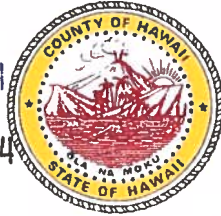


Harry Kim
Mayor

COUNTY CLERK
COUNTY OF HAWAII

2018 JAN -4 PM 2: 54



Julie M. Tulang
Chair

David K. S. Nahuina
Vice-Chair

County of Hawai'i Merit Appeals Board

Aupuni Center • 101 Pauahi Street, Suite 2 • Hilo, Hawai'i 96720
(808) 961-8361 • Fax (808) 961-8617

Agenda

January 10, 2018 (Wednesday)
9:00 a.m.
Council Chambers
Hawai'i County Building
25 Aupuni Street, Room 1401
Hilo, HI 96720

- 1) **Call to Order**
- 2) **Addendum to Agenda** (requires four votes and must comply with Hawai'i Revised Statutes § 92-7(d))
- 3) **Statements from the Public**
- 4) **Approval of Minutes:** None
- 5) **Communication(s)**

Communication No. 17-09, received on December 1, 2017, appealing a recruitment and examination action (minimum qualification requirement process) by the Department of Human Resources.

Board Action Required: Setting a hearing date.

- 6) **New Business (for discussion and appropriate action)**

Discussion regarding a request by Margery S. Bronster, Esquire, for appellate mediation (individuals of the Hawai'i County Fire Department concerning an employment action re compensation and benefits); Civil No. 16-1-0106.

William Chillingworth, Luahiwa Namahoe, Mitch Tam, Members

Hawai'i County is an Equal Opportunity Provider and Employer.

7) Unfinished Business (for discussion and appropriate action)

Hearing: 9:00 a.m.

A) **Communication No. 17-01**, received on January 6, 2017, appealing an employment action (denial of the Appellant's Step 2 Decision concerning alleged policy violations) by the Office of the County Clerk; *and*

Communication No. 17-01.01, received on April 25, 2017, regarding Respondent's (County) Motion to Dismiss Appeal Based Upon the Merit Appeals Board's Lack of Jurisdiction; Memorandum in Support of Motion; Declaration of an Individual (Human Resources Technician II, Office of the County Clerk); Exhibits "A"- "D"; Certificate of Service; *and*

(Note: The aforementioned Communications was listed on the Merit Appeals Board agenda dated May 10, 2017.)

Communication No. 17-01.02, received on May 12, 2017, regarding County's request for a continuance of the hearing scheduled for June 21, 2017; *and*

Communication No. 17-01.03, received on May 22, 2017, regarding County's request for a continuance of the hearing scheduled for June 21, 2017; *and*

Communication No. 17-01.04, received on May 25, 2017, regarding Appellant's Memorandum in Opposition to the County's Motion to Dismiss; *and*

Communication No. 17-01.05, received on June 2, 2017, regarding County's (Respondent's) Reply Memorandum to Appellant's Memorandum in Opposition to County's (Respondent's) Motion to Dismiss Appeal Based Upon the Merit Appeals Board's Lack of Jurisdiction Filed April 25, 2017, Filed on May 25, 2017; Declaration of an Individual; Exhibit "E"; Certificate of Service; *and*

(Note: The aforementioned Communications was listed on the Merit Appeals Board agenda dated June 21, 2017.)

Communication No. 17-01.06, received on August 30, 2017, regarding County's Witness List; Certificate of Service; *and*

Communication No. 17-01.07, received on August 30, 2017, regarding the County's Exhibit List; Exhibits "1" - "7"; Certificate of Service; *and*

(Communication No. 17-01.08 continues on the next page.)

Communication No. 17-01.08, received on September 18, 2017, from Appellant, submitting a copy of a letter to the County Clerk concerning Appellant's rebuttal to alleged policy violations; *and*

Communication No. 17-01.09, received on September 21, 2017, from Appellant requesting a continuance of the hearing scheduled for September 27, 2017. (Note: At the Board's meeting held on September 27, 2017, the Board granted the Appellant's request for a continuance.); *and*

Communication No. 17-01.10, received on September 22, 2017, from County stating they have no objection to the Appellant's request for a continuance; *and*

(Note: The aforementioned Communications was listed on the Merit Appeals Board agenda dated September 27, 2017; Comm. No. 17-01.10 was presented/circulated at the meeting.)

Communication No. 17-01.11, received on October 9, 2017, from Appellant requesting a continuance of the hearing scheduled for November 8, 2017; *and*

Communication No. 17-01.12, received on October 9, 2017, from Appellant in opposition to County's Motion to Dismiss (Appeal Based Upon the Merit Appeals Board's Lack of Jurisdiction) and requesting a continuance of the hearing scheduled for November 8, 2017; *and*

Communication No. 17-01.13, received on October 25, 2017, from County stating they have no objection to the Appellant's request for a continuance; *and*

Communication No. 17-01.14, dated October 27, 2017, from Merit Appeals Board Chair Julie M. Tulang, granting Appellant's request for a continuance.

(Note: The aforementioned Communications was listed on the Merit Appeals Board agenda dated November 8, 2017.)

Board Action Required: *Address the County's motion to dismiss for lack of jurisdiction. (If the County's motion is granted, the Board will consider the appeal closed and no further action will be taken. However, if the County's motion is denied, the Board will proceed with the scheduling of a new hearing date to consider, discuss, or deliberate the merits of this appeal.)*

Hearing: 9:15 a.m.

B) Communication No. 17-07, received on September 1, 2017, appealing a reclassification of a particular position(s) actions (concerning an audit of positions at the Mass Transit Agency and compensation for work performed) by the Department of Human Resources; *and*

Communication No. 17-07.01, received on September 6, 2017, regarding a copy of a letter to the Department of Human Resources Director from the Appellant, concerning a timeline of events regarding Appellant's requests and the filing of the appeal with the Merit Appeals Board; *and*

(Note: The aforementioned Communications was listed on the Merit Appeals Board agenda dated September 27, 2017.)

Communication No. 17-07.02, received on October 2, 2017, regarding Appellant's Subpoena re. Production of Documents to the Mass Transit Administrator (Note: The subpoena was approved on October 10, 2017 by Merit Appeals Board Chair Julie M. Tulang); *and*

Communication No. 17-07.03, received on October 3, 2017, regarding Appellant's request to reset her hearing date currently scheduled for January 10, 2018, to an earlier date in late 2017; *and*

Communication No. 17-07.04, dated October 27, 2017, regarding a copy of letter to the Appellant from the Merit Appeals Board, denying the Appellant's request to reset the hearing date scheduled for January 10, 2018, to an earlier date in late 2017; *and*

Communication No. 17-07.05, received on October 12, 2017, regarding County of Hawai'i Mass Transit Agency's Motion to Dismiss for Lack of Jurisdiction; Memorandum in Support of Motion; Declaration of Mass Transit Administrator; Certificate of Service; and County's request that this matter be scheduled for the November 8, 2017 Merit Appeals Board meeting; *and*

Communication No. 17-07.06, dated October 27, 2017, regarding a copy of a letter to both parties from the Merit Appeals Board, denying the County's request that this matter be scheduled for the November 8, 2017 Merit Appeals Board meeting; *and*

Communication No. 17-07.07, received on October 16, 2017, regarding Appellant's Objection to the County of Hawai'i Mass Transit Agency's Motion to Dismiss for Lack of Jurisdiction Dated 10/12/17; Certificate of Service; *and*

(Communication No. 17-07.08 continues on the next page.)

Communication No. 17-07.08, received on November 30, 2017, regarding County of Hawai'i Mass Transit Agency's Reply to Appellant's Objection to County's Motion to Dismiss for Lack of Jurisdiction Dated October 16, 2017; Certificate of Service; *and*

Communication No. 17-07.09, received on October 16, 2017, regarding Appellant's Ex Parte Order Dismissing County of Hawai'i Mass Transit Agency's Motion to Dismiss for Lack of Jurisdiction Dated 10/12/17; *and*

Communication No. 17-07.10, received on October 17, 2017, from Appellant transmitting an executed copy of the "Return and Acknowledgment of Service" form to the Mass Transit Administrator regarding the "Subpoena re Production of Documents"; *and*

Communication No. 17-07.11, received on October 19, 2017, regarding County of Hawai'i Mass Transit Agency's Motion to Quash Subpoena; Declaration of Counsel; Certificate of Service; *and*

Communication No. 17-07.12, received on October 23, 2017, regarding Appellant's Objection to County of Hawai'i Mass Transit Agency's Motion to Quash Subpoena Dated 10/19/17; Certificate of Service; *and*

Communication No. 17-07.13, received on October 23, 2017, regarding Appellant's Ex Parte Order Dismissing County of Hawai'i Mass Transit Agency's Motion to Quash Subpoena Dated 10/19/17; *and*

Communication No. 17-07.14, received on October 31, 2017, from Appellant requesting the Merit Appeals Board's enforcement of the subpoena regarding the production of documents served on the Mass Transit Administrator on October 16, 2017; *and*

Communication No. 17-07.15, received on October 26, 2017, regarding Appellant's Subpoena re Production of Documents to the Office of Information Practices (Note: The subpoena was approved on October 31, 2017 by Merit Appeals Board Chair Julie M. Tulang); *and*

Communication No. 17-07.16, received on November 16, 2017, from Appellant transmitting an executed copy of the "Return and Acknowledgment of Service" form to the Office of Information Practices, regarding the "Subpoena re Production of Documents"; *and*

Communication No. 17-07.17, received on November 16, 2017, regarding Office of Information Practices Motion to Quash Subpoena Served November 1, 2017; Memorandum in Support of Motion; Declaration of Donald H. Amano; Exhibits "A" to "H"; Certificate of Service; *and*

(Communication No. 17-07.18 continues on the next page.)

Communication No. 17-07.18, received on November 20, 2017, regarding Appellant's Objection to Office of Information Practices, State of Hawai'i Motion to Quash Subpoena Served November 1, 2017 Dated November 16, 2017; Certificate of Service; *and*

Communication No. 17-07.19, received on November 20, 2017, regarding Appellant's Ex Parte Order Dismissing Office of Information Practices, State of Hawai'i Motion to Quash Subpoena Served November 1, 2017 Dated November 16, 2017; *and*

Communication No. 17-07.20, received on December 4, 2017, from Appellant requesting her hearing scheduled on January 10, 2018 be reset to March 2018 to allow the Acting Director of Human Resources ample time to complete an audit of positions at the Mass Transit Agency and the request for compensation; *and*

Communication No. 17-07.21, dated December 19, 2017, regarding a copy of an e-mail from the Merit Appeals Board Secretary to the Appellant, stating the opposing party (County) objects to the request to reset the hearing from January 10, 2018 to March 2018; *and*

Communication No. 17-07.22, received on December 4, 2017, regarding a copy of a letter from the Appellant to the Acting Director of Human Resources requesting an update of Appellant's request for an audit of positions at the Mass Transit Agency and the request for compensation; *and*

Communication 17-07.23, received on December 20, 2017, regarding Appellant's Motion to Continue Hearing; Memorandum in Support of Motion; Certificate of Service; *and*

Communication No. 17-07.24, received on December 22, 2017, regarding County's Witness List; Certificate of Service; *and*

Communication No. 17-07.25, received on December 27, 2017, regarding Appellant's Exhibit List; Certificate of Service; *and*

Communication No. 17-07.26, received on December 27, 2017, regarding Appellant's Statement; Exhibits "1" - "18"; Certificate of Service.

Board Action Required: Address the County's motion to dismiss for lack of jurisdiction. (If the County's motion is granted, the Board will consider the appeal closed and no further action will be taken. However, if the County's motion is denied, the Board will proceed with other motions/requests.)

C) **Communication No. 17-08**, received on September 7, 2017, from the Office of the Legislative Auditor submitting copies of their Audit Report No. 2017-03 concerning the County of Hawai'i's Department of Human Resources Hiring Practices; *and*

Communication No. 17-08.01, received on September 25, 2017, from Human Resources Manager II-Recruitment and Examination Division, of the Department of Human Resources, informing the Merit Appeals Board that she will be available to answer any questions concerning the County's recruitment and examination process.

(Note: This matter was listed on the Merit Appeals Board agenda dated September 27, 2017, and was postponed to January 8, 2017, pending the availability of the Legislative Auditor to address questions by the Board.)

Board Action Required: Discussion and appropriate action (accept and file report.)

8) **Schedule Next Meeting Date**

The Merit Appeals Board will convene its next meeting on Tuesday, January 16, 2017, at 10:00 a.m. at the Department of Human Resources Conference Room, 101 Pauahi Street, Suite 2, Hilo; and Wednesday, February 7, 2018, at 9:00 a.m. at the Aupuni Center Conference Room, 101 Pauahi Street, Suite 1, Hilo.

9) **Adjournment**

Executive Session

The Merit Appeals Board anticipates convening one or more executive meetings regarding the above matters listed on the agenda, pursuant to HRS Sections 92-4 and 92-5(a)(4), for the purpose of consulting with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities. A 2/3 vote pursuant to HRS Section 92-4 is necessary to hold an executive meeting.

The meeting place is accessible to persons with disabilities. If you need an auxiliary aid or service, language interpretation, or other access accommodation, please contact Glynis Yamada at 961-8361 as soon as possible or at least five days prior to the meeting of January 10, 2018.