

POLICY COMMITTEE

Council of the County of Maui

MINUTES

December 16, 2008

Council Chamber, 8th Floor

CONVENE: 1:33 p.m.

PRESENT: Councilmember Danny A. Mateo, Chair
Councilmember Jo Anne Johnson, Member
Councilmember Bill Kauakea Medeiros, Member
Councilmember Michael J. Molina, Member
Councilmember Joseph Pontanilla, Member
Councilmember Michael P. Victorino, Member (In 1:35 p.m.)

EXCUSED: Councilmember G. Riki Hokama, Vice-Chair
Councilmember Gladys C. Baisa, Member
Councilmember Michelle Anderson, Member

STAFF: Kirstin Hamman, Legislative Attorney
Camille Sakamoto, Committee Secretary

ADMIN.: Moana M. Lutey, Deputy Corporation Counsel, Department of the Corporation
Counsel
Lauren L. Martin, Deputy Corporation Counsel, Department of the
Corporation Counsel
Thomas Phillips, Chief, Department of Police

OTHERS: None

PRESS: *Akaku: Maui Community Television, Inc.*

CHAIR MATEO: . . .(*gavel*). . . Policy Committee meeting for December 16th, 2008 will come to order. For the record, the Members present with us this afternoon, we have Members Johnson, Medeiros, Molina, and Pontanilla. The Members excused for today's meeting. . .is Member. . .Hokama. . .Anderson, Baisa, and Mr. Victorino. With us this afternoon from the Administration, from the Department of the Corporation Counsel, we have. . .Corporation, Deputy Corporation Counsel Lutey as well as Martin. And also with us, the Chief of Police, Tom Phillips. The Committee Staff with us this afternoon, we have Ms. Hamman; and our Committee Secretary, Ms. Sakamoto. Also present with us this afternoon, Mr. Victorino. Thank you for joining us--

MR. VICTORINO: Thank you, Chair. Sorry for the late--

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CHAIR MATEO: --this afternoon. Members, we have just one item on the Committee agenda for this afternoon...and that is POL-10, uh 5(10), excuse me, special counsel authorization. I'm gonna go ahead and ask...shortly, Ms. Lutey to provide us with the general information, and will be able to respond to Committee questions as well. And, Members, just as a reminder, on the agenda, you will see that we also have the opportunity to convene in executive session...should the Members feel that there is a need to do so. Before asking Corporation Counsel to provide us with that general information, the Chair will ask whether anyone has signed up to testify this afternoon.

MS. SAKAMOTO: No, Mr. Chair.

CHAIR MATEO: Members, we have no one signed up for testimony, and we actually have no one in the gallery as well. With no objections, the Chair will close public...public testimony at this time.

COUNCIL MEMBERS: No objections.

CHAIR MATEO: And we'll just go ahead and go into POL-5(10), special counsel authorization.

ITEM NO. 5(10): SPECIAL COUNSEL AUTHORIZATION (THE MATTER OF THE GRIEVANCE ARBITRATION BETWEEN THE STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS ON BEHALF OF MARTELL IRISH AND DEREK KAAUKAI, GRIEVANTS, AND COUNTY OF MAUI, EMPLOYER; SHOPO NOS. M-2005-008 and M-2005-009)

CHAIR MATEO: And the Chair will turn over this segment to Ms. Lutey.

MS. LUTEY: Thank you, Chairman Mateo. Good afternoon, Council Members. Martell Irish and Derek Kaaukai were terminated from their positions as police officers in September 2005. There is currently an active labor arbitration over both of these terminations. I am unable to discuss the merits of this arbitration in open session due to union contract provisions. But basically what I'm asking for today is authorization for the retention of outside counsel who has agreed to a flat-fee rate of 25,000 dollars. I'm requesting outside counsel due to the complexity of this case. And I have requested executive session so that we can discuss this matter openly.

CHAIR MATEO: Thank you, Ms. Lutey. Members, if you will refer to your agendas, the Committee is in receipt of correspondence, dated December 10 from the Department of the Corporation Counsel, requesting consideration of the proposed resolution entitled: authorizing the employment of special counsel, Ortiz and Katano, a Law Corporation, in the matter of the grievance arbitration between the State of Hawaii Organization of Police Officers on behalf of Martell Irish and Derek Kaaukai, Grievants, and County of Maui, Employer; SHOPO Numbers M-2005-008 and M-2005-009.

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Members, the purpose of the resolution is to authorize the employment of special counsel to represent the County of Maui in the case for a total compensation of 25,000 dollars. You have heard the brief remarks by Corporation Counsel. Members, if there is any questions for Corporation Counsel that can be responded to in open session, now is the time to ask. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Uh. . .yeah, for Corporation Counsel, so it's a flat fee of 25,000 dollars? So with that agreement. . .there would be no opportunity for the special counsel to come back and through you request more funding?

CHAIR MATEO: Ms. Lutey?

MS. LUTEY: Thank you, Chairman. Councilmember Medeiros, they would not be entitled to come back and ask for additional compensation. However, this agreement does not include their airfare costs. That's the only thing not included in this particular price. And it would be from Oahu to Maui.

COUNCILMEMBER MEDEIROS: Okay, and, and that would be the only other uncovered compensation--would be airfare?

MS. LUTEY: I believe, actually, by. . .I'm not sure if it's County Code, but there is a provision that allows them also to request copying costs. However, we have provided them with copies of all the relevant documents and we'll take care of filing all briefs and motions, if necessary, in this matter from our Office directly. They should not have any additional costs other than flights.

COUNCILMEMBER MEDEIROS: And this law firm has an office on Maui?

MS. LUTEY: No, it does not. They are actually based out of Oahu. Mr. Ortiz does come to Maui for other cases. In this particular matter, he would be coming specifically for this arbitration. But he's not based here.

COUNCILMEMBER MEDEIROS: And. . .in the past history of similar cases, has the Corporation Counsel also requested special counsel and have not. . .litigated the case themselves?

MS. LUTEY: I, I think if you're asking me whether we have gotten outside counsel for arbitration, the answer to that is "no". This is the first time. But the case, this particular case is extraordinary--and we could discuss that in executive session. But without going into the merits of it, it's. . .it's more complex than your typical arbitration. So this is an unusual request in that respect.

COUNCILMEMBER MEDEIROS: And, and finally, you know, because you did mention that in your opening statement--about the complexity of the case. So I'm kind of baffled that

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a law firm would settle for a flat fee. . .and you say it's a complex case. Can you explain that more?

MS. LUTEY: Typically--

COUNCILMEMBER MEDEIROS: Without, you know.

MS. LUTEY: Yeah, without going into the merits--

COUNCILMEMBER MEDEIROS: Correct.

MS. LUTEY: --or the particular facts of this arbitration, actually I typically. . .and, and so does Ms. Martin, try to get flat-fee agreements with outside counsel because it's easier for the Council to see what the upfront costs are going to be. There have been two days of arbitration already in this matter. We have two days that are scheduled remaining in this. Briefs have already been filed by us. So really. . .in terms of a law firm evaluating what would be the most beneficial price for them, they've agreed that 25,000 is fair for what they will need to do--which is, really at this point, the, the primary bulk of costs is going to be review of all the documents. There are approximately six to eight banker's boxes of documents in this case.

COUNCILMEMBER MEDEIROS: Okay, and, and. . .one final question. So with special counsel, does Corp. Counsel sit along with them in the prosecution--I mean, not "prosecution", but in the litigation of the case?

MS. LUTEY: Yes.

COUNCILMEMBER MEDEIROS: Okay.

MS. LUTEY: I actually handled the first two days of it and have filed the briefs on this. But will sit, basically, as second chair in the remainder portions of this arbitration.

COUNCILMEMBER MEDEIROS: Okay. Thank you, Corporation Counsel. Mahalo, Mr. Chairman.

CHAIR MATEO: Thank you, Mr. Medeiros. Mr. Molina?

COUNCILMEMBER MOLINA: Thank you, Mr. Chair. Ms. Lutey, so just to follow up. . .would, they've done, so they've, they're already currently working on the case for the County as it is.

MS. LUTEY: Actually, what's happened is we've agreed to the flat-fee arrangement subject to Council approval. And in the meantime, we have copied all documents and sent them to

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them because of the *volume* of them. This agreement was just reached a couple of weeks ago.

COUNCILMEMBER MOLINA: Oh, okay.

MS. LUTEY: So--

COUNCILMEMBER MOLINA: So they haven't done any prior work for the County yet--

MS. LUTEY: I don't--

COUNCILMEMBER MOLINA: --on this . . . (*inaudible*) . . .

MS. LUTEY: No, not on this particular case.

COUNCILMEMBER MOLINA: Okay. And this firm specializes in arbitration cases like this?

MS. LUTEY: Actually, Mr. Ortiz is a defense, civil defense attorney. He has done work *with* the County also representing defendants in lawsuits that we've been involved in, he's a litigator. But in the past, he has represented SHOPO as their attorney. So he is familiar with labor arbitration, and specifically SHOPO.

COUNCILMEMBER MOLINA: Okay. Thank you--

MS. LUTEY: You're welcome.

COUNCILMEMBER MOLINA: Thank you, Chair.

CHAIR MATEO: Thank you, Mr. Molina. Members, additional questions?

. . . Members, hearing none, the Chair thinks this important enough that we do go into executive session so we're able to obtain additional information as we will soon be dealing with this particular item. Having said that, Members, the Chair will, in reference to Policy Item 5(10), pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee; and Section 92-5(a)(8), Hawaii Revised Statutes, to deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a State or Federal law or a court order. Having said that, the Chair will entertain a motion to convene in executive session.

COUNCILMEMBER MOLINA: So moved.

COUNCILMEMBER VICTORINO: So moved.

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COUNCILMEMBER MEDEIROS: Second.

CHAIR MATEO: It's been moved by Mr. Victorino, second by . . . Mr. Medeiros. Any additional discussion?

. . . Hearing none, the Chair will call for the question--all those in favor, signify by saying "aye".

COUNCIL MEMBERS: Aye.

CHAIR MATEO: All those opposed? Motion is carried with six "ayes"; and we have three "excused", Chairman Hokama, Ms. Anderson, and Ms. Baisa.

VOTE: AYES: Councilmembers Johnson, Medeiros, Molina, Pontanilla, Victorino, and Chair Mateo.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Baisa, Anderson, and Vice-Chair Hokama.

MOTION CARRIED.

ACTION: APPROVE; RECESS Open Session and CONVENE Executive Session.

CHAIR MATEO: We will take a three-minute . . . or thereabouts recess to reconfigure the Chambers, put the screen down, and we will proceed as soon as possible. This Committee stands in recess . . . *(gavel)* . . .

RECESS: 1:44 p.m.

RECONVENE: 2:36 p.m.

CHAIR MATEO: . . . *(gavel)* . . . Policy Committee meeting for December 16th, 2008 will come to order. Members . . . are there additional questions for Corporation Counsel at this point regarding POL-5(10)? And for the record, POL-5(10), special counsel authorization, the matter of grievance arbitration between the State of Hawaii Organization of Police Officers on behalf of Martell Irish and Derek Kaaukai, Grievants, and County of Maui, Employer, SHOPO Numbers 2005-008 *[sic]* and M-2005-009. That is the POL-5(10).

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Members, if there's no additional questions for Corporation Counsel, before the Chair offers my recommendation, I would just like to provide information for you. If you noticed on your Council agendas, you would have noted that on our next Council meeting, that this particular item, which is County Communication Number 08-287. . .it is list, it is posted on our agenda for Council meeting. There is a request to discharge this Committee so we can address this item on the Council floor. You've heard that--because we have heard from Corporation Counsel arbitration is scheduled for January 20 and 21st. We need to expedite as soon as possible. And that is the fastest means for this Committee to expedite this out of. . .and put it into action.

COUNCILMEMBER MOLINA: Chair?

CHAIR MATEO: Mr. Molina?

COUNCILMEMBER MOLINA: Chair, are you looking for a motion to discharge?

CHAIR MATEO: No, actually, at this. . .level, I will, I will. . .recommend that we *defer* this item with no objections by this Committee.

COUNCILMEMBER VICTORINO: No objections.

COUNCILMEMBER MOLINA: Okay.

CHAIR MATEO: Hearing no objections, Members, this completes our agenda for the day.

COUNCIL MEMBERS VOICED NO OBJECTIONS. (excused: MA, GB, GRH)

ACTION: DEFER pending further discussion.

CHAIR MATEO: And once again, just as a reminder, when you do have the opportunity of taking a look at your agenda items for the *Council* meeting, you will note County Communication 08-287. Okay? Any announcements, Members?

. . . Before we adjourn, the Chair would like to take this opportunity to thank the Members. This has been a very long and trying year with the Policy Committee. As you know, the Policy Committee is a, is a culmination of two different. . .committees joined as one. We have been challenged quite a bit this year, and I thank you for your stick-to-itiveness and helping us to move out a lot of our agenda items. And we. . .we were able to do that because of your hard work and your commitment. And I truly am. . .am very grateful to each one of you for your commitment in helping move the process along. So--Mr. Victorino?

COUNCILMEMBER VICTORINO: Well, Mr. Chair, I'd like to say we thank you for your leadership, you know, in helping us along--especially the freshman class. I speak on

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behalf of myself and, and, and the other member who's not here that we really appreciate your leadership. . .your ability to give us the opportunity to learn as we went, and to help us make what we call good solid decisions based upon the facts that you were able to bring through. And I'd like to thank Corp. Counsel and the various departments for their ability to enlighten us in all of these different situations. So, Chair, thank you very much and. . .we look forward to your continued leadership in another aspect in the next term. But I thank you very much for all of your patience and understanding.

CHAIR MATEO: Thank you, Mr. Victorino. Mr. Molina?

COUNCILMEMBER MOLINA: Thank you, Chairman. I, I can't think of a better Committee Chair to work with on a long and arduous year. Thank you for your--

CHAIR MATEO: . . .*(laughter)*. . .

COUNCILMEMBER MOLINA: --leadership on this Committee. We had some very interesting items to deal with. And also, Committee Secretary, Camille Sakamoto; and the, your dynamic Analyst team of Revels and Hammels [*sic*]-you know, sounds like a law firm--but thank them for their hard work, and of course Corporation Counsel, too. Thank you, Chair.

CHAIR MATEO: Thank you, Mr. Molina. Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: You just as well go down the line because--

ALL: . . .*(laughter)*. . .

COUNCILMEMBER PONTANILLA: --going say something.

ALL: . . .*(laughter)*. . .

COUNCILMEMBER PONTANILLA: I, I just wanna say thank you for your leadership in the Policy Committee. I know we've had very interesting cases, especially with our attorneys. That was enlightening. And, and your Housing and Human Services lead, leadership is. . .great, gratefully respected. Thank you, Chairman.

CHAIR MATEO: Thank you, Mr. Pontanilla. And. . .Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Yeah, I, too, would like to join in . . .*(laughter)*. . . my colleagues to thank you for your leadership. But even more than that, I wanna thank you for sharing your knowledge and experience in helping this one freshman counselor along. It has been very helpful. . .in working with you and learning from you with your tenure in this body. So I thank you for all that, you know, we were able to do in the Policy Committee this term. And. . .look forward to working with

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you. . .next term. So thank you, once again. And thank you to the Administration, especially Corp. Counsel. And to the Committee Staff who has been terrific in making sure that we're notified of all the changes.

CHAIR MATEO: Thank you.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chair.

CHAIR MATEO: Thank you, Mr. Medeiros. Ms. Johnson?

COUNCILMEMBER JOHNSON: Yes, I also wanna thank everybody who participated in all the Committee meetings. I know sometimes it, it's kind of boring . . .*(laughter)*. . . this subject matter that we discuss in this Committee . . .*(laughter)*. . . No disrespect, but it's just the fact . . .*(laughter)*. . . that it is boring . . .*(laughter)*. . . But it's work that we have to do and we have to pay attention to the details, otherwise many times it really is a disservice if we don't pay attention to details, to the taxpayers--because they end up footing the bill for our mistakes . . .*(laughter)*. . . And then other times, it's just simply moving issues forward, you know. And, and I, and I wanna say, particularly like on Honolua, you know that was something that the community really drove. And they really appreciated your openness and just coming to the west side to meet with our community. It meant a lot to them and, and I think that while people here, they see what we do on the floor of the council, it's what you do off the floor of the council and your commitment to the community that really does make that difference. And I think sometimes. . .for one reason or another, people choose to always focus on the negative. And I choose to focus on the positive things because this next term we have so many challenges. And I would like everybody to come in with as positive an attitude as you've approached things--and many of the Members here, too. We wanna do the best job we can. But it means all of us making that commitment. And it's not just what we do here on the floor. So I wanna thank you, on behalf of my community and. . .you know, the people that sometimes work behind the scenes helping all of us. It's not an easy job. And. . .I, I just know that sometimes it's gonna be, with the fiscal problems that we're facing, even more difficult. But I think with all of us pulling in the right direction and together, we'll, we'll come through this and we'll have, hopefully, a much better holiday season with not so many gloom and, you know, doom outlooks on the horizon. And we'll get through it all together. But, thank you, Mr. Chair, for your dedication. I really appreciate it.

CHAIR MATEO: Thank you, Ms. Johnson. And, Members, sentiment's likewise. I worked with an incredible cast of characters--

ALL: . . .*(laughter)*. . .

CHAIR MATEO: --that I will. . .remember for a long time. And, and also, you know, we, this Committee would not be able to, to function as we did without, without such cracker jack staff. . .Ms. Revels, Ms. Hamman, and Ms. Sakamoto are really. . .cream of the crop, and

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I'm really glad that we had the opportunity to work together. So, Members, if there's no more announcements--

ALL: ...*(laughter)*...

CHAIR MATEO: --Policy Committee meeting for December 16, 2008 is adjourned
...*(gavel)*...

ADJOURN: 2:44 p.m.

APPROVED:



DANNY A. MATEO, Chair
Policy Committee

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Transcribed by: Camille Sakamoto