

**HAWAI'I COUNTY POLICE COMMISSION  
SPECIAL MEETING MINUTES  
REGULAR SESSION  
July 16, 2004  
MAYOR'S KONA OFFICE CONFERENCE**

**CALL TO ORDER**

Vice Chair Manago called the meeting to order at 9:05 a.m.

**ROLL CALL**

|          |                                |               |                                     |
|----------|--------------------------------|---------------|-------------------------------------|
| Present: | Dwight K. Manago, Vice Chair   | Also Present: | Harry Kubojiri, Deputy Chief        |
|          | John M. Bertsch, Commissioner  |               | Thomas Hickcox, Assistant Chief     |
|          | Paul M. de Silva, Commissioner |               | James Day, Major                    |
|          | James A. Frazier, Commissioner |               | Paul Ferreira, Captain              |
|          | Betsy Mitchell, Commissioner   |               | Lincoln Ashida, Corporation Counsel |
|          |                                |               | Josie Pelayo, Secretary             |

Absent: Horace S. Hara, Chair  
Pudding Lassiter, Commissioner  
Peter M. Muller, Commissioner

A quorum was present.

**APPROVAL OF AGENDA**

Commissioner Bertsch motioned to approve the agenda. Commissioner Frazier seconded the motion, and it carried unanimously.

**STATEMENTS ON AGENDA ITEMS** - Open to the public

Corporation Counsel Ashida informed that normally the commission allows testimony in open or closed session. However, Hawaii Revised Statutes requires that the commission must have six votes to go into executive session, and since they only have five members present, they will not be able to meet in executive session. If they wish to discuss a matter in executive session, they could defer it to the next meeting.

**TOM SCHIMDT, Complaint HPC 04-21:** Came before the commission and requested a 60-day extension because the court transcripts of his complaint were still not available.

Commissioner de Silva motioned to defer the complaint to the next meeting, and if it needs to be deferred further, they would have to make another motion. Commissioner Mitchell seconded the motion, and it carried unanimously.

Corporation Counsel Ashida stated that under the police collective bargaining agreement, if any discipline is meted out to an officer, it must be within one year from the date of incident.

Mr. Schmidt stated that he has an all-day trial scheduled for August 13, the day of the commission's next meeting, and asked for a deferral to September.

Commissioner Bertsch stated that Mr. Schmidt could get the documents to them as soon as possible before the next meeting, and then he would not need to be there. If he showed up with the documents at the meeting, they would not be able to review them.

Commissioner de Silva stated that the commission has decided to defer his complaint to the next meeting in August.

Vice Chair Manago suggested that if he needs more time, that he send a letter to the commission requesting another deferral to September.

**CHERYL TURNER:** While she was shopping at KTA, a local guy falsely accused her boyfriend of stealing a sticker, and he tried to attack her boyfriend. The guy called the police. The police pointed the gun at her boyfriend, telling him to pull over in the intersection. The cops arrested her, handcuffed her, and banged her head on the ground. They manhandled her boyfriend. She filed a complaint with the Police Commission.

Ms. Pelayo stated that the complaint was not signed and not notarized. She returned it to Ms. Turner with a letter stating that it had to be signed and notarized. Ms. Turner stated that they have the complaint and will sign and notarize it.

**WILLIAM DOMINGO:** Stated that he would be speaking about the same complaint. Vice Manago stated they would have to file a formal complaint. for the commission to take action.

**ALAN PRATT, Correspondence 04-23:** Stated that the figures in the report (The Price of Visibility) were based on figures from the Hawaii County Police Department and the Fresno Sheriff's Department. The report talks about a phase-in over five years. The Legislative Auditor made a report recommending phasing in some marked cars and some unmarked cars. They would like to see a complete following of the Legislative Auditor's report by the police department.

He has a complaint about the police department. They have offered the services of his board of directors who have experience in designing police car equipment, running a fleet, ordering the cars, and training people in the use of these cars, but the police department has not accept their services.

