

City of Miami

*City Hall
3500 Pan American Drive
Miami, FL 33133
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Meeting Minutes

Tuesday, May 6, 2008

10:00 AM

Commission Chambers

Civil Service Board

*Miguel M. de la O, Chairperson
Jessica Angel-Capo, Board Member
Mariano Cruz, Board Member
Florene L. Nichols, Board Member
William J. Scarola, Board Member*

PLEDGE OF ALLEGIANCE

The meeting was called to order at 10:10 A.M. Chairman de la O welcomed William Scarola and Jessica Angel-Capo as new Members to the Board. The roll call for Board Members at the commencement of the meeting was as follows:

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

Absent: Member Cruz

Prior to consideration of items on today's agenda, Chairman de la O introduced Tishria L. Mindingall, Executive Secretary to the Board, who presented Certificates of Appreciation to Miguel de la O, Jorge L. Garcia, Mariano Cruz [absent], Michael Dames, and Florene Nichols in recognition of their distinguished two-year tenure as Civil Service Board Members.

A. APPROVING THE MINUTES OF:

Regular Meeting of April 22, 2008.

The Board entered a motion to APPROVE the minutes of the April 22, 2008 meeting which resulted as follows:

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

Aye: Member Angel-Capo, Chief Examiner Scarola, Member Nichols and Chairperson de la O

Absent: Member Cruz

B. PERSONNEL MATTERS

C. MILITARY LEAVES OF ABSENCE

C.1 08-00511 James Maree, Fire Lieutenant, requests active duty leave from May 2, 2008 through May 10, 2008. Copy of orders attached. (DISCUSSION)

The Board entered a motion to APPROVE Fire Lieutenant James Maree's request for military leave with pay which resulted as follows:

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

Aye: Member Angel-Capo, Chief Examiner Scarola, Member Nichols and Chairperson de la O

Absent: Member Cruz

C.2 08-00512 James Maree, Fire Lieutenant, requests active duty leave with pay from May 29, 2008 through June 1, 2008. Copy of orders attached. (DISCUSSION)

The Board entered a motion to APPROVE Fire Lieutenant James Maree's request for military leave with pay which resulted as follows:

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

Aye: Member Angel-Capo, Chief Examiner Scarola, Member Nichols and Chairperson de la O

Absent: Member Cruz

D. DISCIPLINARY MATTERS

E. GENERAL ITEMS

- E.1 06-01084** Copy of a notice from Osnat Rind, Attorney, Cohen & Rind, P.A., requesting a continuance of the hearing of appeal on behalf of Orlando Borges, Police Officer, relative his 20-hour suspension. (DISCUSSION)

Hearing of appeal is scheduled for May 20, 2008.

Chairman de la O stated that he understands the department has no objection to the employee's request for a continuance of his appeal hearing. He asked if this is Officer Borges' first request for a continuance.

Attorney Rind responded that she does not know if this is the first continuance request, but she does know that her client cannot be present today because he is out of town.

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

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

Aye: Member Angel-Capo, Chief Examiner Scarola, Member Nichols and Chairperson de la O

Absent: Member Cruz

- E.2 06-01336** Copy of Findings of Fact concerning the appeal hearing on behalf of Paul Jean, Police Officer, relative to his termination, effective July 1, 2006. (DISCUSSION)

Chairman de la O asked Attorneys Abbott and Rind if they had reviewed the proposed Findings of Fact and Conclusions of Law. Both attorneys responded in the affirmative.

Chairman de la O asked if the department's representative had any objections to the proposed Findings.

Assistant City Attorney Abbott responded in the affirmative. She went on to say that she e-mailed a copy of her recommended changes to Attorney Rind and the Executive Secretary of the Civil Service Board.

Attorney Rind stated that she has no objections to Assistant City Attorney Abbott's recommended changes to the findings of fact.

Assistant City Attorney Abbott stated that the first change she requests is on page 1, first paragraph, second sentence of the findings in which she is asking that the words, "Department Director" be changed to "Chief of Police" so that it reads, "The Appellant requested a hearing to appeal the decision of the CHIEF OF POLICE to terminate him effective July 1, 2006."

Assistant City Attorney Abbott directed the Board to page 1, fifth paragraph, second sentence, of the findings and suggested that this sentence be changed to read as follows: "Prior to Appellant's request, two mental health professionals had previously issued reports finding that Appellant was unable to return to work. DR. ALLEN CONDUCTED THE FITNESS FOR DUTY EXAMINATION AND DETERMINED THAT APPELLANT WAS NOT FIT FOR DUTY."

