing to yield and safety sticker violations. She went to the Waimea station to prove that she had a safety sticker. She thought that he had a fight with his ex-wife or something. They can't have a loose canon on the force. She doesn't remember what

the dispatcher told her when she called 911, but she was given the Kailua number. She called the number and said that Pacheco killed his wife, and this guy was out of control. They said they couldn't help her because it was a Waimea jurisdiction. They gave her the Waimea number. She called when she went home and talked to an officer and told them she was on her way to the police station. Officers Yee and Kealoha looked at her safety sticker, although the safety sticker was not mentioned in the report. (She gave the commission photos of the intersection.)

OFFICER CHARLES ADAMS came before the commission and gave a statement in response to Complaint HPC 02-64. He stated that Officers Yee and Kealoha and Lieutenant Medeiros prepared memos of their contact with Ms. Wrixon following the incident. It shows that Ms. Wrixon was the one who was out of control. He was on duty. He had pulled a second watch shift which was 6:45 to 3:30 in the afternoon. His shift continued from 3:30 p.m. to about 10:00. He was supposed to work overtime in the neighborhood watch walk in Kona. He was on his meal break at that time and had removed his blue dome light because he was traveling out of the district and was going to put the light back on when he returned back in the Kona District.

On the day of the traffic stop he was not speeding and couldn't have been because it was the end of a workday, and there was too much traffic. He was approaching the driveway access to the shopping center when Wrixon shot out of the shopping center, nearly causing a broadside collision with his vehicle and the vehicle on the other lane. Because of the hazardous violation, he made a U-turn when he came to an area with visibility of oncoming traffic and pursued this vehicle. He didn't have his blue light on, but popped his hazard lights and flashed his lights at her. She immediately pulled over. He informed her that she was pulled over for a hazardous conditions violation. He also mentioned that she gave him the bird. She started going off on him, yelling at him, swearing at him, using vulgar language. The comments that really caught his attention were something to the effect, "What are you going to do? Are you going to F'ing kill me and kill your F'ing wife, too? Aren't you cops F'ing wife killers?" She ranted and raved about that. She was referring to the issue with Detective Pacheco. He told her that she would be getting a citation for the failure to yield. She was very uncooperative. He asked for her license twice. On the second request, he also asked for her registration and insurance card. As soon as he started to read her registration, she reached out of her vehicle, ripped it back out of his hand and crumpled it up. He called dispatch and asked for a registered owner check. Everything was current with the exception of the safety check on the registration. He told her that the police computer check showed that her safety check was expired, so he needed see her verification through the paperwork just to verify that it was current. She yelled to him twice that it was on the bumper and said something to the effect that, "F- you, it's not my fault." So, he wrote out the citation based on what the dispatcher told him. For all he knew it could have been stolen. She refused to give him pertinent information to complete the citation. She continued to yell at him and used profanity. She refused to sign the citations for failure to yield and expired safety check. As he walked away, she said, "Here, here's the safety check." He told her to take it up with the courts. That was the end of his contact with her.

He also made contact with South Kohala Police requesting backup because of her irate demeanor. But he had cleared the traffic stop, and Wrixon had left the scene before the officers arrived.

STATEMENTS ON AGENDA ITEMS (Executive Session): None.

APPROVAL OF REGULAR SESSION MINUTES

Vice Chair Manago moved to approve the regular session minutes of November 8 and December 9, 13, and 20, 2002, as amended. The motion was seconded by Commissioner Bertsch and carried unanimously.

PERSONNEL ORDERS

Vice Chair Manago moved to accept Personnel Orders as listed. The motion was seconded by Commissioner Bertsch and carried unanimously.

COMMUNICATIONS

Vice Chair Manago moved to accepted communications as listed. The motion was seconded by Commissioner Bertsch and carried unanimously.

COMMITTEE REPORTS

Chair Hara announced the assignment of committees as noted below:

- **Budget and Finance** (Hara/Manago): Vice Chair Manago reported that he and Commissioners Hara and Hendricks reviewed the 2003-04 budget with the Mayor's staff and the Chief and his staff. The Chief will be submitting an updated budget.
- **Office Management and Staffing** (Muller/Mitchell): The committee had no report.
- **Rules and Policies** (Moe/Bertsch): The committee had no report.
- **Contractual Services** (Hendricks/de Silva): Chair Hara informed Commissioner de Silva that their main concern would be the investigator's contract, and it was recently renewed.
- **Public Relations** (Hara/Lambeth): The committee had no report.

CHIEF'S REPORT

- **Crime:** Assistant Chief Paiva summarized the written report.

Chair Hara commended the police department for Operation Meltdown, and inquired into whether they could share more information with the commission in public.

Assistant Chief Paiva stated that this is a continuation of the Chief's promise to the public and commitment of the Hawai'i County Police Department to pursue public complaints of individuals who deal drugs in our community. Further discussion would have to be in executive session.

- **Traffic:** Assistant Chief Paiva summarized the written report.

