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Case No. 21-DR-00-118

STATE OF HAWAI'I

HAWAI'I LABOR RELATIONS BOARD

In the Matter of

MERIT APPEALS BOARD, County of
Hawai'i,

Petitioner,

and

ROBERT R. K. PERREIRA; and FIRE
COMMISSION, County of Hawai'i;

Intervenors(s).

CASE NO(S). 21-DR-00-118

ORDER NO. 3818

DECLARATORY RULING

DECLARATORY RULING

1. Introduction and Statement of the Case

Hawai'i Revised Statutes (HRS) § 76-14(c)(2) provides the Hawai'i Labor Relations Board (Board) with the responsibility to resolve any controversy regarding the authority of the Merit Appeals Board to hear an appeal.

The Merit Appeals Board, County of Hawai'i (MAB), filed a petition for declaratory ruling (DR Petition) with the Board to determine MAB's jurisdiction to hear an appeal from Intervenor ROBERT R.K. PERREIRA (Mr. Perreira).

After the prior Fire Chief for the County of Hawai'i (Fire Chief and County, respectively) retired, Intervenor FIRE COMMISSION, County of Hawai'i (Fire Commission) began the process to select the next Fire Chief. Mr. Perreira applied for the position, and the Fire Commission did not select him.

Mr. Perreira, as a self-represented litigant, filed an appeal from this non-selection with MAB, challenging the Fire Commission's selection process (Perreira Appeal). In the Perreira Appeal, Mr. Perreira asserted that the Fire Commission failed to provide a fair and transparent selection process, leading to Mr. Perreira's non-selection. Mr. Perreira requested that the selection process be redone to allow for a fair process and that the Fire Commission receive training on the recruitment process prior to any redo of the selection process.

During the appeal, MAB requested that the parties brief their positions on the issue of whether MAB had jurisdiction to hear the appeal under HRS § 76-14. In their briefs, Mr. Perreira and the Fire Commission dispute the issue. Therefore, MAB is holding the appeal proceedings in abeyance pending the Board's resolution of the issue of jurisdiction under HRS § 76-14(c)(2).

1.1. Issue

The issues in this case are:

1. Whether MAB is precluded from acting on the Perreira Appeal because under HRS § 76-14(c)(1), the action complained of constitutes a prohibited act subject to the jurisdiction of another appellate body or administrative agency; and
2. Whether MAB has jurisdiction over the Perreira Appeal based on his non-selection for the Fire Chief position under HRS § 76-14(a)(1) and (4) and (b)?

1.2. Statement of the Case

MAB filed the DR Petition with the Board and attached the briefs from Mr. Perreira and the Fire Commission on the issue of MAB's jurisdiction over the Perreira Appeal. Mr. Perreira and the Fire Commission both petitioned to intervene in this case, and no one opposed the petitions to intervene.

At the prehearing conference on the DR Petition, the Board granted both Mr. Perreira and the Fire Commission's interventions. The Board requested that the Fire Commission file copies of the County Charter for County of Hawai'i 2020 (County Charter) and the County of Hawai'i Fire Commission Rules (Fire Commission Rules) with the Board as part of the official record for this case. The Board acknowledged receipt of the prior briefs on MAB's jurisdiction and set a deadline for the parties to file any supplemental or additional briefs or memoranda in support of their positions.

The Fire Commission filed the County Charter and the Fire Commission Rules, as requested, and did not file any supplemental or additional brief or memorandum. MAB filed a notice of intent not to file a supplemental brief unless ordered by the Board. Mr. Perreira filed a supplemental memorandum on the MAB jurisdiction over the Perreira Appeal.

MAB has not submitted a written request for a hearing on the DR Petition. Therefore, under Hawai'i Administrative Rules (HAR) § 12-42-9(h)(1)¹, the Board makes the following Declaratory Ruling without oral arguments from the parties based on a review of the full record and finds that MAB does not have jurisdiction over the Perreira appeal.

2. Factual Background

Based on HAR § 12-42-9(i)², for the purposes of the Board's Declaratory Ruling, all facts alleged in the DR Petition are deemed to be true, as are other relevant facts alleged by the parties, which are uncontroverted. Accordingly, the Board relies on the following facts.

2.1. Fire Commission Selection Process

When Darren Rosario resigned from his position as Fire Chief on November 1, 2020, Mr. Perreira became the Acting Fire Chief for the County.

Mr. Perreira applied for the position of Fire Chief with the Fire Commission, and the Fire Commission requested that he undergo a three-hour written assessment.

On March 10, 2021, the Fire Commission interviewed Mr. Perreira at a meeting. Prior to the start of the meeting, Mr. Perreira overheard some Fire Commission members and the Deputy Corporation Counsel begin discussing the interview process. Specifically, Mr. Perreira heard the members and counsel discussing that questions had been emailed to the candidates being interviewed by teleconference and the name and timing of the interview of the first candidate. Mr. Perreira left the room and excused himself.

When Mr. Perreira returned for his interview, the Acting Chair for the Fire Commission gave him five minutes to review a set of questions and 45 minutes to present his answers. When the Fire Commission called Mr. Perreira, he was told to just begin answering the questions he'd been given.

Mr. Perreira finished his answers to those questions with one minute left before the 45 minutes expired. After Mr. Perreira finished, a Fire Commission member asked him a question, which Mr. Perreira answered. Another Fire Commission member was about to ask a question; however, before they could do so, the Deputy Corporation Counsel called time up. No further questions were allowed.

After the Fire Commissioners completed all the interviews, they deliberated and voted in executive session. Using the preferential voting method, each Fire Commissioner ranked their choices in order of their preference.

Mr. Perreira was not selected for the position of Fire Chief.

2.2. Concerns Raised by Mr. Perreira

In his brief submitted to MAB, Mr. Perreira points out his serious concerns regarding the fairness and transparency of the interview and selection process, which include the following.

Regarding the interview process, Mr. Perreira raises issues including: the timing, limitations, oral information and instructions, and the pre-interview discussion; the fact that the Fire Commission emailed questions to some candidates and not others; the fact that those written questions may have been shared with others; and the lack of instructions or caution regarding the maintenance of confidentiality. He further raises concerns about the confidentiality of the process based on his understanding that Fire Commissioners were allowed to review and score the written assessments for the candidates at home. Mr. Perreira also questions whether the Fire Commission acted improperly when they interviewed a candidate, who had not taken the written assessment and who had a close relationship with the person ultimately selected as Fire Chief.

As to the concerns regarding the Fire Commission's deliberations, Mr. Perreira argues that the preferential voting method means that a candidate did not need five first place votes to be chosen for Fire Chief. Further, he alleges that one Fire Commissioner should have recused himself because of a past conflict with Mr. Perreira. Mr. Perreira further asserts that the April 14, 2021 open session where the Fire Commissioners disclosed their votes by handwritten ballots was an apparent attempt to rectify the March 10, 2021 vote in executive session.

After a request under HRS Chapter 92F (Uniform Information Practices Act), Mr. Perreira received the Commission records, which included one Fire Commissioner's scoring sheet for him that was left blank. This blank scoring sheet raised additional serious questions and concerns for Mr. Perreira regarding the selection process.

Mr. Perreira alleges that, "The Fire Commission failed to provide a fair and transparent process for the selection of the Fire Chief. Appellant was a candidate for the position of Fire Chief and was not afforded a fair process." As other relevant facts, Mr. Perreira alleges that the Fire Commission knew the names of the five finalists in August 2020, prior to determining and creating the selection process in January 2021; that the selection process was not consistent with the prior two selection processes; that Fire Commissioners broke confidentiality by discussing the process outside of Executive Session; and that the Fire Commission used a scoring system, which resulted in one Fire Commissioner not completing the scoring card for Mr. Perreira.

3. Conclusions of Law and Discussion

No one disputes that the Board has the responsibility to resolve any controversies regarding MAB's authority to hear an appeal under HRS § 76-14(c)(2) and HAR § 14-21.1-3(b)³.

3.1. Position of the Parties

3.1.1. The Fire Commission's Position

The Fire Commission asserts that the issue in the Perreira Appeal is whether the Fire Commission failed to provide a fair and transparent hearing. This issue involves “the discussions, deliberations, decisions, and action of government agencies” being conducted as openly as possible, so the Fire Commission argues that this matter falls within the purposes set forth in HRS § 92F-2.

Based on this argument, the Fire Commission claims that this issue is properly within the jurisdiction of another appellate body or administrative agency under HRS Chapter 92F, the State's Uniform Information Practices Act (UIPA or HRS Chapter 92F); therefore, under HRS § 76-14(c)(1)⁴, MAB is prohibited from acting on and has no jurisdiction over the Perreira Appeal.

The Fire Commission further asserts that any argument from Mr. Perreira is “his gripe” with the Fire Commission's recruitment process, which does not vest MAB with jurisdiction for three reasons: first, the Fire Chief position is appointed and exempt from civil service law and outside the statutory authority of MAB; second, Mr. Perreira has cited no legal authority granting MAB with the power, ability, or jurisdiction to challenge the Fire Commission's exclusive discretionary appointment power under the County Charter §7-4.3(a); and third, MAB cannot provide the remedies demanded by Mr. Perreira to resolve his issues and allegations regarding the recruitment process.

3.1.2. Mr. Perreira's Position

Mr. Perreira disputes the Fire Commission's position regarding the applicability of HRS Chapter 92F. Mr. Perreira maintains that the UIPA, as the State's open records law, has nothing to do with MAB jurisdiction over this appeal. Further, he argues that an individual's right to privacy cannot be used to hide or protect misconduct particularly as it relates to the public interest.

To the extent that there may be some privacy interests or issue involved as to certain government records retained by the Fire Commission, Mr. Perreira appears to assert that HRS Chapter 92F would protect those interests and concerns only so long as allowing access would not constitute a clearly “unwarranted invasion of privacy”. Mr. Perreira dismisses the County's effort to name the Office of Information Practices (OIP) as the agency with primary jurisdiction as nothing more than a struggle to identify an appellate body or administrative agency for deferral of jurisdiction purposes. Mr. Perreira then cites to HRS § 92-6 (a) under the open meetings and record law, which excepts the civil service commission from the open meetings part of HRS Chapter 92.

Regarding the Fire Commission's position that County Charter § 7-4.3(a) gives the Fire Commission the exclusive authority and discretion to appoint the Fire Chief, Mr. Perreira asserts that § 7-4.3(a) requires that this appointment must be done through an open, honest, non-political, and legal process, and this issue of whether this was done is within MAB's jurisdiction under HRS Chapter 76.

Finally, regarding the issue of competing jurisdictions, Mr. Perreira argues that the Board's decision in Civ. Serv. Comm'n v. Haw. Civ. Rts. Comm'n, Board Case No. DR-00-88, Decision No, 445, 6 HLRB 355 (2003 (Decision No. 445), is applicable and holds that MAB ordinarily has jurisdiction over matters that fall under HRS § 76-14(a)(1) and (4) and (b)⁵ unless the issue falls under one of the categories set forth in HRS § 378-2⁶.

3.2. MAB Jurisdiction

3.2.1. Decision No. 445 and MAB's Lack of Jurisdiction under HRS § 76-14(c)(1)

In Decision No. 445, employee Wade Amador (Amador) challenged his non-selection for a permanent civil service position before the Civil Service Commission, County of Hawai'i Merit Appeals Board (CSC/MAB) on the grounds of discrimination because of race, "who they know", and qualifications. Amador further filed a complaint with the Hawai'i Civil Rights Commission (HCRC), alleging that his non-selection was based on racial discrimination.

CSC/MAB petitioned the Board for a declaratory ruling regarding whether, under HRS § 76-14(c)(1)⁷, CSC/MAB had jurisdiction or whether it should defer to the HCRC. HCRC intervened and took the position that Amador's appeal should be bifurcated, with CSC/MAB resolving the "who they know" and qualification issues, and HCRC deciding the race discrimination claim.

In deciding the case, the Board held that CSC/MAB was required to defer Amador's appeal, including his non-selection claims based on race, "who they know" and qualifications to HCRC because the action complained of was subject to HCRC jurisdiction. Decision No. 445, at *8-9. In so holding, the Board reasoned that, among other things, HRS § 76-47 provides MAB with exclusive authority to hear and decide appeals relating to matters set forth in § 76-14 concerning the civil service for the County. Decision No. 445, at *4-5. However, this broad CSC/MAB jurisdiction is limited by HRS § 76-14(c)(1), which requires that CSC/MAB "shall not act on an appeal but shall defer to other authority, if the action complained or constitutes a prohibited act that is subject to the jurisdiction of another appellate body or administrative agency or the grievance procedure under a collective bargaining agreement." Decision No. 445, at * 5.

The Board determined that, because Amador’s pending HCRC complaint for his non-selection based on race was based on the laws administered by HCRC, Amador’s complaint was subject to HCRC jurisdiction. Decision No. 445, at *5-6. The Board concluded that an interpretation favoring bifurcation would render the phrase “shall not act on an appeal meaningless”. Decision No. 445, at *6-7, 9.

Mr. Perreira’s interpretation that Decision No. 445 stands for the proposition that MAB’s jurisdiction is only limited by one of the categories set forth in HRS § 378-2 simply has no merit. As stated above, Decision No. 445 interprets HRS § 76-14(c)(1) more broadly to hold that CSC/MAB was required to jurisdictionally defer to any “other authority, if the action complained of constitutes a prohibited act that is subject to the jurisdiction of another appellate body or administrative agency or the grievance procedure under a collective bargaining agreement” in Amador’s case.

Further, the Board is compelled to point out that this argument is contrary to the Board’s administrative rule relating to declaratory rulings, HAR § 12-42-9(i), which provides that, “An order disposing of a [declaratory ruling] petition shall be applicable only to the factual situation alleged in the petition or set forth in the order. The order shall not be applicable to different factual situations or where additional facts not considered in the order exist.” Therefore, under this administrative rule, the Board’s declaratory ruling in Decision No. 445 is limited to that case and cannot be controlling of the instant DR Petition, which must be considered on its own facts.

3.2.2. MAB’s Jurisdictional Limitations Under HRS § 76-14(c)(1)

Although not relying on Decision No. 445, the Fire Commission also uses HRS § 76-14(c)(1) for its argument that MAB has no jurisdiction over the Perreira Appeal. The Board likewise is compelled to reject the Fire Commission’s argument based on its erroneous reliance on HRS Chapter 92F.

The Board concurs with Mr. Perreira that the UIPA, which provides for the public’s right to access government records maintained by Hawai‘i state agencies, is not applicable to this case. Mr. Perreira is also correct that, to the extent that he is alleging that the selection process was not transparent, the relevant law would be HRS Chapter 92, which requires governmental agencies to hold open meetings.

HRS § 92-1 provides in relevant part, that “[T]he legislature declares that it is the policy of this State that the formation and conduct of public policy—the discussions, deliberations, decisions, and action of government agencies—shall be conducted as openly as possible.”⁸ HRS § 92-2 defines “Board” to include, among other things, a “commission...of the State or its political subdivisions which is created by...statute[.]” Therefore, it appears that the Fire Commission could fall within the governmental agencies covered by this law⁹.

Under HRS § 92-1.5, the director of OIP is responsible for administering HRS Chapter 92, and HRS § 92-12 provides that jurisdiction for enforcement of HRS Chapter 92 rests with the circuit courts of the State.

Therefore, to the extent that Mr. Perreira is challenging his non-selection based on the Fire Commission's alleged lack of transparency, and despite the Fire Commission's reliance on the wrong statutory authority, the Board declares that MAB does not have jurisdiction over the Perreira Appeal because of the HRS § 76-14(c)(1) requirement that MAB defer to OIP and the circuit courts under HRS Chapter 92.

3.2.3. MAB's Jurisdiction Under HRS §§ 76-14(a)(1) and 76-14(b)

In addition to the previously discussed HRS § 76-14(c)(1) jurisdictional issue, Mr. Perreira relies on HRS § 76-14(a), which provides that MAB is required to decide appeals from any action under HRS Chapter 76 taken by an appointing authority relating to (1) recruitment and examination or (4) other employment actions under this chapter.

The Board declares that HRS § 76-14(a) does not provide MAB with jurisdiction over Mr. Perreira's appeal for the following reasons.

Under the County Charter Chapter 4, Hawai'i Fire Department § 7-4.1¹⁰ (County Charter § 7-4.1), the fire chief is the administrative head of the Hawai'i Fire Department. Under the County Charter § 7-4.3 (a)¹¹ and Fire Commission Rules and Regulations Rule 11(a)¹², the Fire Commission appoints the Fire Chief. HRS § 76-11 defines "[a]ppointing authority" to mean a department head or designee having the power to make appointments or changes in the status of employees. "Department" is defined under this same section to include any commission.

Therefore, the Board concludes that the Fire Commission is an appointing authority under HRS § 76-14(a), which may be subject to MAB appeals from their actions. However, this conclusion does not determine that MAB has jurisdiction over the Perreira Appeal.

HRS § 76-14(b) and HAR § 14-25.1-1(b) set forth the categories of individuals who have standing to appeal under the various actions permitted by HRS § 76-14(a).

For HRS § 76-14(a)(1) and HAR § 14-25.1-1(b)(1)¹³, relating to recruitment and examination, that category under HRS § 76-14(b) is broad, including "[a]ny person suffering legal wrong by an action under (a)(1) or aggrieved by such action", which, therefore, could potentially include Mr. Perreira.

However, HRS § 76-22.5, providing for recruitment, clarifies that recruitment under HRS Chapter 76 is limited to filling civil service positions¹⁴.

Similarly, HRS § 76-18, relating to examinations, clarifies that examinations covered by HRS Chapter 76 are limited to those examinations that test the “fitness and ability of applicants for positions in civil service.”¹⁵

HRS § 76-11 specifically provides that, “‘Civil service’ includes all positions within a jurisdiction that are not exempted by section...76-77, or by any other law and must be filled through civil service recruitment procedures based on merit.”

HRS § 76-77, providing for civil service and exemptions for public service positions of each county, specifically exempts positions of heads of department. HRS § 76-77 (2).

Based on the interplay of these provisions, recruitment and examination under HRS Chapter 76 apply only to civil service positions. The County Charter § 7-4.1 provides that the Fire Chief is the administrative head of the Hawai‘i fire department, and HRS § 76-11 specifically exempts County department heads from civil service. Therefore, the Fire Chief is a position exempt from civil service, and any recruitment or examination to fill that position is not within the recruitment and examination provisions of HRS §§ 76-22.5 and 76-18. Because of this exemption of the Fire Chief position, the Fire Commission’s recruitment and examination actions appealed by Mr. Perreira are not within MAB’s jurisdiction under HRS § 76-14(a)(1).

3.2.4. HRS §§ 76-14(a)(4) and 76-14(b)

Mr. Perreira has further appealed his non-selection under HRS § 76-14(a)(4).

Appeals taken under HRS § 76-14(a)(4) and HAR § 14-25.1-1(b)(4)¹⁶ for other employment actions under HRS Chapter 76, including disciplinary actions and adverse actions for failure to meet performance requirements, are limited to those taken against employees excluded from collective bargaining who are covered by HRS Chapter 76 (civil service employees).

Under HRS § 76-14(b), only employees covered by HRS Chapter 76 (civil service employees), excluded from collective bargaining, and suffering legal wrong by an action under HRS § 76-14(a)(4) are entitled to appeal to MAB.

HRS § 76-14(a)(4) covers two types of actions over which MAB may have jurisdiction. The first is “other employment actions” taken under HRS Chapter 76. As discussed above, the Fire Chief position, as a department head, is specifically exempted from civil service. Accordingly, on that basis, Mr. Perreira’s non-selection for this position cannot be an employment action taken under HRS Chapter 76. Therefore, his appeal does not fall within HRS § 76-14(a)(4) on this basis.

The second type of action under HRS § 76-14(a)(4) that MAB may have jurisdiction over is “disciplinary and adverse actions for failure to meet performance requirements, taken against

civil service employees who are excluded from collective bargaining coverage” under HRS § 89-6. This type of action, therefore, could be read to apply to employees currently in civil service positions, excluded from collective bargaining, who may be applying for non-civil service positions. The evidence does not reflect whether Mr. Perreira was a civil service employee, excluded from collective bargaining, at the time that he applied for the Fire Chief position. However, even if Mr. Perreira was a civil service employee, who was excluded from collective bargaining, at the time of his non-selection, he has not shown that his non-selection for Fire Chief is a disciplinary or adverse action for failure to meet performance requirements. Therefore, MAB has no jurisdiction under HRS § 76-14(a)(4) over the Perreira Appeal

For these reasons, Mr. Perreira lacks standing under HRS § 76-14(b) to appeal his non-selection under HRS § 76-14(a)(4).

4. Conclusion and Order

For the reasons discussed above, the Board declares that, to the extent that the Perreira Appeal is based on lack of transparency, MAB has no jurisdiction over the controversy in the Perreira Appeal under HRS § 76-14(c)(1). The Board further declares that Mr. Perreira lacks standing under HRS § 76-14(b) to appeal his non-selection for the Fire Chief Position under HRS § 76-14(a)(1) and (4); and therefore, MAB has no jurisdiction over the Perreira Appeal.

DATED: Honolulu, Hawai‘i, _____ December 6, 2021 _____.

HAWAI‘I LABOR RELATIONS BOARD



Marcus R. Oshiro

MARCUS R. OSHIRO, Chair

Sesnita A. D. Moepono

SESNITA A.D. MOEPONO, Member

J. Musto

J. MUSTO, Member

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¹ HAR § 12-42-9(h)(2) provides:

(h) Hearing:

(2) Any petitioner who desires a hearing on a petition for declaratory ruling shall set forth in detail in a written request the reasons why the matters alleged in the petition, together with supporting affidavits or other written evidence and briefs or memoranda or legal authorities, will not permit the fair and expeditious disposition of the petition and, to the extent that such request for hearing is dependent upon factual assertion, shall accompany such request by affidavit establishing such facts.

² HAR § 12-42-9(i) provides:

(i) An order disposing of a petition shall be applicable only to the factual situation alleged in the petition or set forth in the order. The order shall not be applicable to different factual situations or where additional facts not considered in the order exist. Such order shall have the same force and effect as other orders issued by the board.

³ HAR § 14-21.1-3(b) provides:

(b) The [merit appeals] board shall defer action on an appeal, if there is controversy on whether the matter is within its jurisdiction or that of the Hawaii labor relations board. The Hawaii labor relations board shall determine which of these boards has jurisdiction in the appeal.

⁴ See endnote 1, *supra*.

⁵ HRS § 76-14, Merit appeals board; duties, and jurisdiction, provides in relevant part:

(a) The merit appeals board of each jurisdiction shall decide appeals from any action under this chapter taken by the chief executive, the director, an appointing authority, or a designee acting on behalf of one of these individuals, relating to:

(1) Recruitment and examination;

(4) Other employment actions under this chapter, including disciplinary actions and adverse actions for failure to meet performance requirements, taken against civil service employees who are excluded from collective bargaining coverage under section 89-6.

(b) Any person suffering legal wrong by an action under subsection (a)(1) or aggrieved by such action shall be entitled to appeal to the merit appeals board. Any employee covered by chapter 76 suffering legal wrong by an action under subsection (a)(2) or (3) shall be entitled to appeal to the merit appeals board. Only employees covered by chapter 76, who are excluded from collective bargaining, suffering legal wrong by an action under subsection (a)(4) shall be entitled to appeal to the merit appeals board. Appeals under this section shall be filed within time limits and in the manner provided by rules of the merit appeals board.

⁶ HRS § 378-2 lays out unlawful discriminatory practices.

⁷ HRS § 76-14(c)(1) provides:

- (c) The rules adopted by the merit appeals board shall provide for the following:
 - (1) The merit appeals board shall not act on an appeal, but shall defer to other authority, if the action complained of constitutes a prohibited act that is subject to the jurisdiction of another appellate body or administrative agency...

⁸ HRS § 92-1, Declaration of policy and intent, provides:

In a democracy, the people are vested with the ultimate decision-making power. Governmental agencies exist to aid the people in the formation and conduct of public policy. Opening up the governmental processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore, the legislature declares that it is the policy of this State that the formation and conduct of public policy – the discussions, deliberations, decision and action of governmental agencies – shall be conducted as openly as possible. To implement this policy the legislature declares that:

- (1) It is the intent of this part to protect the people's right to know;
- (2) The provisions requiring open meetings shall be liberally construed; and
- (3) The provisions providing for exceptions to the open meeting requirements shall be strictly construed against closed meetings.

⁹ While the Board does not disagree with Mr. Perreira that the adjudicatory functions of the Civil Service Commission may be exempt under HRS § 92-6(a)(2)(A), the Fire Commission's proceedings are not. HRS § 92-6(a)(2) provides, in relevant part:

(b) This part shall not apply:

- (2) To adjudicatory functions exercised by a board and governed by sections 91-8 and 91-9, or authorized by other sections of the Hawaii Revised Statutes. In the application of this subsection, boards exercising adjudicatory functions include, but are not limited to, the following:

(D) Civil service commission, chapter 26[.]

¹⁰ County Charter § 7-4.1. Organization, provides:

There shall be a Hawai'i fire department consisting of a fire chief, a deputy fire chief, a fire commission and the necessary staff. The fire chief shall be the administrative head of the Hawai'i fire department.

¹¹ County Charter, § 7-4.3. Fire Chief, provides in relevant part:

- (a) The fire chief shall be appointed by the fire commission[.]

¹² Fire Commission Rules and Regulations, Rule 11. Appointment of The Fire Chief provides in relevant part:

- a) The Fire Chief shall be appointed by the Commission and may be removed by the Commission at its sole discretion. Any motion for removal of the Fire Chief must

contain a statement of reasons, and the Fire Chief must be allowed to respond to the statement of reasons before being removed.

b) The Department of Human Resources of the County of Hawai‘i shall screen all applications and forward to the Commission all applicants meeting the minimum qualifications. The Commission shall select which applicants it wishes to interview, provided that no part of this rule shall be interpreted so as to limit the discretion of the Commission in determining which person it shall appoint as Fire Chief....

¹³ HAR § 14-25.1-1(b)(1) provides in relevant part:

(b) The merit appeals board shall decide appeals from actions taken by...an appointing authority,...as follows to:

(1) Recruitment and examination for civil service positions. Any person suffering legal wrong by that action or aggrieved by that action may file an appeal...

(4) Other employment actions taken against civil service employees who are excluded from collective bargaining coverage under section 89-6, Hawaii Revised Statutes, if the employee suffers a legal wrong by the action. These actions include:

(C) other employment actions if the employee suffers a legal wrong by the action.

¹⁴ HRS § 76-22.5, Recruitment, provides in relevant part:

The director shall adopt rules in accordance with Sections 76-1 and 78-1 to determine, establish, and maintain the manner in which civil service positions are to be filled...

(Emphasis added).

¹⁵ HRS § 76-18, Examinations, provides in relevant part:

There shall be examinations for testing the fitness and ability of applicants for positions in civil service....

¹⁶ See endnotes 5 and 14, *supra*.