Chairman de la O asked Assistant City Attorney Abbott if her third request was to change "physician" to "psychiatrist."

Assistant City Attorney Abbott responded that this might change depending upon what is agreed upon about Drs. Segal and Allen who determined that Officer Jean was not fit to work (as a police officer).

Chairman de la O asked Assistant City Attorney Abbott again if she wished to change the word "physician" found on page 1, fourth paragraph, second sentence, of the findings to "psychiatrist" and to add the following sentence: "DR. ALLEN CONDUCTED THE FITNESS FOR DUTY EXAMINATION AND DETERMINED THAT APPELLANT WAS NOT FIT FOR DUTY."

Assistant City Attorney Abbott responded in the affirmative.

Chairman de la O asked Attorney Rind if she had an objection to these changes and she responded in the negative.

Assistant City Attorney Abbott stated that on page 2, under the topic, Findings, paragraph #4, the date needs to be changed from February 2005 to November 2004 and she added the word, "paid" in front of the word, "leave" so that paragraph #4 reads as follows: "Appellant was placed on PAID leave from the Department in NOVEMBER 2004."

Chairman de la O asked Attorney Rind if she had objection to these changes and she responded in the negative.

Following discussion, the Board entered a motion to amend the proposed findings with the recommended changes suggested by the department which resulted as follows:

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

Aye: Member Angel-Capo, Chief Examiner Scarola, Member Nichols and Chairperson de la O

Absent: Member Cruz

Chairman de la O asked Attorney Rind if she had any changes she wished to make to the proposed findings of fact.

Attorney Rind responded that on the first page of the findings, last paragraph, first sentence, she changed the date from "February 25, 2005" to "February 16, 2005". She went on to say that she is requesting that the third sentence in this same paragraph be written a little differently to read as follows: "SUBSEQUENT to Appellant's request, two mental health professionals issued reports finding that Appellant was unable to return to work."

Assistant City Attorney Abbott asked if this proposed language refers to the Fitness for Duty conducted by Dr. Allen and the evaluation conducted by Dr. Segal.

Attorney Rind responded in the affirmative.

Chairman de la O asked Assistant City Attorney Abbott if she had an objection to these proposed changes.

Assistant City Attorney Abbott responded in the negative. She went on to say that since the sentence speaks about two mental health professionals and she only made reference to Dr. Allen, [she believes] the information about Dr. Segal should also be included in the findings.

Chairman de la O asked Attorney Rind if she had any objections to expressly referring to Dr. Segal.

Attorney Rind responded in the negative.

Cynthia A. Everett, Special Counsel to the Board, responded that what she has to say is not an objection, but information she would like to relate so that the Board knows how she has been preparing the findings. She went on to say that before getting to the numbered paragraphs (listed under the Findings section), essentially what she prepares is a recitation of what the department has used as their basis for taking [disciplinary] action. Special Counsel Everett further stated that the report is not necessarily saying that [what the department used as their basis for determining disciplinary action] is accurate or true, but it is what the department found or did in making a determination for disciplinary action. She stated that under the heading "Findings" (numbered paragraphs), this is what the Board found which may very well be different from what the department found, did, or alleged. Special Counsel Everett went on to say that she is not saying that the report should not be factually accurate, but she is only repeating what the department said it did [in determining disciplinary action].

Chairman de la O asked Attorney Rind if she objected to adding the language, "Dr. Segal found that the appellant was not psychiatrically cleared to return to duty." Attorney Rind responded in the negative.

Chairman de la O asked Attorney Rind if she had any other changes to add to the findings.

Attorney Rind responded that she wished to omit some of the wording in the third paragraph under Findings so that it reads as follows: "Upon his release, Appellant was advised that he should seek further care from his primary care physician." She went on to say that she requests this change because they were talking about Officer Jean's release at that moment from Larkin Hospital.

Chairman de la O asked for the department's position on Attorney Rind's request.

Assistant City Attorney Abbott responded that the department disagrees because there was testimony presented that Officer Jean was prescribed medication by Dr. Allen while at Larkin Hospital and that he was released to a mental health physician. She went on to say that there was testimony presented that Officer Jean was released to a mental health physician shortly after his release from Larkin Hospital.