- **Personnel:** Deputy Chief Kubojiri summarized the written report. They have 16 sworn and 15 civilian vacancies. A new recruit class was started yesterday. As of January 16, Sergeant Ron Paul of the Juvenile Aid Section was promoted to Lieutenant of South Hilo Patrol, Sergeant Lawrence Balberde of Communications Dispatch was promoted to Lieutenant of Kona Patrol, and Sergeant Jay Enanoria of the Training Section was promoted to Lieutenant of South Hilo Patrol.

Chief Mahuna reported that SHOPO has agreed to allow 14 cellblock positions back on the road. The positions will be replaced with private security guards. The only holdup is writing up the RFP.

Chief Mahuna reported that after many years of requesting an 18-month probationary period for officers, the union has finally agreed. This will give them 9 additional months to evaluate an officer. They have found that some officers are not able to work in the field on their own, and this will allow them to weed them out. The union is in back of this, and they only need to work out minor details. Their working relationship with the union has improved.

Chief Mahuna reported that the position for administrative assistant chief has been posted, and he estimates the position will be filled by the middle of February.

Corporation Counsel Ashida informed that the commission could discuss the department's annual disciplinary report of personnel under this portion of the agenda, but because of the confidential nature, it should be done in executive session. Chair Hara asked that executive session discussion of discipline of personnel be held at the conclusion of the Chief's report.

- **Finance:** Deputy Chief Kubojiri summarized the written report that was submitted for the commission's review. The department completed its budget review with the Director of Finance and Budget Administrator.

Vice Chair Manago asked that on the financial report, they separate dispatch from administration in order for them to monitor the overtime.

- **Commendations:** Deputy Chief Kubojiri reported receiving 9 commendations since the last meeting.

Chief Mahuna reported that they are working on recognizing people before the entire command staff during the commanders' meetings.

EXECUTIVE SESSION

Chair Hara called for a motion to meet in executive session to discuss discipline of personnel. Commissioner Hendricks moved to meet in executive session to consider discipline and charges against officers or employees of the Hawai'i County Police Department where consideration of matters affecting privacy will be involved and a closed session is requested and to consult with Corporation Counsel on questions and issues pertaining to the commission's powers, duties, privileges, immunities, and liabilities pursuant to HRS 92-5 (2) and Hawai'i County Charter Section 13-20 (b). Vice Chair Manago seconded the motion, and it carried unanimously.

The commission convened into executive session at 11:10 a.m. and reconvened back into open session at 11:20 a.m.

UNFINISHED BUSINESS: None

NEW BUSINESS

- **Confirmation of Harry Kubojiri as Deputy Chief**

Vice Chair Manago moved to confirm Harry Kubojiri as Deputy Chief. Commissioner Bertsch seconded the motion.

Discussion: Commissioner Bertsch stated that he's known Harry since becoming a part of the commission and has found him to be very honest. He has a true sense of passion for the department and has demonstrated a real good sense of values. He also headed up the SRT program. Commissioner Bertsch commended the Chief for making the appointment.

The motion carried unanimously.

Corporation Counsel Ashida stated that the challenge to the appointment was not to the Deputy Chief's appointment, but the challenge was to a typographical error on the previous agenda when his appointment was confirmed.

- **Review and Update of Police Department's 2003-2004 Budget**

Chair Hara reported that he and Commissioners Manago and Hendricks attended the budget meeting. The budget that they received was the normal status quo budget. The supplemental budget is a request for additional funds.

Chief Mahuna stated that they would be receiving a new supplemental budget that has \$1.4 million for additional equipment and personnel.

- **Correspondence 03-03** from the Salary Commission requesting comments on its proposal to grant standard of conduct compensation to the Police Chief and Deputy Chief.

Chair Hara stated that the Salary Commission wants to give the standard of conduct pay to the Chief and Deputy only if the Chief's annual evaluation is above average. This is the gun and clothing allowance that every police officer receives, but under another name. His personal feeling is that they should not hang a carrot over the Chief and Deputy. This should be given to them along with all other officers.

Corporation Counsel Ashida stated that the Salary Commission has the sole authority to approve it, and they are seeking the commission's input. There is a question on whether the Salary Commission can even authorize this standard of conduct pay. The Police Commission should make a recommendation to the Salary Commission.

Commissioner Bertsch moved that standard of conduct compensation not be constrained to any performance and that it be merely a part of the compensation. Commissioner Hendricks seconded the motion, and it carried unanimously.

- **Evaluation of Chief of Police for 2003**

Chair Hara stated that each commissioner was given the Evaluation of Chief of Police form that they are to use to evaluate the Chief throughout the year. The evaluation schedule calls for the Chief to provide his goals to the commission in January.

Chief Mahuna gave a copy of his goals to the commission. He stated that his first goal would be to improve their public image. He believes that they have had such bad press because it appears that the department is a secretive organization. He plans to be more open with the public, community groups, and the press. He will have an open-door policy.

