

City of Miami

*City Hall
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Miami, FL 33133
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Meeting Minutes

Tuesday, January 13, 2009

10:00 AM

Commission Chambers

Civil Service Board

*Miguel M. de la O, Chairperson
William J. Scarola, Chief Examiner
Jessica Angel-Capo, Board Member
Mariano Cruz, Board Member
Michael T. Dames, Board Member*

PLEDGE OF ALLEGIANCE

The meeting was called to order at 10:19 A.M. The roll call for Board Members at the commencement of the meeting was as follows:

Present: Chief Examiner Scarola, Chairperson de la O, Member Dames, Member Angel-Capo and Member Cruz

A. APPROVING THE MINUTES OF:

Regular Meeting of December 16, 2008.

The Board entered a motion to APPROVE the minutes of the December 16, 2008 meeting which resulted as follows:

Motion by Member Cruz, seconded by Chief Examiner Scarola, to APPROVE. PASSED unanimously.

B. PERSONNEL MATTERS**C. MILITARY LEAVES OF ABSENCE****D. DISCIPLINARY MATTERS**

- D.1** Copy of a Judgment from the City Manager concurring with the Board's findings of not guilty in the matter of Edward Lugo, Police Officer, and guilty of D.O. 1, Ch.11.6.13.18, as set forth in the disciplinary letter, effective April 16, 2008. Ordered and adjudged that he shall serve 120-hour suspension. (NOTIFICATION)
- D.2** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Melissa Thomas, Police Officer, of her 10-hour suspension, effective December 19, 2008. No appeal to date. (NOTIFICATION)
- D.3** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Gerardo Quinones, Police Officer, of his 200-hour suspension, effective December 19, 2008. No appeal to date. (NOTIFICATION)
- D.4** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Jason Fersuson, Police Officer, of his 10-hour suspension, effective December 23, 2008. No appeal to date. (NOTIFICATION)
- D.5** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Marcel Jackson, Police Officer, of his 20-hour suspension, effective January 5, 2009. No appeal to date. (NOTIFICATION)
- D.6** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Favian Rodriguez, Police Officer, of his 40-hour suspension, effective January 3, 2009 and a copy of a request to appeal from Fabian Rodriguez. A hearing will be scheduled in accordance with the Civil Service Rules and Regulations. (NOTIFICATION)

- D.7 Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Christian Alvarez-Vega, Police Officer, of his 10-hour suspension, effective January 4, 2009. No appeal to date. (NOTIFICATION)
- D.8 Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Natalie Ogletree, Police Officer, of her 10-hour suspension, effective January 6, 2009. No appeal to date. (NOTIFICATION)
- D.9 Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Christian Alvarez-Vega, Police Officer, of his 20-hour suspension, effective January 5, 2009. No appeal to date. (NOTIFICATION)

E. GENERAL ITEMS

- E.1 Copy of Findings of Fact concerning the appeal hearing of Lazaro Chappoten, Automotive Mechanic, relative to his termination, effective May 30, 2008. (DISCUSSION)
- Chairman de la O asked if counsel for the department had any objections to the findings of fact (prepared by Special Counsel Everett).*
- Assistant City Attorney Vizcaino responded that she and Attorney Irizarri conferred and agreed with many of the items included in the findings and they also had some objections. She went on to say that what she will present to the Board is findings prepared by Attorney Irizarri, which include her proposed changes as indicated by the handwritten information appearing in the findings. Assistant City Attorney Vizcaino further stated that she and opposing counsel agreed to substituting paragraphs 1 and 2 (on page 1 of Special Counsel's findings) with Attorney Irizarri's proposed language which are closely identical.*
- Chairman de la O asked why the change (if the language is "closely identical").*
- Assistant City Attorney Vizcaino responded that there are some slight differences.*
- Chairman de la O stated that the problem [with solely using Attorney Irizarri's findings] is the findings are prepared by Special Counsel Everett as the Board's proposed findings and although both attorneys may have agreed on how the findings should be written, in the end the Board has to agree with the changes also. He went on to say that he knows the first paragraph in Attorney Irizarri's finding is innocuous in that nothing has changed, but it makes it very hard for the Board to know what the attorneys are changing from the Board's findings; [so this process] will take a while and the Board has a lot of items for consideration on its agenda today. Chairman de la O stated that it would be easier for the Board [to review and approve the findings] if counsel had indicated strike-outs and additions to Special Counsel Everett's report so the Board would know what it is the attorneys are trying to change of the Board's proposed findings.*
- Ramon Irizarri, Attorney at Law on behalf of Lazaro Chappoten, stated that he and Assistant City Attorney Vizcaino discussed the changes [to the findings] and he does not think the Board would have any objections. He went on to say that he knows the Board has time constraints so he would suggest that he and opposing counsel incorporate the two set of findings, submit them to the Board, and he would sign off on those items that he is in agreement with.*

Chairman de la O stated that he wants to see the strike-throughs and changes to the findings prepared by Special Counsel Everett because the fact that both attorneys agree does not mean it is the Board's findings. He went on to say that the Board has a voice in the findings.

Attorney Irizarri stated that the problem he had with the Board's findings was its structure so that is why he prepared findings. He went on to say that he thinks if the Board allows Assistant City Attorney Vizcaino to go through the changes, it would find that there are not a lot of changes to be made.

Chairman de la O instructed Assistant City Attorney Vizcaino to proceed with her objections on the findings.

Assistant City Attorney Vizcaino stated that paragraphs 1 and 2 [as indicated on page 1 in the findings prepared by Special Counsel Everett] seem to be very similar to Attorney Irizarri's proposed paragraphs. She went on to say that she thinks the only difference in paragraph 1 is in the last sentence where it states, "The Appellant requested a hearing to appeal the decision of the Department Director to terminate him effective May 30, 2008, the word "employment" was added. Assistant City Attorney Vizcaino further stated that they also agreed to move paragraph 5 on page 2 of Special Counsel's report directly after paragraph 3 on page 1 so that the information about the e-mails is in chronological order as to the events that occurred.

Cynthia A. Everett, Special Counsel to the Board, stated that she just received a copy of Attorney Irizarri's proposed findings so she did not have a chance to review it, but in response to the change suggested by both counsels, she would say that before getting to the "Findings of Fact" section of the report that is identified by the numbered paragraphs (on pages 3-4 of her report), she basically repeats the language from the written reprimand so it is not so much a finding of the Board, but a presentation of why the matter is before the Board and the department's allegations as set out in the reprimand.

Chairman de la O asked if there were any substantive changes.