Chairman de la O stated that he could not recall the testimony on that matter.

Attorney Rind stated that if the department wants to add language that Dr. Segal prescribed medication for Officer Jean, she would have no problem, but the way paragraph 3 is written, it is not accurate because Assistant City Attorney Abbott is talking about the time Officer Jean was at Larkin Hospital, but as she recalls Dr. Segal's

testimony, he never saw the records from Larkin Hospital.

Chairman de la O stated that the real problem seems to be an issue of timing. He went on to say that except for the introductory clause, "Upon his release," the remainder of the sentence is accurate; therefore he suggests removing the introductory clause so that paragraph #3 reads, "Appellant was advised that he needed mental health treatment, including the taking of medication and that he should seek further care from his primary care physician."

Attorney Rind stated that she had no objection to the change suggested by the Chairman.

Chairman de la O asked Assistant City Attorney Abbott if she had an objection to the proposed language. Assistant City Attorney Abbott responded in the negative.

Chairman de la O asked Attorney Rind if she had any additional changes she wishes to add to the findings of fact. Attorney Rind responded in the negative.

Following discussion, the Board entered a motion to APPROVE the amendments proposed by the employee which resulted as follows:

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

Aye: Member Angel-Capo, Chief Examiner Scarola, Member Nichols and Chairperson de la O

Absent: Member Cruz

The Board entered a motion to APPROVE the proposed Findings of Fact and Conclusions of Law, as amended, which resulted as follows:

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

Aye: Member Angel-Capo, Chief Examiner Scarola, Member Nichols and Chairperson de la O

Absent: Member Cruz

- E.3 07-00354** Copy of a memorandum dated March 3, 2008, from Maria Ferrer-Miralles, EO/DP Administrator, Equal Opportunity/Diversity Programs recommending the continuance of the grievance hearing on behalf of Miguel Hervis, Police Lieutenant. (NOTIFICATION)

Grievance hearing is scheduled for today.

NOTIFIED

F. REPORTS

- F.1 08-00018** Pending Hearings as of May 6, 2008. (NOTIFICATION)

G. REQUESTS FOR HEARINGS

H. TODAY'S HEARINGS

H.1 07-00354

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 asked Attorney Rind if she was prepared to proceed with her client's case today. Attorney Rind responded in the affirmative.

Assistant City Attorney Abbott stated that she agrees with the position of the Administrator of Equal Opportunity and Diversity Programs (Item E.3), and [is asking that] this hearing be continued.

Chairman de la O asked Attorney Rind if she objects to continuing her client's hearing today.

Attorney Rind responded that on this occasion she will not object.

Chairman de la O clarified with Attorney Rind that this would not be a waiver to object if the department tries to continue this case for the same reason in the future.

Attorney Rind responded in the affirmative.

Assistant City Attorney Abbott asked if there was going to be discussion about Lt. Hervis' open investigation and whether his case before the Board today should not go forward until his (external) investigation is closed.

Chairman de la O responded that no one has made that request yet. He went on to say that the only thing he has is a memorandum from Maria Ferrer-Miralles stating that Lt. Hervis' hearing should be continued and Assistant City Attorney Abbott is saying that she wants to stay the proceedings, which is a different issue. Chairman de la O suggested that a motion be made to continue the hearing and discussion could take place afterwards concerning a stay. He went on to say that Attorney Rind does not oppose continuing the hearing, but staying the proceedings is different.

Following discussion, the Board entered a motion to CONTINUE the grievance hearing of Lt. Miguel Hervis which resulted as follows:

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

Aye: Member Angel-Capo, Chief Examiner Scarola, Member Nichols and Chairperson de la O

Absent: Member Cruz

The Continuance will be charged to the department.

The Board entered discussion to determine whether a stay of proceedings relative to the grievance hearing filed by Lt. Miguel Hervis should be granted.

Chairman de la O asked Assistant City Attorney Abbott if she did not wish to reschedule Lt. Hervis' hearing.

Assistant City Attorney Abbott responded that she does not wish to have Lt. Hervis' hearing rescheduled until his open investigation is completed.

Chairman de la O asked Attorney Rind if she objects to the department's position and she responded in the affirmative.

Chairman de la O asked Assistant City Attorney Abbott to present the grounds for which she feels the Board should not reschedule Lt. Hervis' grievance hearing.