Chair Hara stated that the commissioners will be given a copy of the goals, and they can discuss it at the next meeting. He informed the commissioners that the purpose for the goals in January is so that they can take notes throughout the year. In December they will evaluate the Chief. They should be able to justify their evaluation in writing. In July he would like to do an oral evaluation, a mid-year update, in case there are things they want the Chief to work on.

Chief Mahuna stated that his open-door policy pertains to all commissioners and believes that communication is important for their initiatives.

Chair Hara reminded the commissioners that the Chair and Vice Chair are the public spokespersons for the commission, and that they should not go to the Chief or the media with a personal agenda.

- **2003 Meeting Schedule**

Chair Hara reviewed the schedule and pointed out that some meetings will not be on the third Friday of the month because of holidays and vacations. The State of Hawai'i Police Commissioners' Conference will be held on April 24-25 on Oahu and the Hawai'i State Law Enforcement Officials Association Conference will be held on September 17-19 on Maui. All commissioners are encouraged to attend these conferences.

Chair Hara requested of Chief Mahuna that they give training presentations for the commissioners on things such as use of handcuffs and use of radar. They would like to tour the new detention facility and dispatch at the next meeting in Hilo.

EXECUTIVE SESSION

Vice Chair Manago moved to meet in executive session to consider discipline and charges against officers or employees of the Hawai'i County Police Department where consideration of matters affecting privacy will be involved and a closed session is requested and to consult with Corporation Counsel on questions and issues pertaining to the commission's powers, duties, privileges, immunities, and liabilities pursuant to HRS 92-5 (2) and Hawai'i County Charter Section 13-20 (b). The motion was seconded by Commissioner Hendricks and carried unanimously.

The commission convened into executive session at 12:25 p.m. and reconvened back into regular session at 1:22 p.m.

ACTION ON EXECUTIVE SESSION MATTERS

- **Correspondence 70**, request for legal counsel by Officers Verl Nakama, Chad Taniyama, and David Araki in CV 02-00285 LEK. Vice Chair Manago moved that no action be taken. The motion was seconded by Commissioner Hendricks and carried unanimously. (The case had been previously settled.)
- **Correspondence 03-01**, request for legal counsel by Sergeant Leroy Victorino in H-14967/KN. Vice Chair Manago moved that the officer was not acting within the performance of his duty. The motion was seconded by Commissioner de Silva and carried unanimously.

Investigation and Deliberation of Complaints

Complaint HPC 02-64: Complainant alleged that an officer issued her citations but that she had the proper safety sticker and that the officer's speeding caused the incident.

Vice Chair Manago moved to accept the complaint for further investigation. The motion was seconded by Commissioner Bertsch and carried unanimously.

Complaint HPC 02-02: Complainant was stopped for a traffic violation. He alleged that an officer called him stupid in the presence of his children and then threw one of the citations at him. Akal Investigations investigated the complaint.

Vice Chair Manago moved to not sustain the charges of Standard of Conduct and Performance of Duty because there was insufficient evidence to prove or disprove the allegations, and that the complaint be referred to the Chief for counseling of the officer in dealing with the public. The motion was seconded by Commissioner Bertsch and carried unanimously.

Complaint HPC 02-05: Complainant alleged that an off-duty police officer harassed her while passing her in his car and that the dispatcher did not follow proper procedures in the course of her duties. Akal Investigations investigated the complaint.

The complaint of misconduct was made only against a dispatcher. However, the Commission also looked into the possible misconduct of three other employees of the department.

Commissioner Bertsch moved to not sustain the charges of Standard of Conduct, Performance of Duty, and Obedience to Laws, Written Orders, Policies against Accused #1. The motion was seconded by Commissioner de Silva and carried unanimously.

Vice Chair Manago moved to exonerate Accused #2 on the charges of Standard of Conduct, Performance of Duty, and Obedience to Laws, Written Orders, Policies and to refer this to the Chief for counseling of the employee when dealing with the public. The motion was seconded by Commissioner Hendricks and carried unanimously.

Commissioner Bertsch moved to exonerate Accused #3 on the charges of Standard of Conduct, Performance of Duty, and Obedience to Laws, Written Orders, Policies. The motion was seconded by Commissioner Hendricks and carried unanimously.

Commissioner Bertsch moved to exonerate Accused #4, the accused dispatcher, on the charges of Standard of Conduct, Performance of Duty, and Obedience to Laws, Written Orders, Policies. Commissioner Hendricks seconded the motion.

Discussion: Vice Chair Manago stated that procedures need to be checked, and that they need procedures on how to handle certain situations. The motion carried unanimously.

STATEMENTS FROM THE PUBLIC: None

ANNOUNCEMENTS

Chair Hara announced that the next monthly meeting is scheduled for February 21, 2003, at 10:00 a.m., at the Ohana Keauhou Beach Resort.

ADJOURNMENT

The meeting was adjourned at 1:32 p.m.

SUBMITTED:

APPROVED:

JOSIE PELAYO, SECRETARY

HORACE S. HARA, CHAIR