None of West Hawaii Crime Stoppers' figures are amplified or blown out of proportion like a charge of \$10 a night to take a vehicle home. They should sit down as a group and try to get something like this straightened out. They have had hundreds of letters and communications saying that the police department should have marked cars.

Commissioner Bertsch asked if they could compile the letters for the commission's review.

Mr. Pratt stated that the County Council would be passing a resolution on this matter, and he would like the commission's support.

Commissioner Bertsch stated that the administrative function of the Police Commission is that they can make recommendations to the Chief. The best thing they can do is to collectively decide if they would send a letter to the Chief or maybe attach the hundreds of letters and make a recommendation.

**SAMUEL DELO SANTOS, Complaint HPC 04-24:** Stated that the officers used excessive force while he was handcuffed and on his knees. He wants the officers who did that to him to be reprimanded, change, attend anger management classes, and adhere to their code. His report is what happened. He was on his knees, handcuffed, and not resisting when the police officer came behind him and jumped on his back. They sat on his back with their knees. The officer said he was going to hit him with his baton, and he started yelling. One officer struck him with a baton, and the other choked him. Another person came up from behind him. It happened at the intersection of Manono and Kekuanaoa, and all the neighbors were witnesses. He believes that he has a clear memory, and his report is exactly how it happened. He has been sober for eight years. No drugs for ten years. He drinks wine occasionally and had two bottles of wine that day. He did run across the street from where he was and took a swing at the woman. The second time he hit her on the head. In the past, that person assaulted him. He was acting the way he did because he found out that that person was not a she.

### **APPROVAL OF MINUTES**

June 18, 2004, regular and executive sessions. Commissioner Mitchell motioned to approve the minutes. Commissioner Frazier seconded the motion. Discussion: Commissioner Bertsch stated that the minutes needed to reflect that they are special minutes. Commissioner Frazier commended Ms. Pelayo for taking verbatim minutes as requested. The motion carried unanimously.

### **PERSONNEL ORDERS**

Commissioner Frazier motioned to accept Personnel Orders 2004-064 to 2004-078. Commissioner Mitchell seconded the motion, and it carried unanimously.

### **COMMUNICATIONS**

Commissioner Mitchell motioned to accept the communications as listed. Commissioner de Silva seconded the motion.

Discussion: Commissioner Bertsch stated that he would like to discuss Correspondence 04-42 at the next meeting when they have a full panel and when they are able to go into executive session.

Vice Chair Manago stated that the commissioners needed to notify Ms. Pelayo if they plan to attend the HSLEOA Conference (Correspondence 04-38). Ms. Pelayo asked that they give her topics for discussion with commissioners from the other counties.

## **COMMITTEE REPORT**

- **Budget and Finance (Hara/Manago):** Vice Chair Manago stated that they needed to look at the 2005 budget. The commission can make recommendations to the Chief, the Chief makes recommendations to the Mayor, the Mayor reviews and makes adjustments, and then it goes to the County Council for reviews, adjustments, and approval.

Commissioner de Silva stated that his reading of the Charter is that they have to review the budget and make recommendations to the Mayor. There is nothing that says anything about the Council, so he wonders if going before the County Council puts them in a strange position.

Vice Chair Manago stated that in the past the County Council requested that they make a presentation.

Commissioner de Silva stated that he doesn't think that they, as an oversight board, should be a lobbyist for the police department.

Corporation Counsel Ashida stated that the Police department reports directly to the Managing Director, not the Mayor. If a commissioner goes to the council and makes recommendations, which may not be consistent with the Mayor's budget, package that may create conflict. Before going to the council, recommendations should be reviewed by the Managing Director and the Mayor's office.

Commissioner de Silva stated that they are there to check on the department and make recommendations to the Managing Director, that's all. He sees it as a conflict to testify before the council in favor of the budget offered by the department. They don't have to decide on this, just think about it.

Vice Chair Manago stated that the commission has been pushing accreditation, and the money would have to come from the County Council.

Commissioner Bertsch stated that according to the Charter, they do oversight of the budget. They are to affirm the budget, but they could also go against the submitted budget as well. If they were taken out of the process, they would not be afforded the ability to contradict what the community wants over what the department wants. He doesn't want to lose that ability.