Diana Vizcaino, Assistant City Attorney, responded that she and Attorney Irizarri consulted and agreed to the following changes to the findings of fact report. (Additions are in CAPS):

1. Attorney Irizarri suggested to delete the sentence, "The Appellant testified on behalf of himself." that appears at the top of page 3 since the Appellant did not testify.
2. Paragraph #4 should be modified to read: "On May 13, 2008, Appellant received an official reprimand for EMAILS that he sent on April 29, 2008, MAY 7, 2008 AND MAY 8, 2008 to outside parties. In THOSE E-MAILS, Appellant questioned workplace decisions and alleged mispending of taxpayer's money. The reprimand recounted other instances of Appellant sending e-mails in May 2008."
3. Paragraph #5 should be modified to read: "Appellant attended the reprimand meeting with the Department Director, Kelly Barket AND LOURDES LOPEZ. Mr. Barket testified that Appellant made several statements that were insubordinate and threatening. Appellant stated "Mr. Barket should think about taking this step. Don't you think Mr. Barket that you are making this even worse for you? You never know Mr. Barket how this can be worse for you. I think you are making a terrible mistake Mr. Barket."

Following discussion, the Board agreed with the three proposed changes to the

findings.

Member Angel-Capo directed the Board's attention to page 3, paragraph 5, first sentence which states, "Appellant attended the reprimand meeting with the Department Director, Kelly Barket AND LOURDES LOPEZ. Mr. Barket testified that Appellant made several statements that were insubordinate and threatening." She went on to say that she would recommend that the word "threatening" be removed because Director Barket testified that he did not feel threatened.

Following discussion, the Board entered a motion to remove the words "and threatening" from the first sentence in finding #5 which resulted as follows:

Motion by Member Angel-Capo, seconded by Member Dames, that this matter be APPROVED. PASSED by the following vote.

Aye: Chairperson de la O, Dames, Angel-Capo, Scarola and Cruz

Assistant City Attorney Vizcaino stated that she and opposing counsel had no objection to finding #6 and then referred the Board to page 4, finding #7. She went on to say that her objection is that she wants to delete the second sentence which states, "Appellant had previously made it clear that he felt that the City was attempting to curtail his First Amendment rights of expression." Assistant City Attorney Vizcaino further stated that the reason for her objection is she did not recall that part of the testimony.

Following discussion, Chairman de la O called for a motion to strike the second sentence from finding #7. Hearing none, Chairman de la O stated that the sentence would not be stricken.

Assistant City Attorney Vizcaino stated that since the sentence will not be stricken from finding #7, she would suggest that a sentence be added to read: "Pursuant to e-mails that were produced, Appellant expressed concerns that the City was attempting to curtail his First Amendment rights of expression." She went on to say that she thinks the findings need to be clear by indicating that it was an e-mail because a plain reading of that sentence would lead a reasonable person to believe that the Appellant or someone testified to that effect.

Special Counsel Everett stated that it is her recollection from her notes that one of the Board Members, particularly Chairman de la O, felt the statements were not threatening or insubordinate because of the allegations previously raised about the First Amendment, which she thinks are contained in some of the numerous e-mails that Mr. Chappoten sent. She went on to say that in that context, that is why [Mr. Chappoten] would be so concerned and made such statements because someone threatened his First Amendment rights, so it was not meant to be that Mr. Chappoten or one of the witnesses testified to this matter, but she obtained this information from what one of the Board Members talked about.

Member Cruz stated that there is no law against using e-mails and he thinks in a sense that Mr. Chappoten was acting as a whistle-blower and perhaps he was penalized because he was letting people know what was going on in the [General Services Administration].

Chairman de la O called for a motion to add the following preface to the second sentence in finding #7 as proposed by Assistant City Attorney Vizcaino: "Pursuant to e-mails, Appellant had previously made it clear that he felt that the City was attempting to curtail his First Amendment rights of expression." Hearing none, the Chairman stated that this proposed change would not be added to the findings. He asked if there were any other changes to be made to the findings.

Assistant City Attorney Vizcaino referred the Board to the Conclusions of Law section of the report that appears on page 4. She went on to say that Civil Service Rule 14.2(r) should be added since this same charge is included in the charging document.

Chairman de la O asked Attorney Irizarri if he had an objection to adding this charge in the Conclusion of Law section of the report.

Attorney Irizarri responded in the negative.

Without objection from other Board Members, Chairman de la O stated that the Civil Service Rule 14.2(r) would be added.

Chairman de la O called for a motion to APPROVE the Findings of Fact and Conclusion of Law report as amended, which resulted as follows:

Motion by Member Cruz, seconded by Member Dames, to APPROVE. PASSED by the following vote.

Aye: Chairperson de la O, Dames, Angel-Capo, Scarola and Cruz

Following the approval of the findings in the case of Lazaro Chappoten, Assistant City Attorney Vizcaino reminded Attorney Irizarri that they still needed to address the first two pages of the findings that was spoken of earlier. She asked Attorney Irizarri if he was going to be drafting anything as to the proposed changes or were they going to go with the version as currently written.

Attorney Irizarri responded that his main concern is that his client return to work as quickly as possible and as long as the City Manager has a clear picture (of what occurred in this hearing) that is what he is striving for, so he has no objections.

E.2

Copy of Findings of Fact concerning the appeal hearing of Debra Grant, Police Officer, relative to her 20-hour suspension, effective July 3, 2006.
(DISCUSSION)

Attorney Rind asked that this matter be deferred to the next meeting. Without objection from other Board Members, Chairman de la O DEFERRED this item to the next Board meeting.

DEFERRED

E.3

Copy of Findings of Fact concerning the appeal hearing of Alina Pena, Police Sergeant, relative to her 20-hour suspension, effective July 1, 2007.
(DISCUSSION)

Deferred from the meeting of December 16, 2008.

NOTE: Member Dames was not in attendance when the Board conducted Sgt. Pena's hearing; therefore, he abstained from discussion and voting on these findings that pertain to her Civil Service Board hearing.

Chairman de la O asked the department's counsel if she had any proposed changes to the findings of fact.

Osnat K. Rind, Attorney at Law on behalf of the employee, stated that the document before the Board with the underlines and strikes of information are her proposed changes to Special Counsel Everett's findings of fact report. She went on to say that she and the department's attorney have reviewed and are in agreement with the proposed changes to the first three findings.

Chairman de la O encouraged Board Members to voice their position if they were not in agreement with any of the proposed changes.

Attorney Rind referred the Board to finding #4 and stated that opposing counsel objected to the proposed change to this finding.

Following argument by both attorneys and discussion by the Board concerning finding #4, the Board entered a motion to amend this finding as proposed by the Appellant to read: "There is no Departmental Order which required Appellant to record the statement taken from the officer, and she was not aware that the Department wanted her to do so. Nor is there a Departmental Order which required her to give the officer a copy of the complaint before questioning. Departmental Order 2, Chapter 2.4.3.2.6 applies only to investigations performed by Internal Affairs. Furthermore, Carlos Avila, Vice President of the Fraternal Order of Police, testified that the Department does not uniformly enforce the rule requiring statements to be tape recorded." The motion resulted as follows:

Motion by Member Cruz, seconded by Member Angel-Capo, that this matter be APPROVED. PASSED by the following vote.

Aye: Chairperson de la O, Angel-Capo, Scarola and Cruz

Abstain: Dames

Chairman de la O asked Assistant City Attorney Vizcaino if she objected to the deletion of the second sentence in finding #5 which states, "Based on her conversation with the assistant, Appellant was under the impression that she had been granted an extension for a "couple of days".

Assistant City Attorney Vizcaino responded in the affirmative. She went on to say that she and opposing counsel agreed to leave the original sentence in finding #5.

Attorney Rind responded that she had no objection to changing finding #5.

Without objections from other Board Members, Chairman de la O stated that finding #5 will remain as written in the report prepared by Special Counsel Everett which is, "Appellant requested an extension to complete the report by making the request through an assistant, Karen Hagins. Based on her conversation with the assistant, Appellant was under the impression that she had been granted an extension for a "couple of days".

Attorney Rind stated that in finding #6 the name "Ms. Charo" should be changed to Ms. Mata since Charo is the person's first name. She went on to say that opposing counsel objected to deleting the struck-through language which states, "based on her conversation with Ms. Mata, Ms. Hagins assumed that an extension had been granted and . . ."

Following argument by both attorneys and discussion by the Board, the Chairman called for a motion to delete the struck-through language as proposed by the Appellant. Hearing none, the Chairman stated that the struck-through language would remain in finding #6 as well as the proposed underlined language that was agreed upon by both attorneys so that finding #6 reads as follows: "Karen Hagins testified that Appellant did ask her to request an extension of time. Ms. Hagins did so by contacting the DEPUTY Chief's secretary, Ms. MATA. Ms. Hagins testified that MS. MATA GRANTED THE EXTENSION AND THAT based on her conversation with Ms. MATA, Ms. Hagins assumed that an extension had been granted and conveyed that information to Appellant."

Chairman de la O asked the attorneys if they had any disagreements regarding finding

#7.

Assistant City Attorney Vizcaino stated that she objected to adding the language, "The evidence showed that an extension was received"

Attorney Rind stated that she would not have an objection to finding #7 if the second sentence read, "The evidence showed that Sgt. Pena was told that an extension was received."

Special Counsel Everett asked the Chairman to tell her how finding #7 would be written.

Without objections from other Board Members, Chairman de la O responded that finding #7 would read, "APPELLANT IS ACCUSED OF MAKING A FALSE STATEMENT (DEPARTMENTAL ORDER 1, CHAPTER 11.6.17.17) "WHEN SHE CLAIMED SHE HAD RECEIVED AN EXTENSION ON THE DUE DATE FOR THE REPORT" AT ISSUE. There may have been miscommunication; however, Appellant did not make a false statement. She only repeated what she had been told."

Both attorneys expressed that they had no objection to the amendment of finding #7 as stated by the Chairman.

Chairman de la O asked if there were any objections to finding #8.

Assistant City Attorney Vizcaino stated that her objection to finding #8 is that it goes beyond the findings that the Board made.

Following argument by both attorneys and discussion by the Board concerning finding #8, the Board entered a motion to amend this finding to read: "Sgt. Pena is accused of disobeying and executing an order of her superior (Departmental Order 1, Chapter 11.6.13.12) by disobeying a direct verbal order from Lt. Suarez to complete the assignment. Lt. Suarez testified that he told Sgt. Pena to complete the report and forward it through her chain of command (i.e. Lt. Cruz). Sgt. Pena testified that Lt. Suarez told her to wait until her lieutenant, Lt. Cruz, returned and turn the report in to him. Lt. Cruz did not return to work from an injury until September 18, 2006, at which time Sgt. Pena SPOKE WITH HIM ABOUT THE ASSIGNMENT. The Board finds that Sgt. Pena did not disobey an order or directive from her superior. To the contrary, she complied with Lt. Suarez' directive by turning her report in to Lt. Cruz." The motion resulted as follows:

Motion by Member Cruz, seconded by Member Angel-Capo, to APPROVE. PASSED by the following vote.

Aye: Chairperson de la O, Angel-Capo, Scarola and Cruz

Abstain: Dames

Chairman de la O asked the department's attorney if she had an objection to finding #9 as proposed by the Appellant.

Assistant City Attorney Vizcaino responded that she would defer to the Board regarding finding #9 because she did not recall it as being a finding by the Board.

Following argument by both attorneys and discussion by the Board concerning finding #9, the Board entered a motion to add finding #9 as proposed by the Appellant which resulted as follows:

Motion by Chief Examiner Scarola, seconded by Member Angel-Capo, to APPROVE. PASSED by the following vote.

Aye: Chairperson de la O, Angel-Capo, Scarola and Cruz

Abstain: Dames

Assistant City Attorney Vizcaino read into the record a portion of finding #10 which reads, "Indeed the evidence showed that the Record of Formal Counseling was approved by Sgt. Pena's chain of command based on her investigation. Furthermore, the Board finds that Sgt. Pena did not violate the Departmental Order by failing to interview the complainant or witnesses." She went on to say that she did not recall the Board making that exact finding and that she also objected to the portion of the last sentence that states, "and therefore no further investigation by Sgt. Pena was required." and provided argument in support of her objection.

Attorney Rind stated that she would be willing to remove the third sentence because she did not think it was particularly needed and that she had no problem deleting the portion of the last sentence.

Following argument by both attorneys and discussion by the Board concerning finding #10, the Chairman without objection from other Board Members stated that finding #10 would be added and would read as follows: "As to Departmental Order 2, Chapter 2.4.3.1.1 the Department did not show that Sgt. Pena failed to review any relevant reports, worksheets or communication forms in her investigation of Officer Markowitz. Indeed, the evidence showed that the Record of Formal Counseling was approved by Sgt. Pena's chain of command based on her investigation. Sgt. Pena attempted to contact the complainant on several occasions but the complainant could not be reached, and Sgt. Pena reasonably believed the two officers identified by the Department (Officers Andrews and Gardener) were not witnesses to the incident based on Markowitz' statement. In addition, Officer Markowitz confessed to the misconduct (discourtesy)."

Assistant City Attorney Vizcaino stated that her objection to finding #11 is the same position she took for objecting to findings #8 and #9.

Following discussion, the Board entered a motion to add finding #11, but the motion DIED FOR LACK OF A SECOND. Chairman de la O stated that finding #11 will not be included in the findings.

The Chairman called for a motion to APPROVE the findings of fact as amended. The motion resulted as follows:

Motion by Chief Examiner Scarola, seconded by Member Cruz, to APPROVE. PASSED by the following vote.

Aye: Chairperson de la O, Angel-Capo, Scarola and Cruz

Abstain: Dames

E.4

Grievance hearing on behalf of Edward Diez, Firefighter, pursuant to Civil Service Rules 5-Application for Examinations, 6-Examinations, 7-Eligible Registers and 8-Appointments, Promotions and Advancements.
(DISCUSSION)

Board continuance required; hearing scheduled for January 20, 2009, meeting cancelled.

The Executive Secretary informed the Board that Items E.4 (E. Diez) and E.5 (A. Pritchard) are requests for continuances on behalf of the Board because the meeting was cancelled for which these hearings were scheduled.

Following discussion, the Board entered a motion to CONTINUE the grievance hearing of Edward Diez and charge the continuance to the Board due to the cancellation of the special meeting scheduled for January 20, 2009. The motion resulted as follows:

Motion by Member Angel-Capo, seconded by Member Cruz, that this matter be CONTINUED. PASSED by the following vote.

Aye: Chairperson de la O, Dames, Angel-Capo, Scarola and Cruz

E.5

Investigation hearing on behalf of Amelia Pritchard, Administrative Assistant I, Department of Fire Rescue, pursuant to Civil Service Rule 16.1, Investigation by the Board. (DISCUSSION)

Board continuance required; hearing scheduled for January 20, 2009, meeting cancelled.

The Board entered a motion to CONTINUE the investigation hearing of Amelia Pritchard and charge the continuance to the Board due to the cancellation of the January 20, 2009 meeting. The motion resulted as follows:

Motion by Member Cruz, seconded by Member Angel-Capo, that this matter be CONTINUED. PASSED by the following vote.

Aye: Chairperson de la O, Dames, Angel-Capo, Scarola and Cruz

E.6

Copy of a Request for a continuance from Osnat K. Rind, Attorney, Cohen & Rind, P.A., on behalf of Jeannie Martinez, Typist Clerk III, relative to her 8-hour suspension, effective September 10, 2008. (DISCUSSION)

Hearing of appeal is scheduled for today.

Chairman de la O asked opposing counsel if she had an objection to the Appellant's request for a continuance. Assistant City Attorney Vizcaino responded in the negative.

Following discussion, the Board entered a motion to APPROVE the employee's request for a CONTINUANCE of her appeal hearing which resulted as follows:

Motion by Member Cruz, seconded by Member Angel-Capo, that this matter be APPROVED. PASSED by the following vote.

Aye: Chairperson de la O, Dames, Angel-Capo, Scarola and Cruz

E.7

Motion filed by Iliana Forte, Assistant City Attorney, for recusal of Board Member William J. Scarola, reference the request filed on behalf of Fernando Bosch, Police Officer. (DISCUSSION)

Deferred from the meeting of December 16, 2008.

Attorney Rind stated that (her law firm partner) Attorney Ronald J. Cohen, submitted a brief on this issue and that she did not know if she needed to add anything to it.

Chairman de la O asked Special Counsel Everett if she recalled where the Board left off with discussion of this item.

Special Counsel Everett responded that she thought the matter was resolved, but apparently it was not.

Assistant City Attorney Forte stated that this matter had never been resolved.

Chairman de la O stated for the sake of clarity, the Board would go about this matter by

asking Assistant City Attorney Forte to tell the Board why she thinks Chief Examiner Scarola should recuse himself, which would be followed by Attorney Rind giving her position, and then a decision could be made on the issue at hand.

Assistant City Attorney Forte stated that there were two motions based on the letter from Officer Bosch. She went on to say that the first motion was the recusal of Board Member Scarola and [the second motion was the] lack of jurisdiction or authority that Officer Bosch is asking of the Chief Examiner. Assistant City Attorney Forte further stated that there was an ex-parte letter written to the Chief Examiner by Attorney Rind on behalf of Officer Bosch, in which a copy was provided to the City Attorney's Office. She stated that the letter asked that the Chief Examiner compel the Employee Relations Director to score an examination, but he cannot order a department director to do anything since according to case law, the Chief Examiner does not have the right to do so and according to the Civil Service Rules, the Chief Examiner's role is to make recommendations.

Assistant City Attorney Forte stated that (following discussion of this matter at a previous Board meeting) Board Member Angel-Capo made a motion for the Chief Examiner to conduct an investigation and that is where subsequently the motion for recusal of the Chief Examiner came about. She went on to say that argument was made at that time because the matter involved the sergeant's examination and the decision made by the FOP President not to attend a committee where the questions are being challenged although this was part of the procedures outlined in the job announcement for Sergeant of Police. Assistant City Attorney Forte further stated this is clearly and inherently a conflict because the Chief Examiner has sat on that committee in the past so he is very familiar with what this committee does and that he will make the decision that involves the FOP although he is an officer of the FOP. She stated that the difference in the Civil Service Board situation is that Member Scarola would not be sitting by himself making a judgment because there are four other Board Members (who would vote), but as the Chief Examiner he would be sitting alone making a unilateral decision so it is clear that there has to be a conflict. She stated that the department's request was that another Board Member should be making the decision, but in fact, the matter should be moot because what Officer Bosch is asking is not within the Chief Examiner's power.

Attorney Rind stated that the issue about whether the Chief Examiner has the power to do what her client has requested was already addressed when Attorney Cohen was present at a previous Board meeting so she was not going to discuss that issue today.

Chairman de la O asked Attorney Rind what happened at the time that matter was addressed.

Attorney Rind responded that the entire matter was completely hashed out before Member Scarola and they have not had a decision from him as to what he proposes to do. She went on to say that this matter is not a matter before this Board because although Member Angel-Capo made a motion for the Chief Examiner to conduct an investigation, they do not believe the motion was appropriate one way or the other. Attorney Rind further stated that this is a matter that is strictly and directly a decision made by Member Scarola as the Chief Examiner. She stated that subsequent to that meeting, the City filed a motion to recuse Member Scarola from his position as Chief Examiner and that is what the Memo of Law she provided addresses. Attorney Rind went on to say that she thinks Attorney Cohen was very clear in the Memo of Law when he said that this is an administrative and executive function that Member Scarola is charged with performing by virtue of his position that it is contemplated under the Ordinances, since two members (of the Board) are always elected by City employees, which means that the Chief Examiner may in fact be an employee of the City. She

further stated that this conflict [that the City] alleges exists because of Member Scarola's position on the FOP Board, she would guess that Dr. Mirable, who is head of the Employee Relations Department, would also be in conflict and therefore could not make the decision on how to score the sergeant exam either since there is a dispute between the City and the FOP. Attorney Rind stated that she thinks the most significant part of Attorney Cohen's response is that he laid out under the law (Chapter 112), what a conflict is which would disqualify Member Scarola and that conflict has been interpreted only one way and that Assistant City Attorney Forte had not addressed or disputed the case law and statutory citations listed in the Memo of Law. She went on to say that she has case law and the Attorney General's opinion, which supports her position that this is a decision that is left entirely up to Chief Examiner Scarola.