Assistant City Attorney Abbott stated that Lt. Hervis' EEOC complaint is currently open; all of the information is confidential, and as far as she knows, the EEOC allegations are the same as what Lt. Hervis filed with the Civil Service Board. She went on to say that there are issues and testimony that cannot be used at this hearing because they overlap and that she would have to use the individuals who conducted the EEOC investigation, but they would not be able to testify, nor would the witnesses who gave statements. Assistant City Attorney Abbott further stated that most importantly, Maria Ferrer-Miralles, Administrator, Equal Opportunity and Diversity Programs (EODP), who conducted the investigation cannot testify; therefore, her hands would be tied and she would be unable to put on her case if she is unable to get testimony about the investigation of Lt. Hervis' allegation of discrimination.

Chairman de la O stated that some of what Assistant City Attorney Abbott stated might be accurate, in that the person who is actually conducting the investigation may be bound by some rules of confidentiality, but the actual witnesses can testify. He went on to say that the fact that the witnesses have already testified in some confidential-type proceeding does not prohibit them from testifying before the Civil Service Board as to what happened to them. Chairman de la O further stated that he does not know what the case is about, so he does not know to what extent the department's attorney would need the investigator. He asked for Attorney Rind's position on this matter.

Attorney Rind responded that with all due respect to Assistant City Attorney Abbott, she thinks she is 100% wrong. She went on to say that she does not have any idea as to what Assistant City Attorney Abbott bases her conclusion on that the witnesses who are relevant to this case cannot testify simply because there is an open EEOC case. Attorney Rind further stated that whether Maria Ferrer-Miralles can testify about her conclusions about the investigation is completely irrelevant in these proceedings. She stated that it does not matter what the EODP Administrator determines because this hearing before the Civil Service Board is de novo; therefore, evidence as to any documents that have been submitted to the Office of EODP can come in during these proceedings. Attorney Rind went on to say that the documents do not become confidential because they are provided, so there is absolutely no reason why this proceeding cannot go forward simply because there is an open investigation.

Chairman de la O stated that the issue that usually comes up when there are parallel investigations is whether the Board is stepping on the toes of someone else, whether testimony would come out early, etc. He asked Special Counsel if she saw any reason why the Board should not proceed with this case.

Special Counsel Everett responded that she is not aware of any legal issue as to why the witnesses cannot testify [in this forum].

Assistant City Attorney Abbott asked if she is correct in understanding that the investigation is not [being handled] internally, but externally and whatever [documents] were submitted on behalf of the City are still confidential.

Chairman de la O stated that when someone gives information [to a City representative], that person receiving the information has to maintain it confidentially, but the person who gave the information can still be compelled to testify about the matter. He went on to say that these are two different things and that they do not become confidential for the

entire world just because information was told to someone during an investigation.

Assistant City Attorney Abbott stated that this situation puts the department at a disadvantage because she is unable to review the information.

Chairman de la O stated that because he is not familiar with the case, he would like to know if someone is complaining about something that Lt. Hervis did.

Attorney Rind responded in the negative. She went on to say that Lt. Hervis filed a discrimination case under Civil Service Rule 17. She went on to say that, presumably the department representative can speak to her own witnesses.

Chairman de la O stated that he agrees with Attorney Rind. He went on to say that if Lt. Hervis reports that he was discriminated against for whatever reasons, the department's attorney can speak to those persons whom Lt. Hervis accused of discriminating against him. Chairman de la O further stated that the fact that a witness has given a statement to the EODP Administrator or anyone else, does not stop that witness from talking to an attorney.

Member Scarola stated that there have already been two continuances of this case, the matter of confidentiality has come up, and since Maria Ferrer-Miralles is present in the audience, perhaps she could be called upon to tell the Board how long does she need on the case.

Maria Ferrer-Miralles, Administrator, EODP, Department of Employee Relations, appeared before the Board and stated that Lt. Hervis filed a complaint under Federal and Local law so his complaint is not being investigated by her office, but by the Miami-Dade County Equal Opportunity Board (MDCEOB). She went on to say that the case is being investigated under the Americans with Disabilities Act (ADA) and their local ordinance, Chapter 11A. Administrator Ferrer-Miralles further stated that she has provided Miami-Dade County with the information it requested, but they are not finished with the case. She stated that they have sworn statements from individuals who were named by Lt. Hervis as being involved in what he alleges, which is the same allegation that he brought before the Board. Administrator Ferrer-Miralles went on to say that nothing is open to the City Attorney until the case is completely closed by the MDCEOB.

Chairman de la O asked when this case will be completed by the MDCEOB.

Administrator Ferrer-Miralles responded that the MDCEOB recently issued closings on a couple of cases. She went on to say that when the decisions are handed down, the party that did not prevail has the right to sue under an appeal process and that this process can sometimes take over a year, so she does not know when this case will be completed by the MDCEOB.

Chairman de la O stated that this is still not an exclusive remedy.

Administrator Ferrer-Miralles responded that if the Board were to hear Lt. Hervis' case, the documents that were placed in his EODP file could not be shared with the Board until the case is completely closed.

Chairman de la O stated that the witnesses could still come forward and testify and they can defend themselves against any allegations Lt. Hervis has made. He went on to say that the only difference is the statements given to EODP would not be used.

Administrator Ferrer-Miralles stated that the witnesses are told not to discuss whatever they have provided in an investigation until the case has been completed.

Chairman de la O stated that he can assure Administrator Ferrer-Miralles that what she is saying does not have the force of the law.

Administrator Ferrer-Miralles stated that the MDCEOB holds them to keeping the information confidential until the case is closed because if the information gets out, then there could be retaliation.

Member Scarola stated that in such cases, the Board would be obtaining the information from the witness and not from Administrator Ferrer-Miralles.

Administrator Ferrer-Miralles stated that the information is being disseminated in a public forum.

Chairman de la O stated that the City Charter provides employees with certain rights to address their grievances and if the City Charter wants the Board to hold such cases in abeyance until such time that all of the other proceedings are finished, it should be indicated in the Charter, but it is not. He went on to say that the problem is how does the Board tell Lt. Hervis that his case will not be heard until the other proceedings are completed especially when there is nothing [in writing] that would stop the Board from doing so.

Administrator Ferrer-Miralles stated that this Board sent Lt. Hervis to her office and that he came by her office a month or so after he was directed to do so to seek internal assistance [concerning his discrimination complaint]. She went on to say that she completed a drafted complaint form, but Lt. Hervis never signed it. Administrator Ferrer-Miralles further stated that some time later she heard from Attorney Rind and Lt. Hervis signed the form for internal assistance, but almost immediately he chose to go to the outside agency. She stated that all of these things have a process and when he chose to go to the outside agency, her office was no longer required to proceed with the internal investigation. Administrator Ferrer-Miralles went on to say that she recalls this Board asking Lt. Hervis if he exhausted his administrative EEOC proceedings.

Special Counsel Everett stated that her memory might be faulty but after hearing and remembering more about this case, she believes that this Board did refer Lt. Hervis to EEOC either internally or externally because the Board's remedy if it does go forward is probably going to be limited in this case. She went on to say that in terms of allowing Lt. Hervis to avail himself of every opportunity to seek redress, that recommendation was made because the way the Rule is written, the Board's ability to rectify the situation is going to be limited, but it does not negate the right of this Board to hear Lt. Hervis' case or for him to seek whatever redress this Board can apply.

Member Scarola stated that the Board has already granted a continuance of this case, so his recommendation would be that this matter be placed on the Board's agenda within two weeks so that both sides can present their arguments as to why this case should be stayed.

Attorney Rind asked Member Scarola if he was asking to put Lt. Hervis' case on for a hearing in two weeks.

Member Scarola responded in the negative. He went on to say that the two-week period would be for both attorneys to present arguments at the next meeting as to why there should or should not be a stay of the proceedings.

Attorney Rind stated that the issues really are not going to change from today.

Member Scarola stated that he could agree that the issues are not going to change, but he thinks it was sort of short notice on this issue and what he is asking is just a suggestion.

Following discussion, the Board entered a motion to DEFER discussion to the Board's next meeting to determine whether there should be a stay of the proceedings of Lt. Hervis' case. The motion DIED FOR LACK OF A SECOND.

The Board entertained further discussion following the failed motion.

Chairman de la O stated that he had not heard a legal, cognizable reason why this case should be stayed, so he thinks the case should be scheduled in due course and the Board would hear it like it would with any other case.

Assistant City Attorney Abbott stated that she would request that the Board consider not hearing this case due to the fact that there is no remedy that the Board can provide under Rule 17 especially since the Police Chief is an unclassified employee and the rules are set forth for classified positions.

Chairman de la O stated that he thinks what Assistant City Attorney Abbott is now requesting should have been made at the time when the Board initially considered this matter. He went on to say that he does not recall what the Board discussed at that time regarding this issue.

Assistant City Attorney Abbott stated [that the request was made and] the Board concluded at that time that the Board could offer no remedy in this case.

Attorney Rind stated that she does not recall if there was a conclusion on whether there was a remedy, but she does think that this issue of remedy needs to be addressed by the Board; however, she does not know if the Board wishes to address this issue before the hearing.

Chairman de la O responded that the matter (of a proper remedy) would be addressed at the hearing. He went on to say that Assistant City Attorney Abbott may be right when she says there is no remedy; therefore, if she wants to prepare a motion that legally and clearly states that there is no remedy that the Board can provide in Lt. Hervis' case, then perhaps the Board could rule on this matter at the beginning of the hearing.

No other discussion took place on this matter.

H.2 08-00022

Grievance hearing on behalf of Israel Garcia, Programmer, Department of Information Technology, pursuant to Civil Service Rule 16.2, Complaint by Employee, concerning a violation of Civil Service Rule 5.4, Disqualification, and 14.2 (p) Grounds for Dismissal - falsification of record.

The Board entered into the scheduled grievance hearing on behalf of Israel Garcia.

Israel Garcia, Complainant, represented himself.

Zascha B. Abbott, Assistant City Attorney, represented the Department.

Israel Garcia waived opening statements and Assistant City Attorney Abbott reserved opening statements until after the Complainant rested his case.

All witnesses were sworn in individually. Witnesses for the Complainant appeared in the

following order:

1. *Noravia Rodriguez, Database Administrator, City of Miami, Department of Information Technology.*

The Complainant rested his case.

Assistant City Attorney Abbott moved for a Directed Verdict

Chairman de la O denied Attorney Abbott's motion for a Directed Verdict.

Opening statements were made by Assistant City Attorney Abbott.

Witnesses for the Department appeared in the following order:

1. *Joni Harris, Employee Relations Manager, City of Miami, Department of Employee Relations.*

Questions were posed by Chairman de la O during the testimony of witness Joni Harris.

The Department rested its case.

Following closing arguments by Israel Garcia and Assistant City Attorney Abbott, Chairman de la O stated that he finds that part of the problem is the way in which Mr. Tacoronte filled out his [employment] application. He went on to say that instead of inserting the number of credits he earned (in the box designated in the application for this information), Mr. Tacoronte inserted "100%", which he thinks led to this misunderstanding that Mr. Tacoronte had his Master's Degree although he apparently does. He went on to say that what the Board has is some sort of issue about whether in Mexico the Master's Degree is the same in the United States, but he does not see this as an intent to falsify the application. Chairman de la O further stated that the analysis prepared by Josef Silny & Associates, Inc. indicates what the [academic credentials] submitted by Mr. Tacoronte are [equivalent to in the United States]; Mr. Tacoronte completed the course work, and at the end of the day there was no material difference on whether Mr. Tacoronte had a degree or not because either way (initial outcome of interview results vs. corrected interview results), Mr. Tacoronte ended up in the top band ahead of the other candidates and he qualified for the job. Chairman de la O went on to say that based on this information, he does not think Mr. Garcia has been hurt by what happened during the interview process.

Member Scarola stated that when the department realized that there may have been a problem (with the scores), the scores were recalculated to remove this issue of the (academic) degree; however, at the end of the day the ranking bands did not change and therefore, the matter of the degree was not an issue.

Following discussion, the Board entered a motion finding that there was no violation of Rules 5.4 - Disqualification and 14.2(p) - Grounds for Dismissal-falsification of record, as alleged by the Complainant and recommend no further action be taken, which resulted as follows:

Motion by Chief Examiner Scarola, seconded by Chairperson de la O, that this matter be APPROVED. PASSED by the following vote.

Aye: Member Angel-Capo, Chief Examiner Scarola, Member Nichols and Chairperson de la O

Absent: Member Cruz

ADJOURNMENT:

The Chairman called for a motion to ADJOURN. The meeting adjourned at 11:59 A.M.

A break was taken from 10:40 - 11:04 A.M.

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

Aye: Member Angel-Capo, Chief Examiner Scarola, Member Nichols and
Chairperson de la O

Absent: Member Cruz

SIGNATURE:

Miguel M. de la O, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary