

**SPECIAL MEETING  
HAWAII COUNTY POLICE COMMISSION  
REGULAR SESSION MINUTES  
DECEMBER 8, 2003  
HILO HAWAIIAN HOTEL**

**CALL TO ORDER**

Chair Horace Hara called the meeting to order at 9:08 a.m.

**ROLL CALL**

Present:	Horace S. Hara, Chair	Also Present:	Lawrence Mahuna, Police Chief
	Dwight K. Manago, Vice Chair		Harry Kubojiri, Deputy Chief
	John M. Bertsch, Commissioner		Henry Tavares, Captain
	Paul M. de Silva, Commissioner		Lincoln S. Ashida, Corporation Counsel
	James A. Frazier, Commissioner		Josie Pelayo, Secretary
	Phoebe M. Lambeth, Commissioner		Lynn Miyamoto, Chief's Secretary
	Betsy Mitchell, Commissioner (arrived at 9:30 a.m.)		
	Walter Moe, Commissioner		
	Pete Muller, Commissioner		

A quorum was present.

**APPROVAL OF AGENDA**

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

**PUBLIC STATEMENTS ON AGENDA ITEMS** - None

**NEW BUSINESS**

Develop recommendations and procedures for the investigation of complaints of misconduct of police personnel and recommendations for improvements to the disciplinary system of the Police Department.

The following are comments, ideas, and recommendations brought up for consideration:

HARA: They will not set policy or procedures today. Rather, they will just have discussion on recommendations and procedures for the investigation of complaints. At a future meeting, when everyone has had time to review and think about the recommendations, they will look into implementing policy. Chief Mahuna has agreed to provide the commission with reports, after procedures are set.

MAHUNA: Would like the commission to formally request specific reports.

BERTSCH: They are interested in the officer's past history and the current issue.

DE SILVA: There are two reasons for reviewing the IA reports: 1) to see whether the officer committed misconduct and 2) to ensure that IA is doing their job properly, thoroughly, and without bias. They would like to know if IA contacted and interviewed all witnesses and whether they were influenced.

BERTSCH drafted a flowchart with the following suggestions:

- Complainants can file a complaint with the Police Commission or the Police Department or both.
- Complaints filed with the Police Commission can be reviewed in either open or executive session. During executive session, someone with law enforcement experience could explain the issues. This non-voting person could be someone from IA or the chief's representative. The complainant or the officer may have to consent to this person's presence.
- The commission would vote on whether or not to investigate. If they choose to investigate, Internal Affairs will do it. During the investigation, they could review prior cases and discipline of the officer.
- The commission would review IA's investigation at a subsequent meeting. The commission's investigator would be present only on request. If the commission feels they need more clarity, they could refer the complaint to its private investigator for further investigation.
- If the case were referred to the ARB, a non-voting commissioner would be present during the hearing.

HARA: Once the complaint is sent to the chief and he makes a decision, his decision should stand. It should stop there.

BERTSCH: All Police Department complaints should also go to the Police Commission.

KUBOJIRI: Questioned whether this would include minor complaints such as an officer not returning calls.

MANAGO: Would like to hear about complaints made directly to the Police Department.

MAHUNA: If a citizen only wants a supervisor to speak to an officer, they cannot force that person to make a formal complaint. When a commander makes a decision on discipline or if he makes a mistake on the discipline, he cannot go back on his decision. It would be like a double jeopardy situation. Many of their policies and procedures are dictated by the bargaining unit agreement.

MOE: Would like someone, such as a retired judge, to tell them if a law was violated.

BERTSCH: Pointed out that was his reason for suggesting that IA be present.

All agreed that the commission should be informed of everything that goes to IA.

BERTSCH: They are not looking at taking away the commander's discretion.

KUBOJIRI: The district commander has the ability to do an internal investigation, not necessarily investigated by IA, and it can go to the ARB.

DE SILVA: Having someone from the Police Department, but not IA, would help to interpret procedures.

BERTSCH: Disagreed. Having IA present would help to prescreen and streamline the investigation should they refer it to IA

ASHIDA: OIP has stated that any person that could help in their decision could be present.

DE SILVA: It should be an appropriate police official.

TAVARES: If a police officer is present, the officer would be compelled to give a statement and they would have to be given Garrity and union representation.

BERTSCH: Voluntarily and legally compelled are two different issues. The police can now voluntarily give his comments in either open or closed session, and the commission can in either open or closed session have someone sit in and listen to it.

MANAGO: Both the citizen and the officers should be given the opportunity to have the police personnel present or not.

HARA: Doesn't want the Chief present because he makes the final decision

DE SILVA: The police personnel would just be available to answer a particular question, such as about a General Order or procedure. Doesn't like the idea of having a police officer there when the complainant gives a statement; he might be intimidated. This person would not make judgment or listen to any evidence.

BERTSCH: They have that now. A number of times, during executive session, they have requested that the Chief or Deputy Chief come in to clarify issues.

DE SILVA: They are trying to develop a system that they can eventually present to the chief.

MANAGO: If they were there during discussions, it would help to facilitate faster.

MAHUNA: Sees no problem with someone interpreting the G.O.s, but to have police personnel there all the time would give the perception of the public not being best served.

BERTSCH: Doesn't want perception to get in the way of good, honest procedure. The end results would far outweigh any ill perception and the advantages of having someone with knowledge outweighs the disadvantages. That non-voting person would have no persuasion power over the nine commissioners who make the decision. Most people who complain want to complain to the right people. The way they handle it now is ineffective.