Commissioner stated that with accreditation, taking that position could be very positive in that it brings it to the forefront and makes people more aware of it. He sees a real value with lobbying in this case.

Commissioner Bertsch stated that they should not be placed in a position of lobby. They should just give a report based on information they received and the collective feelings of the commission. When Chair Hara and Vice Chair Manago went before the County Council, their report was based strictly on facts and where they need to be fiscally with the

Police department. If that were lobbying, then he would have to agree. But, the reality of it is they are making a statement to government as a citizen or as a collective citizen group that basically states that the department needs more money, and unfortunately that's just the way our system works.

Corporation Counsel Ashida stated that the Charter states that the commission reviews the annual budget prepared by the Chief of Police and may make recommendations to the Mayor and Managing Director. There's nothing in there about the council. That function is limited to making recommendations. The commission does not have any trump power over the Chief. He decides what's best and appropriate for the department. The commission's recourse, if they are aggrieved with the Chief's decision, is to remove him for cause, collectively. That's where the line is.

Commissioner Bertsch stated that there are policies and procedures that they all must follow, but they also need to do their function to the best of our ability and sometimes that means going in front of the County Council and voicing their opinion whether solicited to or not. In the past, the Police Commission has gone in front of the County Council not as an individual group, but in conjunction with the Police department in submitting the budget. It's the Police Commission providing an affirmation of the budget that is being submitted.

Commissioner de Silva suggested that they just think about it, and maybe in the future someone might ask Corporation Counsel Ashida for his opinion on whether or not it's proper for them to testify before the County Council.

Corporation Counsel Ashida stated that the Fire Commission has had active discussions with the administration and the County Council. He doesn't know if they were effective, but they did get funding for additional positions and a new station.

- **Office Management and Staffing (Muller/Mitchell):** The committee had no report.
- **Rules and Policies (Bertsch/de Silva):** The committee had no report.
- **Contractual Services (Frazier):** Commissioner Frazier reported that they received a report from the investigator and would like comments on the format. Vice Chair Manago expressed concern over the timeliness of the reports. Commissioner Frazier stated that this has been addressed with the investigator who now has nine complaints for investigation.
- **Public Relations (Hara/Lassiter):** The committee had no report.

### **CHIEF'S REPORT**

Including:

- **Crime:** Major Day summarized the written report. He reported on difficulties in staffing the SANE Program, Sexual Assault Nursing Examiners, due to lack of funding, although they are working on a couple of grants.
- **Traffic:** Major Day summarized the written report.
- **Finance:** No discussion on the written report.
- **Personnel:** Deputy Chief Kubojiri reported that seven officers in National Guard will be activated.

Captain Ferreira reported having 57 sworn vacancies. They actually have 40 vacant position numbers in the department because the 17 officers in recruit training were not factored in.

Captain Ferreira stated that they do participate in job fairs and school functions and career day. They constantly provide the Chief's office with vacancy and staffing projections. The Department of Civil Service handles recruitment announcements, written examinations, and the physical agility tests. He explained the recruitment process. Deficiency has been in the applicants' ability to pass the written exam. In the last recruitment, they started with 60 candidates and ended up with 15. They would like to see more in the area of 25.

The Chief's office makes a determination on filling vacant positions. It was decided that they would fill the patrol positions first before the senior rank, because patrol has been short handed for a very long time. Some CPO positions have also not been filled because of the need to staff patrol first.

- **Commendations:** Deputy Chief Kubojiri reported receiving 6 commendations since the last meeting.
- **Other Departmental Activities:** Deputy Chef Kubojiri further reported on the staffing situation. They have lost officers to TSA who has been recruiting seasoned officers. They are looking into the school cadet program. His understanding is that SHOPO is looking into lowering their pay scale to cover those areas that they could use for cadets. They would still have to go through the recruitment process. They have had recruitment announcements in statewide publications and their website. They also participate in job fairs.

Regarding officers working three days a week for twelve hour shifts, that is done in Honolulu. The officers love it and many are able to work a second job. However, as far as service to the community, they have had a lot of complaints from citizens who are waiting longer for follow-ups.

Robert Hickcox was promoted to captain of Kona Patrol and Captain John Dawrs was transferred to CID in Kona. The officers for the ice task force have been selected. The

lieutenant interviews have been completed, and promotions will be in about one to one and a half months. They decided to hold off on the upper promotions because the bottom, patrol has been short and really hurt. In the next go around, they will be looking at filling administrative positions. The SROs are currently in training. They received two new canines that have been certified.

Recess was called at 11:05 a.m. The meeting reconvened at 11:18 a.m.

- **Commanders' meeting minutes:** No discussion.

### **UNFINISHED BUSINESS**

- **Reconsideration of Complaint HPC 04-18.** Complainant was involved in a traffic stop. He alleged that an officer had a racist attitude, lied, and falsified charges. He requested a reconsideration of the commission's decision to exonerate the officer. Vice Chair Manago stated that the complainant has been given another opportunity to appear before the commission and again has not appeared. Commissioner Bertsch motioned to not reconsider the complaint. Commissioner de Silva seconded the motion, and it carried unanimously.
- **Recommendations for Improvement to the Disciplinary System of the Hawai'i County Police department.** Commissioner de Silva motioned to defer this to the next meeting. Commissioner Bertsch seconded the motion, and it carried unanimously.
- **Prohibitive practices complaint filed by SHOPO.** SHOPO believes that it is ill advised and premature for the police commission to adopt new rules and procedures. Corporation Counsel Ashida stated that the commission does not need to take formal action. Commissioner de Silva stated that this matter has not been concluded, so they should defer it. Commissioner de Silva motioned to defer this matter to the next meeting. Commissioner Mitchell seconded the motion, and it carried unanimously.
- **Inquiry into the alleged attendance of two Hawai'i County Police Commissioners attending a proceeding of the Administrative Review Board.** Commissioner de Silva motioned to defer this matter to the next meeting until the matter with the HLRB is concluded. Commissioner Frazier seconded the motion, and it carried unanimously.
- **Review of draft of revised rules.** Commissioner de Silva motioned to defer this to the next meeting in order to have more members present. Commissioner Frazier seconded the motion.

Discussion: Commissioner Bertsch stated that after the last meeting, he took a stronger look at the recommendations. He noticed that the County Charter has parallel ethical codes of conduct that apply to all commissions and all officers. He encouraged the commissioners to look at the Charter. He wondered if they weren't reinventing the wheel. There are line items that are identical to the Charter, and these should be crossed off.

Vice Chair Manago stated that they could discuss this at the next meeting. The motion carried unanimously.

## **NEW BUSINESS**

### **Investigation and Deliberation of Complaints**

**HPC 04-21:** Complainant alleged that an officer committed perjury. Complaint was deferred to Kona meeting in order for complainant to obtain additional court transcripts. Action was taken earlier in the meeting.

**HPC 04-24:** Complainant alleged that during his arrest, two officers used excessive physical force. The complainant gave a statement earlier in the meeting. Commissioner de Silva motioned to refer the complaint for investigation. Commissioner Mitchell seconded the motion, and it carried unanimously.

- **Status Report of Complaints Referred to Chief Mahuna:** No discussion.

### **PRESENTATION BY COUNCIL MEMBER LENINGRAD ELARIONOFF ON CHARACTER**

**BUILDING.** Council Member Leningrad Elarionoff gave a video presentation on character building called "Character First," in hopes that the department and/or the commission would consider sending someone to this seminar in Oklahoma.

**STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS:** None.

## **ANNOUNCEMENTS**

- Collection of files and documents: Collected by Ms. Pelayo.
- Vice Chair Manago announced that the next monthly meeting is scheduled for August 13, 2004, at 9:00 a.m., at the Waimea Civic Center, 67-5189 Kamamalu St., Kamuela, next to the police station.

## **ADJOURNMENT**

The meeting was adjourned at 12:14 p.m.

SUBMITTED:

APPROVED:

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JOSIE PELAYO, SECRETARY

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HORACE S. HARA, CHAIR