



County of Hawai'i  
Department of Human Resources

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June 19, 2012

Mr. Earl Hatada  
Union Agent  
Hawaii Government Employees Association (HGEA)  
495 Manono Street  
Hilo, HI 96720

RE: Step II Grievance – BU:13  
Patricia Nakamoto, Election Program Administrator

Dear Mr. Hatada,

This is in response to your Step II grievance filed on January 20, 2012, on behalf of Election Program Administrator, Patricia Nakamoto, County of Hawai'i, Office of the County Clerk. The grievance alleges that the Department violated the following Articles of the BU13 Collective Bargaining Agreement:

Article 3 - Maintenance of Rights and Benefits;  
Article 4 – Personnel Policy Changes;  
Article 5 - Rights of the Employer;  
Article 8 – Discipline;  
Article 11 – Grievance Procedure;  
Article 11A – Performance Judge;  
Article 16 – Personnel File;  
Article 17 - Personal Rights and Representation.

You contend these violations occurred when the Department dismissed the Grievant from her position effective the close of business January 6, 2012. We note that you withdrew the allegation of a violation of Article 11A – Performance Judge.

In letter dated April 11, 2012, we submitted our request to mutually agree to waive Step 2 and proceed directly to Step 3, arbitration. On May 7, 2012, we received your letter of denial asserting that we proceed to Step 2 and citing, HRS 89-2 definition of "Employer" or "public employer" means the governor in the case of the State, the respective mayors in the case of the counties.

As a threshold matter, we examined the County Clerk and Council Chairman's contention they should be responsible for hearing the Step 2 meeting, and not the Mayor.<sup>1</sup> Hawai'i State law does not support their

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<sup>1</sup> With respect to the State Elections Office, it is independent, except for being housed in the State Department of Accounting and General Services for administrative purposes (HRS Section 11-1.5). It is free to "make all decisions regarding employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees of or under the jurisdiction of the office of elections without the approval of the comptroller" (HRS Section 11-1.55).

The State Elections Officer is authorized to delegate the responsibility of overseeing elections in the respective counties to the County Clerks. Section 11-2 provides as follows:

**§11-2 Chief election officer; duties.** (a) The chief election officer shall supervise all state elections. The chief election officer may delegate responsibilities in state elections within a county to the clerk of that county or to other specified persons.

(b) The chief election officer shall be responsible for the maximization of registration of eligible electors throughout the State. In maximizing registration, the chief election officer shall make an effort to equalize registration between districts, with particular effort in those districts in which the chief election officer determines registration is lower than desirable. The chief election officer, in carrying out this function, may make surveys, carry on house-to-house canvassing, and assist or direct the clerk in any other area of registration.

(c) The chief election officer shall maintain data concerning registered voters, elections, apportionment, and districting. The chief election officer shall use this data to assist the reapportionment commission provided for under Article IV of the Constitution.

(d) The chief election officer shall be responsible for public education with respect to voter registration and information.

(e) The chief election officer shall adopt rules governing elections in accordance with chapter 91.

In the County of Hawai'i, the Elections Division is neither part of the Executive or the Legislative branches of County government. It is important to note there are no provisions in our Hawai'i County Charter 2010 (hereinafter "Charter") related to the Elections Division. In fact the only reference to Elections Division personnel appear in Section 3-6 of the Charter, that provides as follows (emphasis supplied):

**Section 3-6. Organization of the Council; Officers; Employees.**

(a) The council shall elect from among its members a chairperson and a vice chairperson, each of whom shall serve at its pleasure. Until such time as the chairperson and presiding officer shall be elected, the mayor shall preside at such meeting, provided

argument. Unlike State of Hawai`i Elections Office employees, County of Hawai`i permanent employees in the Elections Division are civil servants, subject to collective bargaining contracts negotiated between the unions and County. As signatory to the collective bargaining agreement, the Mayor is the only recognized employer with respect to these civil service employees. Had the dismissed employees been appointed personnel, no step process would apply, and the County Clerk and/or Council

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that the mayor shall not have a vote. The chairperson shall preside at council meetings. If at any meeting the chairperson is not present or unable to act, the vice chairperson shall then preside. In the absence of the chairperson and vice chairperson, the council shall elect from among its members a temporary presiding officer.

(b) *The council shall appoint the county clerk which position shall be exempt from civil service laws and classifications. The county clerk shall:*

- (1) Be the clerk of the council.
- (2) Be custodian of the county seal.
- (3) *Conduct all elections held within the county.*
- (4) Appoint the deputy county clerk, with the approval of the council, and such position shall be exempt from civil service laws and classifications.
- (5) Perform such other functions as the council may prescribe.
- (6) *Appoint necessary staff for which appropriations have been made by the council, **subject to civil service laws and classifications, and exercise the same power with respect to the personnel of the clerk's office as the department heads in the executive branch**, with the exception of the office of the legislative auditor.*

Thus, unlike State Elections Office employees, County Elections Division employees are civil servants, subject to all rights and responsibilities attendant thereto. Further, the above-cited Charter provision makes clear the Clerk is treated similar to department heads in the executive branch; there is no language found in our Charter (as in HRS Section 11-1.55) that would allow the Clerk to "make all decisions regarding employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees of or under the jurisdiction of the office of elections without the approval of the comptroller." In fact, our Charter specifically requires compliance with all civil service laws and classifications.

The Clerk is the appointing authority for County Elections Division employees, but the Mayor is the employer. This is made clear by the above-cited Charter Section 3-6. As the Employer, the Mayor is obliged to hear the Step 2 meeting; he is the only signatory to the collective bargaining agreement.

This makes sense. County Elections Division employees should not be mayoral or Council appointees in order to ensure their independence. The Mayor and Council members are elected officials and they should not have influence within the Elections Division. A proper check and balance exists in allowing the Clerk (a Council appointee) to hire and fire these employees, and the Mayor to review disciplinary decisions at the Step 2 level. This ensures both due process for the civil service employees, and to ensure one branch of government (the administration or Council) does not have overreaching power over these employees to influence them.

Chairman would be free to resolve whatever labor dispute would ensue following a discharge. The Step 2 meeting was held on May 24, 2012.

Having reviewed the facts and circumstances surrounding this case, it is my decision that in lieu of the dismissal action taken on the close of business of January 6, 2012, a ten (10) working day suspension shall be applied. Specifically, the dismissal action taken against Ms. Nakamoto will be rescinded, and Ms. Nakamoto will be suspended during the period of January 9 – 22, 2012. Effective, January 23, 2012, the employer shall restore any and all other rights and/or benefits lost.

This grievance response shall not be construed as an admission of wrong doing by either party, and shall be restricted in scope and application to the parameters of the grievance. Further, this grievance response shall not serve as precedent in any other matter.

We appreciate your approval to extend the time limitation for rendering this Step 2 response and also thank Ms. Nakamoto for her willingness and cooperation with obtaining and providing additional information requested at the Step II grievance meeting.

It is my understanding that the actions as noted above shall serve to remedy the grievance. Please let me know by Friday, June 22, 2012 if you are not in agreement with this response. If I do not hear from you by Friday, June 22, 2012, I shall instruct the Department to process the reduction in discipline as stated, and consider the case resolved.

Sincerely,



Sharon Toriano  
Deputy Director  
Human Resources

cc: Ian Takashiba, HGEA  
Jamae Kawauchi, County Clerk  
William Kenoi, Mayor

DEPARTMENT OF HUMAN RESOURCES  
 COUNTY OF HAWAII  
**PERSONNEL ACTION FORM**

**CANCELLATION**

Department Office of the County Clerk  
 Division Elections  
 Home Dept No. 1120 Pos. No. OO-00029

BU Code 13	Retirement System Codes	
	Class H	Group 3

Pos Status: Civil Service  Exempt

1. Employee Name  
 Nakamoto, Patricia A  
Last First Middle

1a. Employee No.  
 01099

2. Soc. Sec. No.

3. Position Title  
 Elections Program Administrator

4. Pay Grade & Step  
 SR 26 G

Rate \$ Monthly  
 \$ Annual  
 Differential Hourly

5. Former Position Title (If in-service change) Pos. No.

6. Pay Grade & Step Rate Monthly  
 Annual  
 Differential Hourly

7. Effective Date(s)  
 January 6, 2012 COB

8. Employee Name Changed To:

9. Employee Status: (Check One)

Permanent Civil Service  
 Initial Probation-Civil Service  
 New Probation-Civil Service  
 Civil Service Limitation Date  
 Initial Probation NTE \_\_\_\_\_  
 CSLD Employee NTE \_\_\_\_\_  
 Conditional Probation-Civil Service  
 Temporary-non Civil Service  
 Contract  
 Exempt

10. Nature of Action

Appointment  
 Change of Class Title  
 Change of Pay  
 Conversion  
 Demotion  
 Extension \_\_\_\_\_  
 Inter-Dept'l Movement \_\_\_\_\_  
 Inter-Govt'l Movement  
 Intra-Dept'l Movement

Leave of Absence w/o pay  
 Promotion  
 Reallocation  
 Reinstatement  
 Step Movement  
 Suspension  
 Transfer  
 Other Cancel

10.a. Nature of Action - Separations

Death  
 Dismissal  
 End of appointment  
 Resignation  
 For Permanent, NP, CSLD Employees only:  
 In Good Standing  
 Not in Good Standing  
 Retirement  
 Termination  
 Other \_\_\_\_\_

11. Authority  
 Step II grievance letter dated 06/19/12.

12. Remarks  
 Cancel Form 13 approved 01/17/12, (Dismissal).

13. Approval by Appointing Authority


The above action has been taken in accordance with the applicable laws, rules, collective bargaining agreements and policies and procedures governing employment and compensation for employees of the County of Hawaii.

**Refused to Sign**

Date \_\_\_\_\_  
 Appointing Authority

14. Approval by Department of Human Resources

The above action has been taken in accordance with the applicable laws, rules, collective bargaining agreements and policies and procedures governing employment and compensation for employees of the County of Hawaii.

JUL 17 2012 

Date \_\_\_\_\_  
 Director of Human Resources

Distribution: Original to Department  
 Copies by Human Resources: HR  
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