Assistant City Attorney Forte stated that she never made the argument that this is a Florida Statute, Chapter 112 ethical violation because that is not what she based her decision on. She went on to say that this a quasi-judicial Board and she is concerned with due process of law. Assistant City Attorney Forte further stated that the case law she quoted was that Member Scarola could not make a determination alone because he is not qualified. She stated that this is not a situation where five individuals are making a decision but this is a person that is entirely linked to the process through the FOP, who has been asked to conduct an investigation. She went on to say there is no basis to say that because it is not part of the Board making the investigation that due process principles still do not apply; and the Chief Examiner would still be conducting an investigation and he is still under the Civil Service umbrella, which is something that cannot be divorced. Assistant City Attorney Forte further stated that Attorney Rind is trying to say that this matter is no longer quasi-judicial because it would only be the Chief Examiner making the investigation, but the investigation that the Chief Examiner has been asked to conduct is quasi-judicial and involves due process.

Attorney Rind asked how this matter would be considered a quasi-judicial function.

Assistant City Attorney Forte responded that it is a quasi-judicial function because Attorney Rind asked the Chief Examiner to conduct an investigation under the Civil Service Rules.

Attorney Rind responded that she was not asking the Chief Examiner to conduct an investigation at all, but to exercise his power under the ordinance as the Chief Examiner to provide examinations as defined under those rules. She went on to say that she has no idea how that request becomes quasi-judicial since this is a not a hearing, there are not opposing entities, etc.

Chairman de la O stated that the more fundamental issue is does the Board have the power to recuse the Chief Examiner since Assistant City Attorney Forte is asking that the Board vote on recusing Chief Examiner Scarola.

Assistant City Attorney Forte responded that under the case law she cited, that is exactly the procedure that was followed or the Chief Examiner could recuse himself, which is the same situation when a Judge has been asked to recuse himself. She stated that in this situation, there is a case and point when it falls with a quasi-judicial Board and that this case was provided to the Board's Special Counsel.

Special Counsel Everett responded that she was not provided with a copy of the case Assistant City Attorney Forte made reference to because she recalled requesting a copy, but never received it.

Assistant City Attorney Forte stated that this matter is proceeding through arbitration so she had a discussion with Attorney Cohen. Assistant City Attorney Forte went on to say

that she received a list of arbitrators yesterday to review because they were not able to agree on an arbitrator. She further stated that they have not gone through the procedures based upon the Collective Bargaining Agreement so as far as she is concerned, this matter before the Board is moot because they are proceeding before an arbitrator. She further stated that she believes that was the discussion she and Attorney Cohen had so she did not see why there needed to be two processes going on at the same time about the same matter.

Chairman de la O stated that he did not think the issue was moot from Attorney Rind's prospective because if it were, she would have asked the Board not to rule on this issue. He asked Chief Examiner Scarola if he was recusing himself.

Member Scarola responded that what has happened with this request so far is that he was presented with a letter from Attorney Rind's law firm via the Executive Secretary and he met with Special Counsel Everett to discuss the request that was sought by Attorney Rind on behalf of her client. He went on to say that rather than making a unilateral decision, he decided to [bring the matter to the Board] so that he could hear arguments from both attorneys on the issue. Member Scarola further stated that after hearing from both attorneys, a motion was approved by the Board [asking him to conduct an] investigation. He stated that everything that he has done [thus far on Officer Bosch's request] has been open and without secrets. Member Scarola went on to say that what the City's attorney called a challenge committee and what he sat on previously might be something totally different, but he did not see that as being a conflict. He further stated that there are legal issues (i.e. whether this matter should be in arbitration, whether the City can file a grievance through the Collective Bargaining Agreement) that do not involve him, but will come up for discussion in arbitration. Member Scarola stated that he has tried to move this process along so that everyone knows what is out there and what is going on if someone has not been forthright in their information. He went on to say that based upon the information he gathered, he will prepare a memo [to the Board detailing his results]. Member Scarola further stated that everyone seemed to think that he made up his mind one way or the other on (Officer Bosch's request), but he has not.

Chairman de la O asked Chief Examiner Scarola if he was going to recuse himself from the request made on behalf of Officer Bosch.

Chief Examiner Scarola responded in the negative. He went on to say that the only way he would recuse himself is if someone was able to point out a conflict. Chief Examiner Scarola further stated that he did sit on a committee in the past, but he does not think that should recuse him from performing his duty as Chief Examiner. He stated that he discussed this matter with Special Counsel Everett and he received the same response; therefore, he will not recuse himself.

Member Cruz stated that Member Scarola was nominated and appointed by the Board as Chief Examiner. He went on to say that as Chief Examiner, Member Scarola is supposed to investigate matters and then bring his [report] to the Board so that the Board could decide whether there should be a hearing; therefore he does not think there is a conflict of interest on the part of the Chief Examiner.

Assistant City Attorney Forte stated that [opposing counsel] is not requesting that the Chief Examiner conduct an investigation; instead she is requesting that a unilateral order be made by the Chief Examiner to order the Department Director of Employee Relations to score an examination.

Chairman de la O stated that he wants to stay focused on where the Board is on this matter, which is whether the Board has the power to forcibly recuse Chief Examiner

Scarola. He went on to say that he read the case law provided by the City's attorney and in that case the three Board Members declined [to recuse themselves] and in response the plaintiffs went to an Appellate Court and filed a Writ of Prohibition. Chairman de la O further stated that as he reads the court's decision in that matter, the court did not seem to be giving the Board the power to recuse anyone, but it just seems to be saying there had to be the right to seek a Writ of Prohibition or Appellate Review. He stated that he does not see where the Board has the power to recuse the Chief Examiner and the Chief Examiner decided against recusing himself so if the City thinks the Chief Examiner's decision is incorrect, Assistant City Attorney Forte can seek a Writ of Prohibition and within that writ, she can ask the court if the Board should have ruled on the Chief Examiner's recusal. Chairman de la O went on to say that (in the cited case) the objectors were saying that the process should have ended with the Board Member refusing to recuse himself and certainly that action does not comply with due process. He further stated that he thinks the (Civil Service)Board is beyond the recusal issue because the Chief Examiner has refused to recuse himself. Chairman de la O stated that what he is calling the Motion to Dismiss, he asked Assistant City Attorney Forte if she was saying that the Chief Examiner does not have the power to compel the Department Director to score the examination.

Assistant City Attorney Forte responded in the affirmative.

