

MINUTES

COMMITTEE OF THE WHOLE

June 21, 2017

A meeting of the Committee of the Whole of the Council of the County of Kaua'i, State of Hawai'i, was called to order by Mel Rapozo, Chair, at the Council Chambers, 4396 Rice Street, Suite 201, Līhu'e, Kaua'i, on Wednesday, June 21, 2017, at 8:32 a.m., after which the following Members answered the call of the roll:

Honorable Arthur Brun
Honorable Mason K. Chock
Honorable Ross Kagawa
Honorable Arryl Kaneshiro
Honorable JoAnn A. Yukimura (*present at 8:39 a.m. and recused at 8:56 a.m.*)
Honorable Mel Rapozo

Excused: Honorable Derek S.K. Kawakami

Minutes of the May 23, 2017 Committee of the Whole Meeting.

Upon motion duly made by Councilmember Kaneshiro, seconded by Councilmember Brun, and carried by a vote of 5:0:2 (*Councilmembers Kawakami and Yukimura were excused*), the Minutes of the May 23, 2017 Committee of the Whole Meeting was approved.

Minutes of the June 7, 2017 Committee of the Whole Meeting.

Upon motion duly made by Councilmember Kaneshiro, seconded by Councilmember Brun, and carried by a vote of 5:0:2 (*Councilmembers Kawakami and Yukimura were excused*), the Minutes of the June 7, 2017 Committee of the Whole Meeting was approved.

The Committee proceeded on its agenda items as follows:

COW 2017-03 Communication (05/11/2017) from the Life's Choices Kaua'i Coordinator, requesting agenda time to provide an update on the Life's Choices Kaua'i Program and its projects, including the Kaua'i Community Drug Response Plan 2015-2020, the Adolescent Treatment and Healing Center, and the Partnership for Success (PFS) Grant. **(This item was Deferred to July 5, 2017.)**

Council Chair Rapozo: Hang on. I know that there is no one here, but I have to make the announcement before we move forward. Is there any public testimony?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Rapozo: The Administration has requested a one (1) month deferral for this presentation. If there is no discussion or public testimony, then I will accept a motion to defer for one (1) month.

Councilmember Chock moved to defer COW 2017-03 to the July 19, 2017 Committee of the Whole Meeting, seconded by Councilmember Brun.

Council Chair Rapozo: The deferral is to the July 19, 2017 Committee of the Whole Meeting.

The motion to defer COW 2017-03 to the July 19, 2017 Committee of the Whole Meeting was then put, and carried by a vote of 5:0:2 (*Councilmembers Kawakami and Yukimura were excused*).

Council Chair Rapozo: Motion carried. Next item, please.

Bill No. 2650 **A BILL FOR AN ORDINANCE APPROVING A COLLECTIVE BARGAINING AGREEMENT FOR BARGAINING UNIT 11 BETWEEN JULY 1, 2017 AND JUNE 30, 2019 (Committee Absence, Insufficient votes to carry the motion to approve; Pursuant to Council Rule No. 5(f), item shall be referred to the July 5, 2017 Committee of the Whole Meeting.)**

Councilmember Kaneshiro moved to approve Bill No. 2650, seconded by Councilmember Brun.

Council Chair Rapozo: Is there any discussion?

Councilmember Kagawa: Yes.

Council Chair Rapozo: Councilmember Kagawa.

Councilmember Kagawa: I cannot support these pay raises. The main reason why is that the other islands have already approved it, and Kaua'i basically is the last chance to say that we have disagreements with some of the provisions in the Firefighters agreement. I have no problems with their annual raises going up two percent (2%) and three percent (3%) in the next two (2) years; however, the rank-for-rank was not even on the table in discussions. We all acknowledged four (4) years ago that that provision was a very generous provision and that it impacts us of about one million five hundred thousand dollars (\$1,500,000) per year. It was done because the Police had gotten the Standard of Conduct raise and in order to keep it similar because they are both in the public safety section, they were given the rank-for-rank, which basically is just a very generous provision that allows them to collect additional overtime based on senior officials taking leave. Basically, you are

doing the same job. It is just that because somebody above you is missing, you get a higher pay. In no other position in the County do you see that. If you are an Accountant I, just because the top financial accountant above you is out, does not mean everybody moves up one (1) step. That is how the rank-for-rank works. Yes, if I was a firefighter, I would love it just as every other accountant, engineer, clerk, or what have you would love it. But times are tough right now. We have to look at how we are going to pave roads, fix bridges, fix parks, and do all of these things without raising taxes. I think the only way we can is we have to really look at our salary negotiations and say, "Hey, what parts of these negotiations are fair and what parts are too generous." For me, the rank-for-rank is too generous. I would hope that we can have enough votes to send it back. I know it would be difficult just being with one (1) island having an objection, but at least send it back and say, "Hey, this rank-for-rank and Standard of Conduct when Police comes up, needs to be seriously looked at" because for Police, we do have a hiring problem. There are not many applicants, but with firefighters, there is no problem. I just talked to the Maui County Council Chair and he said that they had seven (7) position open last year. There were over two thousand (2,000) applicants. He said they have no hiring problem. So if you do not have a hiring problem, why are you approving overly generous portions of the salary package? The bottom line is our job here is to stand up for the people of Kaua'i to say, "Hey, let us cut as much fat as we can." To me, this is obvious fat and I think we should be voting "no," but I understand if other members feel otherwise about salary issues. I think Councilmember Kawakami said it best. He said he has never recalled any item in all of the years he has served, which is much longer than me, where any contract negotiation has been voted no. But to me, I think our job is to not be a rubber stamp on these issues, and I do have a problem with this portion of the Firefighters agreement, which is the rank-for-rank. I believe it should be reduced or cut. Thank you, Council Chair Rapozo.

Council Chair Rapozo: Thank you. Is there any other discussion on this matter? Councilmember Kaneshiro.

Councilmember Kaneshiro: I feel the same frustration that Councilmember Kagawa feels. But at this time, with the current proposal at a two percent (2%) increase this year and a two point one percent (2.1%) increase next year, for me, I am going to pick my battles. If it was way out-of-whack where we have seen four point five percent (4.5%) increases every year. We might have even seen a six percent (6%) increase also. If it was in that range, then yes, I definitely would probably be voting the same way as Councilmember Kagawa. But in this case, I think the two percent (2%) and two point one percent (2.1%) is pretty reasonable. It is manageable.

(Councilmember Yukimura was noted as present.)

Councilmember Kaneshiro: Whether Fire gets paid too much or not enough, it is not for me to say. This has already gone to arbitration. The arbitrators came up with the amount. I think Fire was pushing for four percent (4%). I think the County was pushing for one percent (1%). It ended up at two percent (2%). For now, I think I can swallow it. But, again, I know we are all in the same position. How do we get this to stop? I feel the same way, but in this particular instance with the

increase that is proposed, I think I am going to pick my battles. I am fine with it now. Again, that is not to say if more things come in and yes, rank-for-rank is a big thing. I wish it was discussed, but it was not. All it is a two percent (2%) increase and a two point one percent (2.1%) increase. For me, I am just going to pick my battles. I am okay with it, but again, if things change and if collective bargaining comes up higher in the future, we are definitely all over it. I think we all feel kind of hand-tied on this issue and for me, if it comes in unreasonable, then I would vote "no" also. That is just my position on it.

Council Chair Rapozo: Thank you. Anyone else? Councilmember Chock.

Councilmember Chock: Thank you, Council Chair Rapozo. During our budget procession and discussions, I think it was really clear to all of us where the root of our financial woes lay, and it is within our salaries. It is within this process that we are excluded from to a large degree in being able to oversee. So, I think that we need to recognize this. We need to at least send the message that this is the area that we need to all come to the table and discuss moving forward. While this might be more of a protest vote, I think that my hope is that what we can do is all collaborate better to really come up with things that are more real and fair understanding all of the aspects of the needs of the people on this island. We have to look. We cannot no longer not pay attention to the areas that are being threatened most. I am a huge advocate for our Fire Department and our firefighters, so this has nothing to do with who they are, what they do, and the importance of what they do. It is really as Councilmember Kaneshiro said, to a large degree, our hands are tied here. But at least we can collectively say, "Hey, you folks have to go back and take a look at some of this because it is really part of the things that we are challenged by on an annual basis." Thank you, Council Chair Rapozo.

Council Chair Rapozo: Is there any other discussion?
Councilmember Yukimura.

Councilmember Yukimura: I will be voting against the proposed collective bargaining increases. It is a difficult decision for me, because I deeply appreciate the work that our firefighters do. But appreciation is not the only criteria that we use in deciding whether to approve collective bargaining increases. If it were, we as a society, should raise many other workers' pay including teachers, engineers, those providing affordable housing, and preschool workers. The bottom line is that things are out of balance in precarious ways. The budget is out of balance in terms of priorities. We are not meeting our critical needs such as the need for road resurfacing. We have a one hundred million dollar (\$100,000,000) backlog that gets bigger and bigger the more we delay. We have a need to solve our traffic congestion, a need for better maintained parks and roadsides, the need to help our kids stay away from drugs, the need for expanded bus services, and the need to be more sustainable environmentally and fiscally. We are not able to meet these needs if compensation increases are excessive. Things are also out of balance among County and State workers. The average firefighter, excluding trainees, makes ninety thousand dollars (\$90,000) in total compensation annually. Several firefighters make more in total compensation than the Mayor's salary of one hundred thirty-two thousand

dollars (\$132,000). In total, the annual collective compensation for firefighters is over twelve million dollars (\$12,000,000) per year, and if the raises are approved, it will increase the County budget next year by one million three hundred thousand dollars (\$1,300,000), which interestingly is what we were searching for this year and forced us to take our reserves so we would not raise property taxes. That is the kind of dilemma we are in right now. The divide is even greater if you compare firefighter compensation to workers in the private sector, yet all of us have the same basic cost of living for necessities of food, clothing, transportation, and shelter. It is true that firefighters must sometimes risk life and limb in the work that they do, and that should be a factor in setting pay, but I believe that it is already reflected in existing compensation levels. We must also recognize that the value of a person's work cannot be measured only by that criteria. So think of the problems that sewage treatment plant workers help us avoid on a twenty-four hour/seven days a week (24/7) basis, and think of the civil engineers who make sure our roads and bridges are safe. The divide among County and State workers is something that we have to address and that is why at this time with this particular increase in compensation, I think we need to let the other employees catch-up. I am hopeful that everyone will understand that continued and compounding increases are not sustainable. The way to bring them under control is to vote to stop it. I think we all have a stake, including the firefighters, in a fiscally sustainable budget. So in thinking about the whole, the whole County/State family and the whole County, public and private sectors both, I must vote "no" today.

Council Chair Rapozo: Thank you. Anyone else? Councilmember Kagawa.

Councilmember Kagawa: I just wanted to point out that Janine did an analysis for us and over the past twenty (20) years, the firefighters have gone up about sixty percent (60%). The other unions; Hawai'i State Teachers Association (HSTA) and Hawai'i Government Employees Association (HGEA) were about forty percent (40%). Over the past twenty (20) years, they are about twenty percent (20%) higher than other unions. Police was at seventy percent (70%), so they are even more. But we have a hiring problem with Police, so I think that in some ways is excusable. We do not have a hiring problem with Fire. The other thing is the number in totality. Over the past ten (10) years, the Fire Department's budget has gone from sixteen million dollars (\$16,000,000) to thirty-three million dollars (\$33,000,000). So it has over doubled. Again, yes, what is sustainable? Is sustainability a doubling every ten (10) years? So is it going to be sixty-six million dollars (\$66,000,000) in ten (10) more years? It is just ridiculous. The property taxes are not going to raise that fast. At some point, we have to put the brakes on somehow. I do not know what it is going to be, maybe more volunteer fire stations. I do not know what is going to be the solution for this small island, but I certainly do not think we keep doubling their budget. Thank you.

Council Chair Rapozo: Anyone else? Councilmember Yukimura.

Councilmember Yukimura: I just want to say, I do not think we have to go to volunteer fire. I mean, just staying at the level we are at now for a while, I think meets the needs of both the firefighters and the community. I mean, I think it is

reasonable and needed to say at least this time, we cannot go there because we have to look at all of the other needs.

Council Chair Rapozo: Anyone else? If not, I just have a few comments. I share many of the frustrations that have been said or mentioned around this table. The way the process works is obviously it goes to arbitration if we cannot reach agreement, which it did. The Governor has four (4) votes, five (5) is required. So all of the Governor really needs is one (1) county to agree, which has already occurred. That is a problem. Hawai'i State Association of Counties (HSAC) has lobbied heavily. In fact in our HSAC package this year, we asked the Legislature to consider amending the law to allow the County Councils to have representation on these negotiation sessions. The Legislature failed to accept that and we were asking really for a non-voting seat just to be part of it, just to be able to be able to participate in the discussions so that these arbitrators can hear straight from the entity that at the end of the day, must approve. The Legislature did not feel that was important and did not amend that statute. This year, the Counties got together and retained at the request of the Administration, and thank you to Janine, the Department of Human Resources (HR), and our Office of the County Attorney. They came to us seeking funds to retain Special Counsel, which would be specialized professional negotiators. I will tell that you I believe if not for that, I believe in my heart that that number that you see right now would be significantly higher. So thank you to HR and to the County Attorneys for having that foresight, and thank you for the Counties across the State for approving those funds. I agree. If not for that...and we have been asking for that for a long time. I have criticized and I have gotten criticized for making those statements that we are not negotiating well enough. They are bringing the big guns and we are using our County resources. So this is the first time that the Counties got together and hired a specialist, and I think it made a huge difference. Again, while I agree with much of what has been said on the table, there is a process. If a County rejects the proposal, then it goes back to the table. It goes back to the arbitrator and it starts all over, meaning additional funds would have to be made available to go through another round of arbitration.

At the end of the day, in my experience and I remember one (1) time, Mayor Bryan Baptiste was in office. I remember him taking a strong stand against...in fact, I think Councilmember Yukimura supported that effort as well. This was many years ago, and the votes were not there, but there was some opposition to the negotiation packages set forth. But I do not believe that there was ever a package that was sent back. But in weighing out the costs and to go back to our arbitration, we would have to make a decision whether or not we want to retain that attorney again or the attorney firm. We would start all over and there is always a chance that it could come back worse for us. It could come back with a higher number and I am just not willing to take that chance right now. It is frustrating. Like I have said before in various endorsement interviews to the labor unions, the unions are going to be so successful that there is going to come a point when that "straw that breaks the camel's back" hits that you may see some consolidation of fire stations like you said, Councilmember Kagawa. I am not sure if volunteer, but that is definitely a possibility. You may see consolidation of positions. You may see some positions being lost because the Counties simply cannot afford it. So it is a give and take. It is a process. But the Counties can only sustain this for so long and I think that is the message. I think the

numbers that you see on this negotiation package clearly shows that the trend is turning. So I am hoping that we reach some mutual resolution as it comes to these compensation packages. Councilmember Yukimura.

Councilmember Yukimura: The two percent (2%) may be lower than what might have happened, but when it is on a base of compensation of sixty thousand dollars (\$60,000), seventy thousand dollars (\$70,000), or eighty thousand dollars (\$80,000), it is much higher than two percent (2%) on say most HGEA and United Public Workers (UPW) bases. So, it is still high. Then, the way to send messages to the arbitrator is really to say "no" today. That is the way to send the message. It is highly unlikely that it would be higher than what it is right now.

Council Chair Rapozo: Thank you. With that, roll call. I am sorry, hang on. I am sorry, Councilmember Brun, did you have something?

Councilmember Brun: No.

Council Chair Rapozo: I am sorry. I will suspend the rules.

There being no objections, the rules were suspended to take public testimony.

ALICE PARKER: Alice Parker, for the record. Whereas we may have to swallow this high increase, the firefighters do more than firefighting. They do a lot of medical care. They are the first-responders to emergencies and also, you are going to have an increasing elderly population. We are much more subject to falls. I can attest to that. They come and help seniors up. So whereas they may be highly paid, they really do earn it. Thank you.

Council Chair Rapozo: Thank you. Anyone else wishing to testify? Seeing none, I will call the meeting back order. Now we can have a roll call.

There being no further testimony, the meeting was called back to order, and proceeded as follows:

The motion to approve Bill No. 2650 was then put, and failed by the following vote:

FOR APPROVAL:	Brun, Kaneshiro, Rapozo	TOTAL – 3,
AGAINST APPROVAL:	Chock, Kagawa, Yukimura	TOTAL – 3,
EXCUSED & NOT VOTING:	Kawakami	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

(Committee Absence, Insufficient votes to carry the motion to approve; Pursuant to Council Rule No. 5(f), item shall be referred to the July 5, 2017 Committee of the Whole Meeting.)

ALLISON S. ARAKAKI, Council Services Assistant I:

3:3.

Council Chair Rapozo: 3:3. With that, because of the lack of majority, this will be referred to the next Committee Meeting. Thank you.

Councilmember Yukimura: Council Meeting?

Council Chair Rapozo: Committee Meeting.

Councilmember Yukimura: Okay.

Council Chair Rapozo: Next item, please.

ES-907 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4, 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), on behalf of the Council, the Office of the County Attorney requests an Executive Session with the Council to provide the Council with a briefing on the Notice of Appeal of Sunshine Law Complaint (S Appeal 17-11). This briefing and consultation involves the consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

Council Chair Rapozo: Hang on. Councilmember Yukimura has a recusal on this matter, so she will have to step out before we—thank you.

(Councilmember Yukimura was noted as recused.)

Councilmember Chock moved to convene in Executive Session for ES-907, seconded by Councilmember Kagawa.

Council Chair Rapozo: Is there any discussion or public testimony?
Councilmember Kagawa.

Councilmember Kagawa: My question is does this complaint on the posting, is it similar to the vote the first time when the first half was approved with only three (3) votes? Councilmember Yukimura had voted for that one. It passed to my dismay, and then now, the second half got voted on with the same posting, but she did not vote on it so now she complains about it. My question is, does she only raise a complaint when it is something she does not support, because when she voted for it, she had no problem with the posting and now when she was against the second half, now she is saying something is wrong with the posting. To me, it does not make sense.

Council Chair Rapozo: Councilmember Kagawa, I asked County Attorney to come up because I think it is important. The public has no idea what we are talking about.

Councilmember Kagawa: Well, it is about the Salary Commission recommendations for executive level pay raises.

Council Chair Rapozo: Right. I think Councilmember Kagawa's question is on-point. I am going to suspend the rules. Mauna Kea, if you could give

us the reason that you can, as much as you can, of how we got to where we are at today.

There being no objections, the rules were suspended.

MAUNA KEA TRASK, County Attorney: *Aloha.* For the record, Mauna Kea Trask, County Attorney. To be clear, I am going answer you the best I can with purely factual matters that have been played out in the public record. I do not know what the motivation is as to why someone would file a complaint, so I am not going try to speculate. This issue pertains to specifically item C 2017-55, which pertains to Salary Commission Resolution 2017-1 and the sufficiency of the agenda item as stated. In brief, historically, the same language has always been used by this County, to my understanding for as long as it is been required since the Sunshine Law was enacted, and that was confirmed with the Office of the County Clerk. The agenda item itself came up on the February 22, 2017 Council Meeting agenda. There were questions raised during that Council Meeting about the sufficiency of the language. The Office of the County Clerk contacted the Office of Information Practices (OIP), got a verbal reading from them, and they were informed that it was sufficient.

Council Chair Rapozo: That it was sufficient?

Mr. Trask: It was, and then later was provided with a written E-mail confirmation stating the same. Beyond that, it hinges on an opinion issued by OIP that you can obtain online. It is OIP opinion letter 07-06, which also pertained to a Maui County Salary Commission Resolution, but that is all.

Councilmember Kagawa: I guess for me, my question is back two (2) years ago or whatever when they had taken out the bottom half, the half that they felt did not deserve it and kept the first half, it was the same exact posting as when we discussed the second half, right?

Mr. Trask: Correct.

Councilmember Kagawa: I mean, was the complaint raised the first time? No, right?

Mr. Trask: To my knowledge, no.

Councilmember Kagawa: I know the second time she had verbally brought it up that, "Oh, I have an issue with this being voted on because of the posting." But to me, it was a no-brainer because when she voted on it and it passed the first time and people are receiving their salaries, she had no problem with posting then. It was fine two (2) years ago and now it is not good? It is confusing for me and I feel like we are wasting time.

Mr. Trask: Again, I cannot speak as to the motivation. I do not know what is prompting this.

Councilmember Kagawa: Alright. Let us get it right, but for me, that means that if what she is saying is correct, then all of the salaries that got approved way before when they chopped it up in half, should be given back and is invalid.

Mr. Trask: Well, no. To be clear, the complaint in this matter was filed beyond the ninety (90) day timeframe to sue to void the decision. So under the law, the decision cannot be voided.

Councilmember Kagawa: Alright.

Mr. Trask: So past salary approvals are not at-risk. This really appears just to be a question.

Councilmember Kagawa: Okay, alright. Thank you.

Council Chair Rapozo: So if you could just explain the process. The complaint was filed with OIP by Councilmember Yukimura appealing the ruling that they had given our staff that the posting was sufficient?

Mr. Trask: Well, actually, no.

Council Chair Rapozo: Okay.

Mr. Trask: The Office of the County Clerk obtained the opinion on the 22nd. It appears that two (2) days later on the 24th, the same question was asked to another person, and it looks like that is what is what is being appealed. The timeline is kind of off. But again, there is no one is seeking to void the decision of this Council or to void any salary increases. It is like an intellectual question. That is all it is. It really has no affect.

Council Chair Rapozo: Right and because of that, I share Councilmember Kagawa's frustration. Now it takes an attorney out of your Office to go and answer this thing, which no real remedy is sought other than going forward.

Mr. Trask: Yes. I am sorry. To be clear, it is taking my time. So any of you who have pending matters with me, that is being put on hold right now.

Council Chair Rapozo: Scott, did you have the...oh, okay. What Councilmember Kagawa brought up is, I think, very important. When was the initial Salary Resolution? This is all surrounding the Salary Commission's Resolution that comes to us for passage where we can accept it all, we can kill it all, or we can amend in part. This Council could not get the support for all, so it was amended. The top tier was granted the raises and the top tier was granted those raises with identical posting in the agenda that was used for the second tier. There was no problem by anyone. There was no problem. Then, the second tier gets put up and of course, Councilmember Yukimura does not support that, she is not successful, and then now she is filing a complaint. That is frustrating because the Sunshine Law is twenty-four hours/seven days a week (24/7). It is not to be applied only when things do not go

your way. It is unfortunate because maybe some people think that the County Attorney, because he is on salary, that it does not cost the County money, but it does. He gets paid and it takes him away from his other duties. I am not going wait for the posting. I am telling you that I am going put it up so people can see that Round 1 when she was successful, the posting is fine. Round 2, unsuccessful, there is a flawed posting. I think that is a problem. With that, is there any other discussion? If not, I will call the meeting back to order and we will have roll call.

There being no objections, the meeting was called back to order, and proceeded as follows:

The motion to convene in Executive Session for ES-907 was then put, and carried by the following vote:

FOR EXECUTIVE SESSION:	Brun, Chock, Kagawa, Kaneshiro, Rapozo	TOTAL - 5,
AGAINST EXECUTIVE SESSION:	None	TOTAL - 0,
EXCUSED & NOT VOTING:	Kawakami	TOTAL - 1,
RECUSED & NOT VOTING:	Yukimura	TOTAL - 1.

Council Chair Rapozo: With that, we will be in recess. We need to come back after Executive Session to do the Budget & Finance Committee.

There being no further business, the meeting was adjourned at 9:05 a.m.

Respectfully submitted,

Allison S. Arakaki

Allison S. Arakaki
Council Services Assistant I

APPROVED at the Committee Meeting held on July 5, 2017:



MEL RAPOZO
Chair, COW Committee