LAMBETH: Doesn't have a problem with IA being present because she doesn't think IA always gets the same story that they get.

HARA: The three options to think about are that IA or a police representative would 1) sit in the entire session, 2) be available when called, or 3) they would get the consent of the officer or complainant.

BERTSCH: They should explain and educate the public and the officer about the process.

BERTSCH: They are to vote either "no" or to investigate. The investigation would be through IA

DE SILVA: They should be able to order further investigation or call additional witnesses if they are not satisfied with the IA investigation.

BERTSCH: The commission's investigator would do further investigation.

KUBOJIRI: Asked to clarify some things that were stated and prior meetings. They look at every complaint that is sent to them. It is part of the ARB file. IA does not reinvestigate what the commission's investigator did. They only investigate missing information, and fill in the gaps.

TAVARES: They review the commission's investigative report. That report becomes part of the packet that is sent to the ARB. They will review it, and they may contact the complainant for additional information. They will serve the officer with charges, and give him the date to respond with a statement. All of this is sent to the ARB.

FRAZIER: That's what's driven a lot of their frustration. They were on the premise that there were multiple investigations.

MAHUNA: If you have a police officer present, he could be a witness in a criminal trial against that officer. Garrity is only for administrative inquiry. It guarantees that whatever the officer says cannot be used in a criminal trial. The union contract does not say that the Police Commission can give Garrity. The collective bargaining agreement states that the criminal and administrative investigations must be kept separate. Everyone has the right not to say anything. If the Chief orders an officer to give a statement, he gives him Garrity. He doesn't want to circumvent Garrity by having an officer present.

DE SILVA: There may be circumstances where the chief or one of his officials sees a public complaint that has come there, and he thinks it demands immediate attention, he could send it to IA anytime he wants.

MAHUNA: If a complainant makes complaint with both the Police Department and the Police Commission, they will investigate.

HARA: In the Police Commission's process, there is a 60-day deadline. If it is filed after the deadline, they refer it to the Police Department.

DE SILVA: Questioned why they had a 60-day rule if the complainant could go to the Police Department to file the complaint. They should inform the public that they could file with the Police Department after 60 days.

LAMBETH: The 60-day rule came about because a lot of times people forget the facts.

HARA: Maybe the Police Commission should have an informational brochure such as one that IA has.

FRAZIER: Commissioners need to read the report prior to the discussion.

DE SILVA: It is vitally important to have IA come before them and give an oral report in addition to the written report. This would also allow them to ask questions.

FRAZIER: They should not regurgitate the whole written report.

BERTSCH: IA should come up with all the pertinent information that they feel necessary, that they have asked for, including the personnel report, any investigation that IA has performed, any past history that they may have or the department has regarding this officer or any incidents that are like that. He basically shows up with everything. He presents that to us. He presents the whole investigation regarding that specific complaint.

HARA: Does not want the written report read word for word. Only wants highlights.

DE SILVA: When they submit an investigative report to them, it should be accompanied by all other investigative report involving the same individual. Does not like the idea of routinely looking at a personnel file. There are too many risks there. They should look at the facts of prior cases. They should be able to look at prior reports even if there was an exoneration because the facts of a particular case are relevant.

HARA: They are to consider whether they want the following IA reports:

- written report
- oral report
- prior cases

HARA: If they feel that they need additional investigation, they will give the investigator targets to pursue.

DE SILVA: Their investigator should be present during executive sessions upon their request.

DE SILVA: When they make their decision, they should have a statement of findings of fact. This would give the ARB an indication for their findings.

DE SILVA: Will recommend to Chief that they have a non-participatory observer in the ARB hearing.

ASHIDA: His office can prepare the findings of fact.

BERTSCH: The Chief should report on the outcome of the cases with an explanation. They don't need to vote on the chief's decision.

DE SILVA: Recommended changes to the General Orders.

- G.O. 303 should state what ARB is to consider in commission's investigation and findings.
- If ARB disagrees with commission, should state reason why, and a board member shall appear at next commission meeting to explain the deviation. The commission can comment on the findings.
- Clarify burden of proof as preponderance of the evidence.
- Require a majority rather than unanimity.

- Allow complainants to appear as witnesses before the board.

CHIEF: Changes to GO, they would have to meet and confer with the union.

MOE: They should address what is a frivolous complaint.

HARA: If a complainant takes the time to file the complaint, they think it's serious.

DE SILVA: Frivolous means completely without merit.

HARA: Announced that after lunch they will go into executive session to go over the Chief's annual evaluation which will be finalized at the meeting on December 19.

Lunch recess was called at 11:55 a.m.

The meeting reconvened at 1:00 p.m.

#### **EXECUTIVE SESSION**

Commissioner Lambeth moved to meet in executive session to conduct a preliminary evaluation of Chief of Police Lawrence Mahuna in preparation for his annual evaluation on December 19, 2003, pursuant to HRS 92-5 (a) (2) and Hawai'i County Charter Section 13-20 (b). Commissioner Frazier seconded the motion, and it carried unanimously.

The commission convened into executive session at 1:05 p.m.

The commission reconvened into open session at 2:10 p.m.

#### **PUBLIC STATEMENTS ON AGENDA ITEMS** - None

#### **ANNOUNCEMENTS**

Chair Hara announced that the next monthly meeting is scheduled for December 19, 2003, at 10:00 a.m., in the Hawai'i County Council Room, Hilo.

#### **ADJOURNMENT**

The meeting adjourned at 2:15 p.m.

SUBMITTED:

APPROVED:

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JOSIE PELAYO, SECRETARY

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HORACE S. HARA, CHAIR