Chairman de la O asked if the [power to compel] issue was before the Board.

Attorney Rind responded that she did not think so. She went on to say that she believes this issue was filed before the original meeting and hashed out completely at that time.

Assistant City Attorney Forte disagreed and stated that the matter was never hashed out.

Chairman de la O asked Attorney Rind if she meant that a ruling was handed down by the Board when she said the matter was hashed out.

Attorney Rind responded that she did not know if a ruling was appropriate in that context and she did not recall if there was an actual, official ruling. She went on to say that all she knows is that a decision was made for Member Scarola to conduct an investigation and she assumed by ruling in that way that the City agreed the Chief Examiner had the power to conduct the investigation.

Chairman de la O stated that would be a good assumption if the arguments were hashed out.

Attorney Rind reiterated that the argument definitely was hashed out.

Assistant City Attorney Forte responded that she did believe there was a ruling because the procedure (according to opposing counsel) is they are asking the Chief Examiner and not the Board, to force the department director to score an examination when there is nothing in the Rules, Charter, or Code that gives the Chief Examiner the right to do so.

Chairman de la O stated that Assistant City Attorney Forte is going to the substantive issue, but he was not present at the last hearing so he is trying to determine if the Board has already ruled on this matter. He asked the City's attorney if she had already presented her motion (regarding the Chief Examiner not having the power to compel the department director).

Assistant City Attorney Forte responded that she believed her motion was discussed

two meetings ago. She went on to say that the motion was made and then a Board Member made a motion for the Chief Examiner to conduct an investigation.

Chairman de la O asked Special Counsel if she was present at the meeting and was the matter ruled on.

Special Counsel Everett responded in the affirmative. She went on to say that it is her understanding that the employee's attorney made a request of the Chief Examiner and before the Chief Examiner could determine if he needed to do something since he had only one version of the issue from the employee's attorney, he asked the department's attorney to weigh in on Attorney Rind's request and point out any objections, which was done. Special Counsel Everett further stated that she gave advice as to what the Chief Examiner's role is in this type of situation and the Chief Examiner seized the undertaking of listening to both sides and that he may have taken a review of certain documents. She stated that she thinks Member Scarola needs to reach a decision as to what his response is going to be to Officer Bosch's request.

Chairman de la O asked a second time that when this matter came before the Board, was the [department's] motion already made that the Chief Examiner did not have the power to compel the department director to act.

Special Counsel Everett responded in the affirmative.

Chairman de la O asked if once argument was made (by both attorneys) did Member Angel-Capo make a motion, which was passed by the Board to have the Chief Examiner go forward with his investigation.

The Executive Secretary responded that the motion was made and passed to conduct an investigation, but the request from the employee was not to conduct an investigation but to give a directive to the Employee Relations Department Director to score the examination.

Assistant City Attorney Forte stated that what the Board did (when it voted to have the Chief Examiner conduct an investigation) had nothing to do with what the employee requested and nothing to do with whether the Chief Examiner has the authority to do so under the Civil Service Board.

Special Counsel Everett stated that as an obligation as a member of this Board that at some point the Chief Examiner will respond to the employee's request and that response might very well be that he can or cannot follow through with the employee's request or an alternate response, but he has not gotten to that point. Special Counsel Everett further stated that if the Chief Examiner were to attempt to do something that he has no authority to do, she is sure there would be a response, objection, or other appropriate action.

Chairman de la O stated that Special Counsel Everett is saying that the issue is not yet ripe, but it will be if the Chief Examiner decides to compel the department director to score the examination, which is what the department's attorney says he does not have the authority to do.

Assistant City Attorney Forte stated that she did not know whether this matter would be handled under an investigation or if the Chief Examiner would be addressing the concern of Officer Bosch. She went on to say that one request was made for the Chief Examiner to order the department director to act and on the other hand there is a motion for the Chief Examiner to investigate so she is not sure whether he is undertaking the investigative or ordering role.

Chairman de la O stated that the Chief Examiner now has the department's argument as to why he cannot compel the department director to score the exam and he is sure the Chief Examiner would take it into consideration. He went on to say the Board has asked him to conduct an investigation so he can only assume that there would be some type of investigation. He went on to say that if the department's attorney feels that the conclusion reached by the Chief Examiner violates the Civil Service Rules, he is sure that she would let the Board know. Chairman de la O further stated that the matter is not yet ripe because as Special Counsel Everett mentioned, the Chief Examiner may or may not agree with the department's position so he does not think the Board should short-circuit the process.

Assistant City Attorney Forte stated that her response was based on the request that was made by Officer Bosch. She went on to say that a decision has not been made (by the Chief Examiner), and if the Chief Examiner is not going to recuse himself from the proceedings as stated by him, and he is declining to make the determination, then she supposes that the Chairman is correct.

Chairman de la O stated that to be clear, the Chief Examiner has refused to recuse himself and a ruling has been made so he thinks that issue is ripe for whatever appellant remedies there may be.

Chief Examiner Scarola stated that he came to the Board because of what he perceived would be an issue so that is why he wanted to make sure that everything was put out in the public forum so that both sides could see that there was no hidden agenda on his part. He went on to say that he is already a sergeant of police so whether the exam is scored today or six months from now, it would not affect him personally. Chief Examiner Scarola further stated that he knows there are people who would like for this matter to be done and over with, but there are things that have to be settled first and that is what he is considering.

Chairman de la O stated that he thinks the recusal issue was resolved and that there is nothing else to vote on at this time.

Member Dames stated that it has always been his understanding that a person has one election of remedy, which is either through the grievance procedure or Civil Service.

Chairman de la O responded that [election of remedy] would apply in cases of demotions, appeals, suspensions, etc.

Member Dames stated that this matter is going through arbitration, which is the grievance process and the same matter is also before the Board.

Chairman de la O responded that Attorney Rind is not before the Board at this time (on the matter that is in arbitration), but it is something that her client has requested the Chief Examiner to do, which may become moot, but he thinks everyone should let the process work its way through.

No other discussion took place on this matter.

DISCUSSED : As a result of the discussion, the Board provided Assistant City Attorney Forte with the avenue she could take if she wished to pursue this matter further.

F. REPORTS

- F.1 The 2008 Annual Board Report to the City Commission. (DISCUSSION)
The Board entered a motion to APPROVE the Annual Report which resulted as follows:

Motion by Member Dames, seconded by Member Cruz, that this matter be APPROVED. PASSED by the following vote.

Aye: Chairperson de la O, Dames, Angel-Capo, Scarola and Cruz

- F.2 The 2008 Annual Report reflecting Board action on Hearings, Administrative Activities, and Outstanding Judgments. (NOTIFICATION)
- F.3 Pending Hearings as of January 13, 2009. (NOTIFICATION)

G. REQUESTS FOR HEARINGS

- G.1 Request for hearing from Osnat K. Rind, Attorney, pursuant to Civil Service Rule -14, on behalf of Rodrigo Jimenez, Telecommunications Technician. (DISCUSSION)
- Attorney Rind stated that this request is before the Board because Mr. Jimenez was reduced in grade from his position to a lower pay grade. She went on to say that she filed under Rule 14 alleging there was no just cause for this reduction in pay grade and the Executive Secretary, Ms. Mindingall, sent her a letter suggesting that she proceed under Rule 16. Attorney Rind further stated that she would be happy to add Rule 16 to her client's complaint, but she wants to have the issue of whether her client could proceed under Rule 14 heard by the Board. She stated that her position is delineated in her November 20, 2008 letter and that just from a reading of the rule, an employee does appear to have the right to file under Rule 14 for a hearing if he believes that he has been reduced in grade without just cause.*
- Assistant City Attorney Vizcaino read into the record Civil Service Rule 1.14, which states, "Demotion is a reduction in classification and status. A demotion is used when an employee is found to be unsatisfactory in the employee's higher level or for disciplinary reasons." She stated that Mr. Jimenez' classification was reduced, but it had nothing to do with disciplinary reasons, performance, or otherwise. Assistant City Attorney Vizcaino went on to say that (in her request to the Board) Attorney Rind alleged that the spirit and intent of the settlement awarded to her client some time earlier was violated when this reduction in classification took place; however, that is inaccurate because Mr. Jimenez still maintains his same rate of pay and classification of Telecommunications Technician which, means there has been no demotion and that Mr. Jimenez is not entitled to a hearing as accurately indicated by the Executive Secretary in her letter to Attorney Rind.*
- Chairman de la O stated that a demotion as defined under Rule 1.14 does not talk about a reduction in pay but a reduction in classification or status. He went on to say that the next sentence [in the definition] is not limiting what a demotion is; but he thinks [the rule] is more saying what should be done if an employee's performance is found to be unsatisfactory. Chairman de la O asked what the argument was for this not being a demotion when [under Rule 1.14] it does not talk about pay.*
- Special Counsel Everett stated that some might not agree (with the definition), but [the Rule] defines demotion as a reduction in classification or status.*

Chairman de la O stated that he thought the department was saying that this was not a demotion, but [what he has heard thus far indicates] Mr. Jimenez was reduced in classification.

Assistant City Attorney Vizcaino responded that Mr. Jimenez' salary range was reduced but he was not demoted.

Chairman de la O asked if there a difference between (the terms) grade and classification.

Attorney Rind responded that classification refers to a person being in a different title or position, but "grade" refers to the pay range [i.e. 32A, 33A] that was reduced. She went on to say that she was not suggesting that Mr. Jimenez was demoted, but that he was reduced in grade. Attorney Rind further stated that her point is that "reduced in grade" is something other than a demotion and that Mr. Jimenez could appeal if he feels that he was reduced in grade without just cause.

Chairman de la O asked Attorney Rind if she was saying that the provision in Rule 14.1 would allow her client to file an appeal before the Board, but [the rule] would not if Mr. Jimenez was demoted.

Attorney Rind responded in the negative. She stated that if her client was demoted, clearly he could appeal the demotion, but the department's position is that Mr. Jimenez was not demoted and therefore he cannot appeal. She went on to say that she agrees her client was not demoted but what she is saying is that Mr. Jimenez was reduced in grade or that his pay grade was reduced as provided under Rule 14.1 that states, "Any employee in the classified service who deems that he/she has been suspended, removed, fined, reduced in grade or demoted without just cause . . ." may appeal under this rule.

Assistant City Attorney Vizcaino stated that according to Attorney Rind's letter, the reason she requested a hearing was because her client received a "de facto demotion"; therefore, she would like to know if Attorney Rind's complaint is now different. She went on to say that Mr. Jimenez' classification has remained the same because he still holds the position of Telecommunications Technician but what changed was his salary range that changed from 32M to 25M, but his salary was not affected.

Chairman de la O asked the department's attorney if she agreed or disagreed that [the change in salary range] was the same as a reduction in grade.

Assistant City Attorney Vizcaino responded that she would defer to Mr. Martinez who could explain the different terms of classification, salary range, grade, etc.

Ricardo Martinez, Classification & Pay Supervisor, stated that a classification is a title of the duties and responsibilities that are tied to a salary range or grade, which is practically the same thing. He went on to say that in Mr. Jimenez' case, the pay range was downgraded, but his classification remained the same.

Chairman de la O asked Mr. Martinez if what happened in Mr. Jimenez' case is considered a reduction in grade.

Mr. Martinez responded in the affirmative.

Chairman de la O stated that he would like to know why Mr. Jimenez would not be entitled to a hearing under Rule 14.1 if he received a reduction in grade, but not a reduction in pay.

Assistant City Attorney Vizcaino responded that according to Rule 14.1, employees are entitled to a hearing if there has been a removal, suspension, demotion, or termination, but none of those [actions] have taken place with Mr. Jimenez' situation.

Chairman de la O responded that Rule 14.1 also says that classified employees who are reduced in grade are entitled to a hearing so he does not understand why the department is saying that Mr. Jimenez is not entitled to a hearing.

Assistant City Attorney Vizcaino stated that there seemed to be different schools of thought as to whether this was a reduction in grade or not. She went on to say that [the Executive Secretary] does not seem to think that this is a reduction in grade so she was hoping that she could have a moment to explore the Executive Secretary's thought on this issue.

Member Cruz stated that if an employee requests a hearing [before the Board], there has to be a motive for doing so. He went on to say that the issue is not always money, but it can be a matter of limiting a person from going further in his/her career.

Assistant City Attorney Vizcaino stated that after consulting with department representatives, she would ask that this matter be rolled over to the Board's next meeting. She went on to say that she believes that when the Rules were originally written the term "reduced in grade" was synonymous to a reduction in classification. Assistant City Attorney Vizcaino further stated that she thinks if the spirit and intent of the rules had been a reduction in pay grade or range, it would have made that specification and it does not. She stated that she thinks this matter needs further clarification so she would ask that it be tabled to the Board's next meeting so they could further explore the issue at hand.

Attorney Rind stated that these are the Board's Rules and that the Board has the authority to say what they mean. She went on to say that she was not sure why this matter needed to be continued to the next meeting when it is the department that pointed out that "demotion" is defined a particular way in Rule 1.14. Attorney Rind further stated that the point of her letter to Ms. Mindingall was that if a demotion is defined as a reduction in classification and Rule 14.1 indicates a reduction in grade or demotion, she thinks there is a normal rule of statutory construction which says that words are not put into a paragraph for no reason, so if reduction in grade was meant to mean the exact same thing as demotion, it would be completely superfluous language. She stated that the Board could make a determination that this is not what [the rule] means [as interpreted by the department]. Attorney Rind went on to say that someone in the City could be seriously affected in how much they can make and that in this case there is the possibility of Mr. Jimenez facing a 35% deduction in pay.

Chairman de la O asked Attorney Rind what was the prejudice, if any, of putting this matter off to the next meeting.

Attorney Rind responded that there was no prejudice.

Chairman de la O stated that Assistant City Attorney Vizcaino's argument makes sense that [language in the Rules] can change, but unfortunately in terms of the rule of statutory construction, the fact that under the demotion definition, it uses the word, "classification" and then under Rule 14.1 the word became "reduction in grade", this would mean that when the Board adopted the Rules, it knew there was a difference because different terms were used. He went on to say that if the term "reduction in grade" was used throughout [the Rules], then the department's attorney might be right that at some point there was a diversion between classification and pay grade, but the

fact that both terms are used in the Rules is probably going to go against the department, but he sees no prejudice in giving the department more time to review the issue at hand, but the Board would have to agree.

Assistant City Attorney Vizcaino stated that adequate preparation and being able to respond to a request for a hearing is key. She went on to say that when opposing counsel initially claimed there was a demotion and now she is saying there was no demotion, she would ask where is the good faith argument. Assistant City Attorney Vizcaino further stated that she understands that the argument has now changed, but she needs to be prepared to address the change and that is why the continuance is being requested.

Following discussion, Chairman de la O asked if anyone had an objection to continuing this discussion to the next meeting and the majority of the Board Members expressed their objection to continuing this matter. As a result, the Board entered a motion to GRANT the employee's request for a hearing.

Under discussion, Assistant City Attorney Vizcaino suggested that this matter be rolled over to the next meeting so that perhaps Ms. Joni Harris (Employee Relations Manager) could address the difference between a reduction in grade and a reduction in [salary range] because they are different and the Board's Executive Secretary agrees.

Member Scarola stated that his concern is that he heard the department say that there was no pay loss to Mr. Jimenez' salary, but then the Board heard from the department's attorney who said there is a potential for pay loss. He went on to say that if there is a potential for pay loss, there is some type of reduction that would [eventually] affect Mr. Jimenez' pay so there may be an issue of which the Board needs to address.

Assistant City Attorney Vizcaino stated that the City's position is in the contrary because Mr. Jimenez is now in a position where he has a more escalated opportunity to receive promotions as opposed to the pay grade he was in before.

Member Cruz stated that a hearing needs to be granted because this is the only way the Board can see what happened in Mr. Jimenez' case.

Following further discussion, the motion on the floor resulted as follows:

Motion by Member Angel-Capo, seconded by Member Dames, that this matter be APPROVED. PASSED by the following vote.

Aye: Dames, Angel-Capo, Scarola and Cruz

No: Chairperson de la O

H. TODAY'S HEARINGS

H.1

Continuation of the Investigation hearing on behalf of Stanley Jean-Poix and Andre Paul-Noel, Police Officers, pursuant to Civil Service Rule 16.1, Investigation by the Board concerning an alleged Abuse of Power complaint against Sergeant Juan Casiano, Department of Police.

On December 2, 2008 and December 16, 2008, the Board convened to hear the grievance hearing on behalf of Officers Jean-Poix and Paul-Noel, but due to time constraints was unable to finish their hearing. At today's meeting, the Board proceeded with the continuation of this case.

Osnat K. Rind, Attorney at Law, represented the Grievants.

Iliana Forte, Assistant City Attorney, represented the Department.

The Rule of Witnesses continued to be invoked and all witnesses were sworn in individually. Witnesses for the Department continued in the following order:

4. Richard Perez, Police Lieutenant, City of Miami, Department of Police.

5. Bobbie-Ann Smith, Private Citizen.

Questions were posed by Board Members Scarola and Dames during the testimony of witness Bobbie-Ann Smith.

6. Terrence Patrick Smith, Private Citizen.

Questions were posed by Board Members Cruz, Angel-Capo, and Dames during the testimony of witness Terrence Smith.

7. Juan Casiano, Police Sergeant, City of Miami, Department of Police.

Questions were posed by Board Members Scarola, Angel-Capo, and Cruz during the testimony of witness Terrence Smith.

The Department rested its case and the Board proceeded to closing arguments that was presented by both attorneys.

Following final argument, Chairman de la O stated that the Board would not have time to deliberate this case today due time constraints. He went on to say that the Board's next meeting is on January 27, 2009 and that the Board would resume with this case at that time.

HEARING TO BE CONTINUED

H.2

Grievance hearing on behalf of Miguel Hervis, Police Lieutenant, pursuant to Civil Service Rule 16.2, Complaint by Employee, concerning a violation of Civil Service Rule 17.1, Practices, Penalties.

Chairman de la O stated that the Board would not have time to hear Lt. Hervis' case today and that it would have to be rescheduled.

Member Angel-Capo stated that she felt bad that the Board was not able to hear this case today and thereby instructed the Executive Secretary to reschedule this hearing to the Board's next meeting (January 27, 2009).

Following discussion, the Board entered a motion to CONTINUE the grievance hearing of Lt. Miguel Hervis and to charge the continuance to the Board due to time constraints, which resulted as follows:

Motion by Member Cruz, seconded by Member Angel-Capo, that this matter be CONTINUED. PASSED by the following vote.

Aye: Chairperson de la O, Dames, Angel-Capo, Scarola and Cruz

H.3

Hearing of appeal on behalf of Humberto Mijares, Building Inspector III, relative to his 3-day suspension, effective August 27, 2008.

The Board entered a motion to CONTINUE the appeal hearing of Humberto Mijares and

charge the continuance to the Board due to time constraints which resulted as follows:

Motion by Chief Examiner Scarola, seconded by Member Dames, that this matter be CONTINUED. PASSED by the following vote.

Aye: Chairperson de la O, Dames, Angel-Capo, Scarola and Cruz

H.4

Hearing of appeal on behalf of Jeannie Martinez, Typist Clerk III, relative to her 8-hour suspension, effective September 10, 2008.

The Board took no action on this case because a CONTINUANCE was granted at today's meeting.

CONTINUED

ADJOURNMENT:

The Chairman called for a motion to ADJOURN.

Motion by Member Angel-Capo, seconded by Member Cruz, to APPROVE. PASSED by the following vote.

Aye: Chairperson de la O, Dames, Angel-Capo, Scarola and Cruz

The meeting adjourned at 5:57 p.m. Breaks were taken at 11:49-12:06 p.m, 1:39-2:38 p.m. (LUNCH) and 3:33-3:54 p.m.

SIGNATURE:

Miguel M. de la O, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary