

# **City of Miami**

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

**Tuesday, September 9, 2008**

**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 10:09 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 August 26, 2008.

*The Board entered a motion to APPROVE the minutes of the August 26, 2008 meeting which resulted as follows:*

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

**B. PERSONNEL MATTERS**

- B.1 08-01021** Copy of a memorandum from Stephanie Grindell, Director, Department of Public Works, requesting to extend the probationary period of Hammad Mohammad, Engineering Technician I, six (6) additional months beyond September 24, 2008. (DISCUSSION)

*Chairman de la O asked Mr. Mohammad if he was aware that the department requested to extend his probationary period.*

*Hammad Mohammad, Engineering Technician I, responded in the affirmative.*

*Chairman de la O asked Mr. Mohammad if he had any objections to the department's request. Mr. Mohammad responded in the negative.*

*Following discussion, the Board entered a motion to APPROVE the department's request to extend Mr. Mohammad's probationary period six (6) additional months beyond September 24, 2008, which resulted as follows:*

**Motion by Chief Examiner Scarola, seconded by Member Cruz, that this matter be APPROVED. PASSED unanimously.**

**C. MILITARY LEAVES OF ABSENCE**

- C.1 06-02028** C.T. Gregoire, Police Officer, requests retroactive duty military leave without pay from January 3, 2007 through January 2, 2009. Copy of Orders submitted. (DISCUSSION)

*The Board entered a motion to APPROVE Officer Gregoire's request for retroactive duty military leave which resulted as follows:*

**Motion by Chief Examiner Scarola, seconded by Member Angel-Capo, that this matter be APPROVED. PASSED unanimously.**

**D. DISCIPLINARY MATTERS**

- D.1 08-00896** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Alice Dunn, Typist Clerk II, of her 40-hour suspension, effective

August 11, 2008 and copy of a letter from Osnat K. Rind, Attorney, on behalf of Alice Dunn, Police Officer, requesting a hearing of appeal relative to her disciplinary letter. A hearing will be scheduled in accordance with the Civil Service Rules and Regulations. (NOTIFICATION)

- D.2 08-01047** Copy of a letter from Hector Lima, Director, Building Department, notifying Humberto Mijares, Building Inspector III, of his 3-day suspension, effective August 27, 2008 and copy of a letter from Osnat K. Rind, Attorney, on behalf of Humberto Mijares, Building Inspector III, requesting a hearing of appeal relative to his 3-day suspension. A hearing has been scheduled for January 13, 2009. (NOTIFICATION)
- D.3 08-00897** Copy of a letter from Chief William Bryson, Director, Department of Fire-Rescue, notifying Jeannie Martinez, Typist Clerk III, of her 8-hour suspension, effective September 10, 2008 and copy of a letter from Osnat K. Rind, Attorney, on behalf of Jeannie Martinez, requesting a hearing of appeal relative to her disciplinary letter. A hearing has been scheduled for January 13, 2009. (NOTIFICATION)
- D.4 08-01051** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Glenn Maura, Police Officer, of his 10-hour suspension, effective August 29, 2008. No appeal to date. (NOTIFICATION)
- D.5 08-01052** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Harold Cummings, Police Officer, of his 5-hour forfeiture, effective August 26, 2008. No appeal to date. (NOTIFICATION)
- D.6 08-01053** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Daniel Rodriguez, Police Officer, of his 20-hour suspension, effective August 21, 2008. No appeal to date. (NOTIFICATION)
- D.7 08-01054** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Guillermo Suarez, Police Officer, of his 10-hour suspension, effective August 22, 2008. No appeal to date. (NOTIFICATION)

## **E. GENERAL ITEMS**

- E.1 06-02034** Copy of a Request to Continue from Cohen & Rind, P.A., concerning the appeal hearing on behalf of Leonel Tapanes, Police Officer, relative to his 40-hour suspension, effective June 4, 2004. Diana Vizcaino, Assistant City Attorney, expressed no objections to this continuance. (DISCUSSION)

*Member Dames asked for the scheduling history of Officer Tapanes' hearing.*

*The Executive Secretary responded that Officer Tapanes' hearing was continued for a total of six times; five at the request of the employee and one on the Board.*

*Osnat K. Rind, Law Offices of Cohen & Rind, stated that this case predates her becoming a part of the law firm. She went on to say that Attorney Cohen is the person most familiar with this case and he has a conflict today and that is why she is asking for a continuance.*

Chairman de la O asked if Attorney Cohen would be trying this case. Attorney Rind responded in the affirmative.

Diana Vizcaino, Assistant City Attorney, stated that Attorney Rind advised her that she would be requesting a continuance of Officer Tapanes' case approximately a week ago and she let Attorney Rind know that she had no objection to her request.

Member Scarola stated that this case was continued several times because civil litigations was taking place and now the court case is completed.

Chairman de la O asked if it would help to schedule Officer Tapanes' case for a special meeting date. Attorney Rind responded in the affirmative.

Chairman de la O instructed the Executive Secretary to schedule Officer Tapanes' case as the first hearing on the Board's agenda if other cases are scheduled on the same day.

The Executive Secretary responded that she would work on the rescheduling of Officer Tapanes' hearing.

Chairman de la O stated that he is asking that this case be special set because he is aware that Attorney Cohen has other commitments on Tuesdays that he did not have in the past.

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

**Motion by Member Cruz, seconded by Member Angel-Capo, that this matter be APPROVED. PASSED unanimously.**

**E.2 08-00870**

Chief Examiner's Preliminary Investigation Report regarding Amelia Pritchard, Administrative Assistant I, Department of Fire Rescue, request pursuant to Civil Service Rule 16.2 - Complaint by Employee. (DISCUSSION)

Chief Examiner Scarola stated that he, Ms. Mindingall (Executive Secretary) and Ms. Joni Harris, Employee Relations Manager, met and reviewed documents concerning the Rule violations that Ms. Pritchard cited in her complaint and they were unable to find that any of the cited Rules were violated. He went on to say that he listed seven (7) findings on page 2 of the report for the Board's review, which he feels are self-explanatory and support his conclusion of there being no violation on the part of the department.

Chairman de la O asked Chief Examiner Scarola if there was any discussion of why the eligibility requirement is that applicants must have prepared payroll [utilizing an automated and integrated human resources/payroll information system] for a company with more than 2,000 employees versus 1,000 or 500 employees.

Chief Examiner Scarola stated that he does recall having this discussion. He went on to say that he does not recall exactly the response given, but he believes it had something to do with the department looking at different size cities and how many employees were on the payroll.

Chairman de la O stated that as he understands Ms. Pritchard's complaint, she is alleging that the requirements have been drawn in such a way that only one person qualifies for the Assistant Supervisor of Payroll position. He went on to say that Chief Examiner Scarola did identify in his report that only one person was qualified and he then asked the Chief Examiner if it would not be a violation of the rules to draw

requirements that are not based on need and result in only one person qualifying for the position.

Chief Examiner Scarola responded that if he recalls correctly the Employee Relations Department posted a job announcement for the Assistant Supervisor of Payroll position three times, but he does not know if the specifications were changed during the third posting of the position.

Chairman de la O asked if in each case was only one person qualified for the job.

Chief Examiner Scarola responded that the one person did qualify, but the position has not been filled.

Chairman de la O asked if more people qualified when the job announcement was reposted and if the register for Assistant Supervisor of Payroll has closed yet.

Chief Examiner Scarola responded that he does not know whether the register has closed and that he has not seen Ms. Harris to find out whether it has closed.

The Executive Secretary responded that she checked with the Employee Relations Department and found out that the Assistant Supervisor of Payroll position that was most recently posted closed in July 2008 and that the Payroll Specialist recruitment is also closed.

Chairman de la O asked Chief Examiner Scarola if it is his position that there would have been a violation if the position was filled.

Chief Examiner Scarola responded that what he can gather and what they reviewed, the City changed the eligibility requirements and there was only one person that qualified. He went on to say that whether the City made a last minute change to the requirements he does not know; however, he does not think that was the case. Chief Examiner Scarola further stated that the City looks at parameters all the time which can result in the City changing things, which is what happened in this case, but he does not think this would be a violation. He stated that his report is only a recommendation; therefore, the Board can either accept his report or reject it and have a full hearing.

Chairman de la O stated that what is still bothering him is this is not a position for Payroll Supervisor, but for Assistant Supervisor of Payroll. He went on to say that if there is good reason that the Assistant Supervisor of Payroll position requires that an applicant have four years of experience working with a human resources integrated system to prepare payroll for more than 2,000 employees that is fine, but it sounds arbitrary to him to have this requirement for the Assistant Payroll Supervisor. Chairman de la O further stated that when only one person results in qualifying for the position, it raises questions and he is not sure that he is convinced that there is need for applicants to have [these requirements]. He asked Ms. Harris if there was an analysis done as to why applicants are required to have used a system for which payroll was prepared for 2,000 employees because if the number was lower, Ms. Pritchard and others would have qualified.

Joni Harris, Employee Relations Manager, responded that as it concerns the position of Assistant Supervisor of Payroll, the requirements in terms of years of experience has not changed since 2006 and before this time in 1998. She went on to say that in an effort to ensure that the Employee Relations Department was being consistent, prior to posting a job announcement, a question was posed to the employing department as to what it considers to be a "large number of payroll" and the response received from the department was that they needed someone who has handled an organization at least half the size of the City of Miami. Ms. Harris further stated that currently the City has

over 4,000 employees and this is how the figure of 2,000 came about. She stated that the person occupying the Assistant Payroll Supervisor position would be the core or lead person in running and managing the payroll.

Ms. Harris stated that when the job announcement was prepared, it included two ways for which an applicant could qualify for the position. She went on to say that an applicant could qualify (via the Promotional requirements) by having the time-in-grade as a Payroll Specialist beyond the date of permanent appointment or the open requirements which included persons in or out of City. Ms. Harris further stated that the Assistant Payroll Supervisor position was initially recruited as restricted/promotional so that City employees would be given an opportunity first to interview if they met the requirements. She stated that they were not able to attract candidates from within the City with the exception of one employee who qualified under the time-in-grade requirement and as a result, the job announcement was opened to the public in an effort to find someone who could support this function, to no avail for a variety of reasons. Ms. Harris went on to say that the reason the requirements were done was not to match an individual, but to find a person that everybody depends upon within the City who is able to support payroll .

Chairman de la O asked Ms. Harris if she knows of other employees within the City who would meet the time-in-grade requirement but did not apply.

Ms. Harris responded that for the [promotional requirements], there are no others in the classification of Payroll Specialist. She went on to say that there used to be a Payroll Supervisor position, but it does not exist any more and there is a Payroll Manager position which is a much higher level position, so the person occupying the Assistant Payroll Supervisor position must be able to carry payroll and that is why it is their position to get the best person for the job whether that person is a City or non-City employee.

Chairman de la O asked if the answer to his question is that there is only one Payroll Specialist position in the entire City of Miami that meets the time-in-grade requirements.

Ms. Harris responded in the affirmative. She went on to say that she thought there would have been persons applying from the larger departments that may have met the requirements under the restrictive clause.

Chairman de la O asked if there are City employees who would have met the restrictive requirements, but they just did not apply.

Ms. Harris responded that she did not know what field their bachelors degrees are in because her department did not search individuals' applications, but certainly there are persons in the Fire, Police, Parks and Solid Waste Departments who might have been interested but if they were, they did not apply.

Chairman de la O asked Ms. Harris if she feels comfortable with a requirement that results in only one person qualified for the position.

Ms. Harris responded that this is a critical position and the key is to get the best person for the job and she thinks that is why it was recruited for a second time by opening up the recruitment to the public.

Chairman de la O stated that now the situation is that only one person qualified. He went on to say that if the City is looking for the best person and the person who is qualified might be the best person, but he does not think the City is giving itself a chance to cast the net a little wider to have some competition to determine who is the best

person.

Ms. Harris stated that the net was cast wider when the position was opened to the public. She went on to say that there was discussion before the budget hearing to reopen the position, but it was stopped so at some point there becomes a critical need to move forward to carry out the function. Ms. Harris further stated that some employees are beginning to feel that the department does not want to select them, which is not the case. She stated that the department wants the best person for the job; therefore, recruitments was conducted internally and externally based upon the requirements established for the classification that would provide a qualified person to do the job.

Member Cruz stated that just the other day he received a job announcement for the position of Payroll Specialist.

Ms. Harris stated that she is currently reviewing applications for the position of Payroll Specialist.

Member Cruz stated that if there is one Payroll Specialist position that exists in the City and this is the only person out of 38 candidates that qualified, this would mean that approximately 95% of the candidates were disqualified and he feels that is wrong. He went on to say that he would suggest that the department go back and look at the requirements and make it a level playing field so that everyone has an opportunity to qualify for the position. Member Cruz further stated that in his opinion, a person with experience has more knowledge than a person with 10 degrees so he does not understand why Ms. Pritchard was disqualified.

Ms. Harris responded that Ms. Pritchard did not meet the requirements and was deemed ineligible.

Chairman de la O stated that Ms. Pritchard is not claiming that she met the requirements, but she says that the requirements were not drawn in a way that she felt was fair.

Member Angel-Capo asked if Ms. Pritchard has been doing the job for the past 9 years. Ms. Harris responded in the negative.

Member Angel-Capo stated that the memo given to the Board Members indicates that Ms. Pritchard has been doing the job for 9 years.

Ms. Harris stated that the person who did the job of Assistant Payroll Supervisor was Miriam Rios, who recently retired and this is the reason the department is trying to fill the position. She went on to say that Ms. Rios reported to Mr. Angel de Pedro who had been assigned to the Payroll Section for more than 20 years. Ms. Harris further stated that these individuals did not deal with just one department, but dealt across all contracts dealing with IRS regulations. She stated that the person that gets this job is one who every City employee rests upon everyday to receive a paycheck. Ms. Harris went on to say that if Ms. Pritchard had either done the job or met the requirements that would have been fine, but if she does not, certainly she is not here to draft requirements to exclude her.

Member Angel-Capo asked if Ms. Pritchard does payroll for the Fire-Rescue Department. Ms. Harris responded in the affirmative.

Member Scarola stated that maybe there was a misunderstanding, but when Ms. Pritchard filed her complaint, she cited violations of Civil Service Rules 5.1, 8.1 and 8.7.

He went on to say that they looked at these rules to determine if there was a violation and found none. Member Scarola further stated that with regards to whether the requirements were tailor-made, he does not know where this allegation would fit into the rules that Ms. Pritchard alleged were violated.

The Executive Secretary stated that there still is the possibility of adding findings to the report before it goes to the City Manager.

Chairman de la O stated that the only place that Ms. Pritchard's complaint would fall would be under Rule 16.1 if the department is tailor-making something. He went on to say that he does not think the department was tailor-making the requirements, but he is more interested in knowing whether the requirements were objectively drawn in a way that helps the City. Chairman de la O further stated that in his opinion, to have more applicants would help the City. He stated that he thinks Ms. Pritchard was saying that she did payroll for 700 employees in the Fire-Rescue Department for 9 years. Chairman de la O went on to say that he understands that the department wants someone who has experience working with payroll systems half the size of the City's payroll, which would have made sense to him if there were at least three to four applicants that were qualified. He further stated that even though no one may have intended for only one person to qualify, that is what the result is and he does not think that necessarily leaves the best candidate for the job. Chairman de la O stated that as he mentioned earlier, maybe this would be the best candidate for the job, but only time would tell. He went on to say that it would seem to make more sense to lessen the requirements to let more people in and then make a decision. Chairman de la O further stated that he is not sure that the difference between 2,000 employees and 700 employees is critical because at some level, it is a lot of employees that this person would be supervising in payroll. He went on to say that he is not sure that he would disqualify an applicant who has the experience of supervising payroll for over 700 employees and say that is not good enough, but that is what the department is left with.

Member Angel-Capo asked if the one person that is qualified for the Assistant Supervisor of Payrolls position a City employee. Ms. Harris responded in the affirmative.

Member Dames asked if the person who qualified for the position holds the position of Payroll Specialist. Ms. Harris responded in the affirmative.

Member Dames asked if the person that qualified holds the one and only Payroll Specialist position that exists in the City.

Ms. Harris responded that the individual is the only one who meets the time-in-grade requirements. She went on to say that the individual had to have permanent status as a Payroll Specialist plus a minimum of one year experience beyond the date of permanent appointment.

Member Dames asked Ms. Harris again if the person who qualified is the only person who holds the title of Payroll Specialist. Ms. Harris responded that the individual met the time-in-grade requirements.

For clarification purposes, Chairman de la O advised Member Dames that Ms. Harris is saying that there may have been other Payroll Specialists in the City, but they may not have been in the position long enough to qualify.

The Executive Secretary stated the Chief Examiner's report indicates under finding #3 that there is only one Payroll Specialist position in the City.

*Member Dames asked if the person who holds the position of Payroll Specialist assigned to the Payroll Division. Ms. Harris responded in the affirmative.*

*Member Dames stated that there are employees in other departments who are doing payroll; however, they do not hold the title of Payroll Specialist so he would like to know why the requirements could not be lessened to include these employees.*

*Ms. Harris responded that there is a difference between time and attendance and payroll because those individuals do not deal with IRS regulations. She went on to say that given the difference in the level of the position from Payroll Specialist to Assistant Supervisor of Payroll, it behooves the City to look for the best person for the job.*

*Member Dames stated that the point he is making is the only way a person could become a Payroll Specialist was to work in the Payroll Division.*

*Ms. Harris responded that she would agree that the Payroll Specialist is assigned to the Payroll Division; however, a person working outside of the Payroll Division could become a Payroll Specialist.*

*Member Dames stated that the Fire Department payroll is probably the most difficult payroll to understand in the entire City because of the contract and all of the subdivisions that go along with it. He went on to say that, in his opinion, the Fire payroll itself would constitute more than any other payroll in the City.*

*Ms. Harris responded that she understands what Member Dames is talking about in terms of the regulars, plus items, schedules, etc., but it has nothing to do with end of year processing, IRS regulations, and whether a tax code is needed which is what the Payroll Division does. She went on to say that many people think that the Payroll Division is all about time and attendance, but it is not because the Payroll Division has to make sure the City is financially compliant with IRS at the end of the year and to run processes to make sure checks are processed. Ms. Harris further stated that nothing was connived or drawn out for or against Ms. Pritchard or the other candidates that competed in the process.*

*Member Dames stated that everyone understands that there was no conniving done when preparing the requirements for the Assistant Supervisor of Payrolls position. He went on to say that although Ms. Harris mentioned a lot about compliance with IRS regulations, there is no mention of this in the job announcement.*

*Ms. Harris responded that it is professional payroll experience that is being spoken about.*

*Chairman de la O asked why the information about the IRS regulations would not come out in the interview process because all the Board is talking about is how many people are to be interviewed. He went on to say that as it stands now, there is only one person to interview and that person has to be given the job even though the department may not feel that person is up to snuff. Chairman de la O further stated that what Ms. Pritchard is complaining about and what the Board would be recommending if there is a hearing is to lessen the requirements so that there are more people to interview, and the person who is qualified may still get the job because she has the experience with the IRS regulations. He asked Ms. Harris why would she not want to interview more people.*

*Ms. Harris responded that the Rules indicate that the person must meet the minimum requirements and Ms. Pritchard did not.*

*Chairman de la O asked Ms. Harris when the requirement for a 4-year college degree*

was implemented. Ms. Harris responded when the job specification was done in 1998.

Chairman de la O stated that his counsel is telling him that the requirement was implemented more recent than 1998. Ms. Harris responded that the counsel's information was not correct.

Chairman de la O asked Ms. Harris if a bachelors degree was required prior to 1998. Ms. Harris responded that the job did not exist prior to 1998.

Member Cruz asked how many employees in the City could qualify with a four- year degree who do payroll for 2,000 employees.

Ms. Harris stated that she could not answer the question because she does not have everyone's degree and she does not go through a person's file before a recruitment is done. She went on to say that this is the reason why a job announcement is posted on the job-hotline, web sites, intranet, and is sent to employees, the Employment Office, Civil Service, and Career Builder for the world to see. Ms. Harris further stated that her department cannot be held responsible for knowing every applicant's work experience and education because that is not their point. She stated that their point is to find out what would be required to do a job and then cast the net to find persons that might be interested and qualified and that is what they did.

Member Angel-Capo asked if the last person who held the Assistant Supervisor of Payrolls position had a bachelors degree.

Ms. Harris responded that Ms. Miriam Rios did not have a bachelors degree, but she worked out of classification from two to four years and was promoted to the Assistant Supervisor of Payrolls position in accordance with Civil Service Rule 8.10.

Member Angel-Capo asked if persons from departments other than the Payroll Division would not have an opportunity to qualify for the Assistant Supervisor of Payrolls position.

Ms. Harris responded that the one thing she wants the Board to remember is that persons who have come to work for the City may have had previous work experience, and that just because a person is not performing a particular job now does not mean the person does not have that experience. Ms. Harris further stated that one does not know what type of experience a person has until that person has an opportunity to apply and demonstrate that they qualify for the job, which is what her section is doing when it posts the job announcements. She stated that had the department recruited for the Assistant Supervisor of Payrolls position and no one qualified, they probably would have done another open recruitment to see if any non-City employees would qualify. Ms. Harris went on to say that if they then received no qualified applicants, at that point she would have gone back to the Classification & Pay Division to advise of a possible issue with the recruitment for this classification due to something being too high; however, once a register is established and someone is qualified, the register has to be in effect for at least a year. She further stated that the requirements cannot be changed in the middle of the register so she wants to know what can be done.

Member Dames asked Ms. Harris to state why Ms. Pritchard did not qualify for the position.

Ms. Harris responded that Ms. Pritchard did not qualify because she did not meet the time-in-grade requirements as a Payroll Specialist since she has never held this position before and according to the open requirements, Ms. Pritchard does not have a bachelors degree.

Member Dames asked if Ms. Prichard had held the position of Payroll Specialist in the Fire-Rescue Department would she have qualified for the Assistant Supervisor of Payrolls position.

Ms. Harris responded that if the position existed in that department she would have qualified, but she did not know if that would ever happen given that payroll is a centralized function. She went on to say that the Payroll Specialist position is typically specific to the Payroll Division.

Following discussion of the Chief Examiner's report, the Board entered a motion to hold a full hearing.

Under discussion, Chairman de la O stated that he thinks the Board needs to amend what the hearing is about only to make sure that the issues the Board are concerned about are covered. He went on to say that he thinks the Board should be proceeding under Civil Service Rule 16.1 in terms of the Board analyzing whether the requirements were drawn in the best interest of the City. Chairman de la O further stated that he thinks Member Cruz should amend his motion based upon what he just explained.

Following discussion, the original motion was amended to grant Ms. Pritchard's request for a hearing pursuant to Rule 16.1 Investigations, which resulted as follows:

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

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

**No:** Chief Examiner Scarola

## F. REPORTS

F.1 08-00018 Pending Hearings as of September 9, 2008. (NOTIFICATION)

## G. REQUESTS FOR HEARINGS

G.1 08-01057 Request for grievance hearing from Richard Valdes, AEO II, Department of Public Works, pursuant to Civil Service Rule 16.2 - Complaint by Employee, concerning an alleged violation of Civil Service Rule 8.7, Appointment. (DISCUSSION)

*Richard Valdes appeared before the Board and read into the record his letter of complaint dated September 2, 2008, which was also included in the Board Members' agenda packets for review.*

*The Chairman asked for the department's position regarding Mr. Valdes' request.*

*Assistant City Attorney Vizcaino stated that the department's position is that Mr. Valdes failed to allege a violation of Rule 8.7 and that his request for a grievance hearing is both premature and moot based upon Department Director Stephanie Grindell's August 15, 2008 letter advising all candidates that the selection process for Labor Crew Leader II is on hold and a candidate has not been selected to fill the vacant position. She went on to say that she would ask that the Board deny Mr. Valdes' request for a hearing.*

*Chairman de la O stated that he agrees with the department's position because he does not believe the City has any requirement to select a candidate by a certain time.*

*Mr. Valdes responded that he believes the reason why he was not offered the position has to do with his back condition and he has documentation to prove his claim.*

*Chairman de la O stated that Mr. Valdes' back problem might be the reason the department did not select him, but the Board would not know that Mr. Valdes was not selected unless another person is selected for the job.*

*Mr. Valdes stated that the point is he qualifies for the position.*

*Chairman de la O stated that while Mr. Valdes qualifies, he is not the only person that could be selected for the position.*

*Mr. Valdes stated that according to the July 18, 2008 memo (the interview process report), it indicated that two vacancies are to be filled for the Labor Crew Leader II position. He went on to say that interview results indicated one candidate in the "A" Band and three candidates in the "B" band and because he is the only City employee in the "B" band, he is entitled to the second position.*

*Chairman de la O asked if Mr. Valdes has precedence over the other two candidates in Band "B".*

*The Executive Secretary responded that the preference selection has nothing to do with the Civil Service Rules; however, according to the interview policy, Mr. Valdes is correct in that he would be the next person in line to fill the second vacant position.*

*For clarification purposes, Chairman de la O asked if the department must offer a position to Mr. Lawrence and Mr. Valdes since there are two positions.*

*The Executive Secretary responded that Mr. Lawrence would be offered the position first because he ranked in the "A" band and Mr. Valdes would be offered the second position since he has selection preference over the two non-City employees who are also in the "B" band.*

*Chairman de la O asked if Ms. Grindell or her representative is present at today's meeting.*

*Assistant City Attorney Vizcaino brought to the Board's attention that a request for selection for the Labor Crew Leader II position was approved on Thursday (9/4/08). She went on to say that while a selection has been made, an offer of employment to the candidate has not occurred; therefore, the position has not been filled at this time.*

*Chairman de la O asked if Mr. Valdes is that someone or is it someone else who has been selected to fill the position.*

*Assistant City Attorney Vizcaino responded that Mr. Valdes is not the person who has been selected for appointment to the Labor Crew Leader II position.*

*Chairman de la O stated that according to this new information, the first argument that Attorney Vizcaino raised is no longer operative.*

*Assistant City Attorney Vizcaino stated that the selection process at this time is a confidential process; therefore, she does not know who that person is and although a person has been selected, the position has not been offered to anyone or filled.*

*Chairman de la O stated that as he understands the department's position, the first*

*argument is no longer operative and maybe moot because Mr. Valdes may have been selected for the job.*

*Assistant City Attorney Vizcaino responded that her position remains the same in that Mr. Valdes' request for a hearing is premature because the position has not been filled.*

*Chairman de la O asked for the department's position on the Board granting a conditional hearing which would mean that if Mr. Valdes is selected for the position there would be no need for a hearing and he would be afforded a hearing if he is not selected for the position.*

*Assistant City Attorney Vizcaino responded that she would ask that the Board deny Mr. Valdes' request for a hearing and when and if such action does occur, he could then properly follow the procedural Civil Service Rules and request a hearing.*

*Chairman de la O asked if Mr. Valdes were not offered the position, what would the department's position be on whether he should be afforded a hearing at that time.*

*Assistant City Attorney Vizcaino responded that her position still remains the same.*

*For clarification purposes, Chairman de la O asked if it is the department's position that Mr. Valdes should not be afforded a hearing if he is not selected for the Labor Crew Leader II position.*

*Assistant City Attorney Vizcaino responded that if the Board is going to entertain Mr. Valdes' argument, she would put on two witnesses to address all of Mr. Valdes' allegations regarding his medical condition and the request for clarification from doctors. She went on to say that these are issues that she did not want to address and are not pertinent to a hearing at this point, but she is prepared to do so if necessary.*

*Chairman de la O stated that he only wants to know if Mr. Valdes is entitled to a hearing and what the department's position is regarding him getting a hearing, aside from the fact that it might be moot if he is offered the position.*

*Assistant City Attorney Vizcaino stated that Mr. Valdes is requesting a hearing based upon a violation of Rule 8.7; however, there has not been an appointment, promotion, or advancement to the position of Labor Crew Leader II so she does not see how Mr. Valdes has proven or made an allegation that Rule 8.7 has been violated.*

*Chairman de la O asked when the selection for Labor Crew Leader II is going to be announced.*

*Assistant City Attorney Vizcaino responded that the selection is pending approval by the Employee Relations Director; therefore, she could not give him a date of when the selection will take place.*

*Member Cruz asked Mr. Valdes if he felt the Labor Crew Leader II position already had a name to it despite all that he has done to get the position. Mr. Valdes responded that he has no clue as to who has been appointed to the position. He went on to say that he brought his complaint to the Board based upon the language provided in Rule 8.7, which is the Civil Service Board has the power to enforce the department to make the appointment; therefore, he feels he has standing for a hearing.*

*Member Cruz asked Mr. Valdes how long has he been working for the City. Mr. Valdes responded that he has been working 9 years with the City.*

Following discussion, the Board entered a motion to GRANT a hearing as requested, on the condition that the date of the hearing not be set until selections are made for the Labor Crew Leader II position.

Under discussion, Chairman de la O stated that if Mr. Valdes is appointed to the position the hearing would be moot; however, if he is not selected a hearing will be scheduled.

Member Scarola stated that he thinks the Board is setting a bad precedent if the motion is passed today. He went on to say that he thinks there will be a line of employees seeking to make complaints about an issue they think is going to take place. Member Scarola further stated that as much as he hates to delay anyone from being promoted, nothing has actually happened with the selection process.

Chairman de la O stated that what he sees that is unique about this matter is the Board knows that Mr. Valdes is supposed to get the job because there are two openings and he is entitled to one of the positions otherwise he would agree with Member Scarola that no action be taken since no selection was made as yet.

Member Dames stated that there are two positions that have to be filled. He went on to say that the person in the "A" Band will get the first position and because Mr. Valdes is a City employee, he is next in line for the second position and the department is aware that this is what has to happen. Member Dames further stated that he does not understand why the department is delaying the selection process when it can do what needs to be done which is to offer Mr. Valdes the position.

Member Angel-Capo stated that she agrees with what Member Dames stated about this matter. She went on to say that the problem she has is that the department is aware that it must offer the positions to both candidates; however, the Board knows who the first candidate is that will be offered the position, but not the candidate for the second position.

Following discussion, the motion on the floor to grant a conditional hearing, but not to set the hearing until after selections for the Labor Crew Leader II positions have been made 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, Member Dames, Member Angel-Capo and Member Cruz

**No:** Chief Examiner Scarola

**G.2 08-00891**

Copy of a request for a hearing from Osnat K. Rind, Attorney, on behalf of Kate Abia, Police Officer (Probationary), regarding her termination effective, July 21, 2008. (DISCUSSION)

Diana Vizcaino, Assistant City Attorney, advised the Board that what they were about to hear was a request for an appeal hearing from a probationary employee who was terminated. She went on to say that she had provided copies of Ms. Abia's extension of probationary period documents, including her concurrence memo, and that Ms. Abia was due to complete her probation in September (of 2008) and was terminated in July before her probationary period expired. She referred the Board to Civil Service Rule 1.8 and advised that probationary employees had no rights before the Board.

Osnat Rind, Attorney for the grievant, appeared before the Board and introduced Ms. Abia, Sgt. Jesus Valdivia, and Sgt. Javier Ortiz, trustee of the Fraternal Order of Police

(FOP). Attorney Rind went on to say that it is her client's position that she was not a probationary employee at the time of her termination, and that the documents she was providing to the Board is a history of what occurred in Officer Abia's case. Attorney Rind went on to state that Officer Abia's hire date was January 30, 2006 and in accordance with the FOP contract, her regular probationary period would have ended January 30, 2008; however, it was extended due to FMLA to March, 2008. She stated that in Chief Burden's request, the reason for the extension was to ensure sufficient time for Officer Abia to complete the requisite post-academy training and should Officer Abia comply before the stated extension, she shall be granted permanent status. Attorney Rind went on to say that Officer Abia could have objected to the extension, but did not because she was told that she would be granted permanent status when she completed the training.

Attorney Rind went on to say that her witness' testimony and exhibits will show that Officer Abia completed 6 months of FTO satisfactory performance and 6 months of post-FTO satisfactory performance, and therefore should be considered permanent by the time she was terminated

Chairman de la O asked Attorney Rind if the department's remedy would be to terminate her client, had she not agreed to the extension of probation.

Attorney Rind responded that there is pressure for employees to agree and if the department wished to retaliate against the employee that yes, they could terminate an employee if they objected to the extension.

Chairman de la O stated that he asked the question because he was trying to figure out if the motivation for Officer Abia in agreeing to the extension was the promise that she would become an officer if she successfully completed FTO or if it was avoiding getting terminated immediately.

Attorney Rind responded that Officer Abia would tell the Board that she specifically did not object to the extension of probation because she was explained by her sergeant at the time that she was guaranteed that if she completed this training before the probationary period was up that she would become permanent at that time.

Chairman de la O stated that it appears to him that we have an equitable estoppel argument; in that Ms. Abia was told that if she agreed to the extension that she would [become permanent], and asked why the Board should not apply principles of equitable estoppel.

Assistant City Attorney Vizcaino stated that the issue today is not why Officer Abia's probation was extended, or what her performance was like while probationary. She went on to say that Attorney Rind would have the Board believe that Officer Abia's evaluations were satisfactory, but did not tell the Board about the numerous reprimands Officer Abia received. She stated that the issue before the Board today is that a probationary employee was terminated well within her probationary period. She went on to say that she would ask the Board not to set precedent by allowing probationary employees an audience before the Board, which would be a violation of the Civil Service Rules.

Member Scarola asked Attorney Rind where Officer Abia's evaluation for April 27 - May 31 was. Attorney Rind stated that the evaluation does not exist.

Member Scarola asked Assistant City Attorney Vizcaino why the reprimands she referred to were not reflected in the evaluations summary that Attorney Rind provided to the Board.

Assistant City Attorney Vizcaino stated that the evaluation form was Attorney Rind's representation, not the department's.

Member Scarola read from the evaluation form provided by the employee. Attorney Rind stated that she has as a witness who was Officer Abia's supervisor [in the month of June] who completed a satisfactory evaluation.

Chairman de la O stated that he firmly believes that for every wrong there should be a remedy and asked if there was a judicial remedy for breach of contract. He went on to say that he asked the question because he cannot get around Rule 1.8 which states that "a probationary employee has no civil service rights, may be discharged if in an entrance position and shall not be accorded a hearing before the Civil Service Board".

Attorney Rind stated she does not know about a court remedy, but that it is their position that Officer Abia was not probationary. She went on to say that in this particular case, unlike any that she's seen, although the Board may have seen others, there was a specific guarantee.

Chairman de la O asked what has to happen for a probationary employee to become permanent.

Member Scarola stated that from his research it takes six months of FTO and six months of post-FTO training; that once 12 evaluations are received by the department the employee is considered permanent. He went on to say that departmental personnel usually follow up with supervisors to ensure that evaluations are received.

Joni Harris, Employment Relations Manager, Department of Employee Relations appeared before the Board to provide the specifics regarding the process of an employee going from probationary to permanent.

Chairman de la O stated that the Board may have to conduct a hearing to determine if Officer Abia complied with the training requirements and was therefore constructively permanent. He went on say that the department may have refused to recognize that she was permanent even though they prepared a memorandum stating that they would.

Member Cruz stated that under Rule 2.7, anyone can request an appearance before the Board.

Assistant City Attorney Vizcaino stated that this is a request pursuant to Rule 14, not Rule 16, and she would again ask the Board not to not set precedent by allowing probationary employees the right to contest their terminations.

Chairman de la O stated that the Board has two issues to consider: whether Officer Abia was a probationary employee and if not, whether there was cause to terminate her.

Attorney Rind asked whether the issue of whether or not Officer Abia was probationary at the time of termination could be determined at today's meeting.

Chairman de la O responded that it would not be fair to the department to make that decision now, since the department was not noticed that there was an issue of probation completion. He then asked the department if they could make that argument.

Assistant City Attorney Vizcaino responded that the department was not ready to make an argument because they were noticed that a probationary employee was making a request before the Board for an appeal hearing of her termination. She went to say that

*if the employee is probationary, the Board has no jurisdiction under its own Rules.*

*Chairman de la O stated that he thinks the Board should first have a hearing to determine if Officer Abia was probationary.*

*Special Counsel Everett asked for clarification regarding what the Board was considering doing.*

*Chairman de la O asked if any member wanted to make a motion to have a hearing to determine whether Officer Abia was or was not probationary at the time of her termination.*

*Special Counsel Everett stated that perhaps the Board would like to couch that hearing in terms of an investigation by the Board pursuant to Rule 16.1 because the Board has to have a method to proceed.*

*Chairman de la O stated that the request was pursuant to Rule 14 and asked Special Counsel Everett if the Board could have a jurisdictional hearing to confirm the status of Officer Abia at the time of termination.*

*Special Counsel Everett responded that the Board has authority to address that issue, but not under Rule 14.*

*Attorney Rind stated that she disagreed with Special Counsel Everett in that a Rule 16 hearing results in a recommendation to the City Manager.*

*Special Counsel Everett went on to say that the Board could have a threshold inquiry to determine whether the employee was probationary, as a matter brought before the Board.*

*Member Scarola stated that following a hearing under Rule 16.1, Investigations, a report (of the Board's actions) is sent to the department director; it is under Rule 16.2, Grievances that a recommendation is sent to the Manager.*

*Following discussion, the Board entered a motion to make a threshold inquiry to determine if the employee was probationary or not and therefore qualifies for a Rule 14 hearing.*

*The motion was made by Member Cruz and seconded by Member Dames*

*Following the vote, Assistant City Attorney Vizcaino asked for clarification purposes, under which Rule the Board was making this determination.*

*Member Cruz stated that the Board could make the determination under Rule 2.*

*Chairman de la O stated that since additional information was entered by the employee, the Board must determine whether it has jurisdiction to hold a hearing. He went on to say that the Board did not want to just throw the employee out without making that determination.*

*Special Counsel Everett that one way to satisfy both sides is to reset this matter for Board discussion so the department can be prepared to address these issues. She went on to say that the details of this matter were not clear to her or anyone when the request came; that it appeared simply that a probationary employee was requesting a Rule 14 hearing.*

*Following further discussion, Member Cruz rescinded his motion and the Board considered a motion to reset this matter for discussion on a future Agenda, which resulted in the following vote:*

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

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

## H. TODAY'S HEARINGS

H.1 05-01281

Grievance hearing pursuant to Rule 16.1 Abuse of Power and 16.2 Complaint by Employee, on behalf of Khalil Mangabadi, Engineer I.

*The Board proceeded to hear the conclusion of Mr. Khalil Mangabadi's grievance hearing which was started at the Board meeting on August 12, 2008. The hearing concluded with the Grievant resting his case and the testimony of the Department's witness, Joni Harris. Today's hearing continued with testimony from Department's witnesses.*

*Osnat K. Rind, Attorney at Law, represented the Grievant.*

*Diana Vizcaino, Assistant City Attorney, represented the Department.*

*The Rule of Witnesses is still invoked.*

*Witnesses for the Department continued in the following order:*

2. *Stephanie Grindell, Director, Department of Public Works.*

*Questions were posed by all Board Members during the testimony of witness Stephanie Grindell.*

*The Department rested its case.*

1. *Richard Valdes, Line & Grade Inspector, Department of Public Works, was called as a rebuttal witness on behalf of the Grievant.*

2. *Charlie Cox, Union President, AFSCME-Local 1907, was recalled as a rebuttal witness on behalf of the Grievant.*

3. *Khalil Mangabadi, Grievant, was recalled as a rebuttal witness on his behalf.*

*The Grievant rested on rebuttal.*

1. *Terrella Johnson, Senior Personnel Officer, Department of Employee Relations, was called as a rebuttal witness on behalf of the Department.*

*Questions were posed by Board Members de la O and Cruz during the testimony of witness Terrella Johnson.*

2. *Ricardo Martinez, Classification & Pay Supervisor, Department of Employee Relations, was called as a rebuttal witness on behalf of the Department.*

Questions were posed by Board Members de la O, Cruz, and Scarola during the testimony of witness Ricardo Martinez.

*The Department rested on rebuttal.*

*Following closing argument by both attorneys, Member Cruz stated that it has been said that the department director has the right to select whomever he/she wishes to interview. He went on to say that when an individual works on a job, he works hard and expects to be rewarded. Member Cruz further stated that there are those who follow the rules on how things are supposed to be done, but sometimes a person throws a monkey wrench in the process and he does not think this is fair. He stated that he believes everyone was created equal and should be treated equally under the law.*

*Chairman de la O asked Special Counsel Everett if the Board is supposed to issue a report to the City Manager instead of a recommendation.*

*Cynthia A, Everett, Special Counsel to the Board, stated that it is her understanding that the request filed on behalf of the employee was made pursuant to Rules 16.1 and 16.2. She went on to say that Rule 16.1 provides for report only and Rule 16.2 provides for findings of fact and recommendations.*

*Chairman de la O stated that the first thing he thinks should be in the report is the fact that if the Employee Relations Department is going to approve register announcements that deem certain factors "highly desirable", Employee Relations should be including in the certification lists those highly desirable factors because it does not make any sense to say that information technology and ABET certifications are highly desirable but not provide this information to the department director. He went on to say that he thinks the Board should recommend to the City Manager that he instruct Employee Relations to create a certification list that matches the register announcement because otherwise, it just gets lost in the shuffle. Chairman de la O stated that in this case, the ABET certification is sought after, but it is located nowhere in the certification list and did not happen to be on the application.*

*Chairman de la O stated that he has gone back and forth several times on this matter and he would have to say that on the first day he could say he really did not know what the complaint was about because Ms. Grindell had the discretion to interview whomever she wanted so he did not understand why this case was before the Board. He went on to say that Ms. Harris testified, but the Board did not know how many persons were eligible under the first posting so again he felt that the Board was wasting its time. Chairman de la O further stated that today the Board learned just the opposite, which is that the department did know that there were only three persons that qualified. He stated that Ms. Grindell testified that she did not know who the three individuals were that qualified and that she did not know that Mr. Beylin was one of the candidates who qualified; however, he believes it remains unrebutted that Ms. Grindell is at least friends, how close a friend no one knows, with Mr. Beylin's wife. Chairman de la O stated that if it was left there, he probably would think there was not enough evidence to question what happened, but it is not left there. He went on to say that then Mr. Schoffield is introduced in all of this and the rationale for why Mr. Mangabadi was not interviewed seemed to be shifty.*

*Chairman de la O further stated that he thinks Attorney Vizcaino was right when she said that an employer has a right if not a duty to take character into account and that certainly is what persons do in the private sector, but Ms. Grindell says that she did not take into account those other things, but she did it strictly on credentials. He stated that if he is to take Ms. Grindell at face value and he looks at the chart that she placed before*

the Board, it is not crystal clear to him that Mr. Mangabadi was not qualified, in fact he would say the opposite. Chairman de la O went on to say that he thinks that Mr. Mangabadi was qualified but even there he is not sure there was enough for him to say that there was some sort of abuse of process or a violation of the rules because it is so discretionary. He further stated that when he looks at the case and starts piecing it all together, what his gut is left with is he believes there is sufficient evidence that Ms. Grindell was trying to shape the process and that he certainly has serious questions as to whether the reason Mr. Mangabadi was not selected for an interview is because he is a City employee.

Chairman de la O stated that the only factors that would limit the discretion of the department are veteran status or whether the person is a City employee. He went on to say that if a department director can select the number of City employees, he/she can at least affect the probability because for example, if six people are being interviewed and only two of them are City employees, as long as they fall in an acceptable band, their ability to get the job has already been increased. Chairman de la O further stated that the Board has been presented with two instances where it appears that Ms. Grindell had this discretion and appeared to have stepped over equally qualified individuals who were City employees in order to keep them out of the interview process. He stated that in both cases there was someone who was being interviewed who she had some sort of interest of getting the job. Chairman de la O further stated that the only defense that was put up by the department was they did not think he had the character for the job. He stated that what sealed it for him that this was an abuse of power or a violation of the Charter, which trumps the Labor Management Policy, Ordinance, and Civil Service Rules, is that the Charter states that employees shall be hired and promoted based upon merit, character, efficiency, and industry. Chairman de la O went on to say that he does not know if any one ever called Mr. Mangabadi's character into question and certainly none of the other things, so he believes that there was some type of shaping of the probabilities of who would get the job.

Member Scarola stated that pursuant to Rule 16.1 as it relates to preparing a report to the City Manager he thinks the Labor Management Policy (LMP 3-92, Interview Process), that was created in 1982 and revised in 1983 is something that needs to be looked at and perhaps revised. He went on to say that he thinks the Employee Relations Department needs to sit down with union presidents and managers of the Office of Labor Relations to review the way this policy is put together. Member Scarola further stated that when the policy was created, there may have been provisions put into the policy for a reason, but may need to be changed the same as when the Police Department was under the Consent Decree in 1977. He went on to say that after having met all of the court requirements that pertained to the Consent Decree, it was looked at by the police union and it was felt that it should be discontinued; therefore, in 1985 the matter was taken to court and the judge sided with the union. Member Scarola went on to say that when he looks at the criteria used to select persons for interview, Mr. Shuler who had 21 years of experience, he found it hard to believe that he had never supervised anyone. He further stated that in another instance he counted 10 years of experience for one of the candidates; however, the person was shown on the chart prepared by Ms. Grindell as having 9 years and 10 months of experience. Member Scarola further stated that the chart also showed a 10-month difference of experience between Mr. Mangabadi and Mr. Shuler; however, Ms. Grindell selected Mr. Shuler for an interview over Mr. Mangabadi although Mr. Shuler had no supervisory experience, which bothers him since Ms. Grindell mentioned that supervisory experience was her number one criteria she used for selecting candidates for interviews.

Chairman de la O stated that there are two things the Board will be doing in this case. He went on to say that the Board will be issuing a report pursuant to Rule 16.1 as to whether there was any abuse of power. He went on to say that if there are findings the

Board Members would like to see in the report, they would have to voice them publicly so that Special Counsel Everett can include them. Chairman de la O further stated that he strongly encourages Board Members to also express what they feel should not be included in the report so that the Board can vote on it. Chairman de la O further stated that if Board Members agree or disagree with what should be included in the report, but remains silent, Special Counsel Everett would assume all are in agreement so it is important that Board Members express themselves. He stated that the Board also needs to make a motion pursuant to Rule 16.2 as to whether the Board finds that there has been a violation of the Civil Service Rules.

Member Angel-Capo stated that she is in agreement with the recommendations voiced by Chairman de la O and Member Scarola. She went on to say that she strongly concurs that there was an abuse of power specifically since there was no testimony to prove Ms. Grindell's position. Member Angel-Capo further stated that Ms. Grindell's testimony was not convincing to her because she could not remember names, dates and locations as they related to questions asked by the Board concerning this case.

Member Cruz stated that he agrees that there was a violation of Rule 16.2. based upon the evidence presented. He went on to say that it is evident that Mr. Mangabadi was not treated fairly and he feels that management and the City did not put on a good case.

Following discussion, the Board entered a motion to find that there was a violation of Rule 16.2.

Under discussion, Special Counsel Everett asked if the Board could be specific as to which rules were violated pursuant to Rule 16.2.

Chairman de la O responded that in his opinion, there was a violation of the City Charter and the Civil Service Rules must comply with the Charter and the failure to promote pursuant to merit, efficiency, character, and industry. He went on to say that he is trying to find out where this language is codified in the Civil Service Rules.

Member Angel-Capo stated that she also has a concern that there were two employees from the same department with the same complaint.

Member Dames stated that it concerns him to know that an employee was not selected for an interview based upon something he said at a private affair especially when the only thing Ms. Grindell testified to was that Mr. Mangabadi was trashing the City without elaboration of what was said. He went on to say that Mr. Mangabadi has been employed with the City for 23 years and has not received any disciplinary actions, which is something he cannot even say about himself. Member Dames further stated that he understands that Management has rights when it comes to their employees; however, he raised questions about diversity because he felt that when the Asian candidate declined the interview that Mr. Mangabadi should have been called for an interview since he is an Asian.

Member Scarola stated that being a sergeant of police, he believes that supervisors and management personnel need latitude to make decisions; however, the decisions have to be fair and equitable across the board. He went on to say he thinks that if everyone was interviewed, the department would not have had this problem.

Following discussion, the motion on the floor concerning a violation of Rule 16.2 resulted as follows:

**Motion by Member Cruz, seconded by Member Dames, that this matter be APPROVED. PASSED unanimously.**

Chairman de la O stated that because the Board found there to be a violation of Rule 16.2, he would ask that Attorney Rind provide the Board with what she thinks should be the remedy in this case.

Attorney Rind responded that what she believes would be a proper remedy in this case is that Mr. Mangabadi be promoted retroactively to the date of [the other] promotion and that he be compensated with full back pay that is pensionable, and attorney fees. She went on to say that the reason she was having this discussion with Mr. Cox was because she had a different remedy which is that Mr. Mangabadi would be satisfied if there is no Engineer II position open that he maintain his current position but still receive the retroactive pay back to the date he should have been promoted.

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

Assistant City Attorney Vizcaino responded that if the Board were to follow Attorney Rind's proposed remedy, the Board would be assuming that Mr. Mangabadi performed the best after the interview process. She went on to say that this is an assumption because there is no guarantee of how well Mr. Mangabadi would have performed during the interview process; therefore, she would ask that the Board not follow Attorney Rind's proposed remedy.

Attorney Rind stated that she does not think the department can benefit from its wrongful actions. She went on to say that the only reason no one knows how Mr. Mangabadi would have fared is because the department director improperly denied him an opportunity to interview.

Chairman de la O stated that he certainly does not agree that the department should benefit, but at the same time he feels that the Board would be putting Mr. Mangabadi in a better position than if Ms. Grindell had interviewed him; therefore, he is not comfortable with the proposed recommendation.

Following discussion, the Board entered a motion to recommend that Mr. Mangabadi be promoted to the position of Engineer II retroactive to the date Mr. Beylin was appointed to the Engineer II position.

Under discussion, Member Scarola stated that his only concern is that recently there was a recruitment for the Engineer II position which means that if this motion is passed, others on the register would be placed in a bad position in that they would not have an opportunity to interview. He went on to say that Mr. Mangabadi's premise was that he was not interviewed so he thinks he should have an opportunity to interview. Member Scarola further stated that there are approximately 75 individuals who applied this time around so no one knows whether Mr. Mangabadi would have had a better chance at the position if he was interviewed the last time or not.

Chairman de la O stated that he does not think Mr. Mangabadi will ever be made completely whole, but he thinks by allowing Mr. Mangabadi to interview that would be the closest to making him whole.

Member Dames responded that he was in agreement in allowing Mr. Mangabadi to interview for the purpose of making him whole.

Chairman de la O stated that he certainly could not agree to promote Mr. Mangabadi to Engineer II with back pay. He went on to say that this would be punishing the department instead of making the employee whole. Chairman de la O further stated this recommendation, if passed, would make Mr. Mangabadi more than whole.

*Following discussion, the motion on the floor to recommend that Mr. Mangabadi be promoted to the position of Engineer II retroactive to the date Mr. Beylin was appointed to the Engineer II position, resulted as follows:*

**Motion by Member Angel-Capo, seconded by Member Cruz, to APPROVE.**

**FAILED by the following vote.**

**Aye:** Member Angel-Capo and Member Cruz

**No:** Chairperson de la O, Member Dames and Chief Examiner Scarola

*As a result of the failed motion, the Board entered a motion to recommend that Mr. Mangabadi be promoted as an Engineer II effective today, September 9, 2008, with no back pay.*

*Under discussion, Assistant City Attorney Vizcaino stated that if this motion is passed, the Board would be punishing the 51 eligible candidates who applied for the recently advertised Engineer II position and they have a right to compete for the position.*

*Chairman de la O stated that he cannot imagine the City Manager is going to agree to the proposed recommendation and that he believes the City Manager is going to agree with Assistant City Attorney Vizcaino's position and that he would prefer that the Board recommend a remedy to the City Manager that is more realistic. He went on to say that he would rather do something that benefits Mr. Mangabadi but at the same time, he does not think it would be fair to skip everyone else especially when they were deemed eligible for the position.*

*Member Angel-Capo stated that Mr. Mangabadi was skipped over the first time and now the Board is concerned about 51 other people who are just applicants and the Board does not know how many of the applicants are City employees.*

*Charlie Cox, President, AFSCME local 1907, appeared before the Board and stated that he tried to settle this case before [it came before the Board]. He went on to say that he sides with the Chairman in that he does not want to hurt any of the 51 people who applied for the position. Mr. Cox further stated that in his discussion with Mr. Mangabadi, he would agree to a settlement of a one-year payment at the salary of an Engineer II and remain in his current position. He stated that if Mr. Mangabadi is given a 10% increase in pay retroactively for one year, which he thinks is a fair settlement, neither the department nor the 51 applicants would be harmed.*

*Chairman de la O stated that he agrees and disagrees with Mr. Cox's proposed remedy in that he can support the 10% retroactive pay, but he thinks the Board should recommend that Mr. Mangabadi be interviewed.*

*Mr. Cox stated that he does not want Mr. Mangabadi to interview because there are bad feelings on the part of Ms. Grindell who chose not to interview him and the fact that Mr. Mangabadi's complaint is that he was not interviewed, he thinks his proposed remedy would work out better for the department and the employee.*

*Chairman de la O stated that Ms. Grindell does not interview Mr. Mangabadi, but an interview panel does.*

*Mr. Cox stated that Ms. Grindell is the person who selects who should be interviewed and that she does not want to interview Mr. Mangabadi because if she did, this matter would not be in front of the Board. He went on to say that if the City Manager does not accept the proposal, the matter will end up in court.*

Chairman de la O asked Mr. Cox if he was saying that Mr. Mangabadi does not want to be interviewed this time around.

Mr. Cox responded that if Mr. Mangabadi wanted to be interviewed, he would have applied.

Chairman de la O stated that he is not going to propose a remedy on Mr. Mangabadi that he does not want.

Following discussion, the motion on the floor to recommend that Mr. Mangabadi be promoted to the position of Engineer II, effective September 9, 2008 with no back pay, resulted as follows:

**Motion by Member Angel-Capo, seconded by Member Dames, to APPROVE.  
FAILED by the following vote.**

**Aye:** Member Angel-Capo

**No:** Chairperson de la O, Member Dames, Chief Examiner Scarola and Member Cruz

The motion having failed, the Board entered a motion to add to the recommendations to the City Manager that Mr. Mangabadi receive a pay increase of 10% retroactive to one year.

Under discussion, Member Dames asked if the pending motion suggests that Mr. Mangabadi receive a 10% increase in pay for one year and afterwards return to his Engineer I salary. Member Scarola responded in the negative.

The Executive Secretary stated that it sounds as if the effective date would be September 9, 2007.

Member Cruz asked if the 10% increase would cease after the one year. The Executive Secretary responded in the negative.

Assistant City Attorney Vizcaino stated that the current motion on the floor was Mr. Cox's original proposition to resolve this matter; however, the City's position has been and will continue to be that it sets bad precedent. She went on to say that if this motion passes, the Board will be faced with every employee on the eligible register who was not selected for an interview coming before the Board to ask for a 10% increase in pay.

Member Angel-Capo stated that on the other hand, the Board needs to think about the precedent that could be set when a department director is allowed to pick and choose whomever they want and hire their family and nothing happens. She went on to say that she does not think Mr. Mangabadi would get hired as an Engineer II as long as Ms. Grindell is the Department Director.

Assistant City Attorney Vizcaino stated that she would ask that the Board make a reasonable recommendation.

Chairman de la O asked what does the department consider to be a reasonable recommendation. Assistant City Attorney Vizcaino responded that she agrees with Chairman de la O that giving Mr. Mangabadi an opportunity to interview for the Engineer II position would be more reasonable than giving him a 10% increase and backpay because he was not chosen to be interviewed.

Member Angel-Capo stated that Ms. Grindell had an employee who was related to her and hired at step 3 of the pay range without justification and the only explanation the

*Board received on how this could have happened was that it failed through the cracks.*

*Member Scarola stated the Board needs to be fair to those 51 individuals who applied for the Engineer II position and that he thinks Mr. Mangabadi should have applied also especially if he felt the Engineer II position was important to him. Member Scarola further stated that this recommendation is distasteful to the department, but it was incorrect in what it did in this matter. He stated that after seeing what happened today, he thinks it would be a hostile environment for Mr. Mangabadi to work if he were to get the job as an Engineer II in the Public Works Department.*

*Following discussion, the motion on the floor to recommend to the City Manager that Mr. Mangabadi receive a 10% pay increase retroactive to September 9, 2007 resulted as follows:*

**Motion by Member Angel-Capo, seconded by Member Cruz, to APPROVE. PASSED unanimously.**

**H.2 06-01764**

Hearing of appeal on behalf of Lazaro Chappoten, Automotive Mechanic, relative to his termination, effective May 30, 2008.

*Chairman de la O asked the department's representative if she was ready to proceed with her case today.*

*Assistant City Attorney Vizcaino responded in the negative. She went on to say that she would be asking for a continuance and that she spoke to Attorney Irizarri regarding same. She went on to say that there are two matters before the Board today, one of which is the continuation of Mr. Mangabadi's grievance hearing and an older grievance case involving Firefighter Edwin Diez that she is ready to proceed on. Assistant City Attorney Vizcaino further stated that Mr. Chappoten's case involves his termination from employment which she believes might take an entire day or perhaps longer to complete.*

*Ramon Irizarri, Attorney at Law on behalf of Mr. Chappoten, stated that if the Board wants to grant a continuance, he cannot object. He went on to say that he does have an issue of emoluments. Attorney Irizarri further stated that Mr. Chappoten did have this hearing scheduled before and it is his understanding according to the Rules that if he is ready to proceed from this day forward and should he be reinstated that there is no forfeiture of emoluments.*

*Chairman de la O stated that he had no idea; however, whatever his rights are, that is what they are. He went on to say that he is not passing judgment either way. Attorney Irizarri stated that he is just preserving the issue.*

*Following discussion, the Board entered a motion to grant a CONTINUANCE of Mr. Chappoten's hearing and charge the continuance to the department which resulted as follows:*

**Motion by Chief Examiner Scarola, seconded by Member Cruz, that this matter be CONTINUED. PASSED unanimously.**

**H.3 07-01477**

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.

*Chairman de la O stated that the Board will not have sufficient time to hear Mr. Diez' case and called for a motion to continue the hearing.*

*Following discussion, the Board entered a motion to CONTINUE the grievance hearing of Fire Fighter Edward Diez and charge the continuance to the Board due to insufficient*

*time to hear the case, which resulted as follows:*

**Motion by Member Cruz, seconded by Chief Examiner Scarola, that this matter be CONTINUED. PASSED unanimously.**

**H.4 06-02034** Hearing of appeal on behalf of Leonel Tapanes, Police Officer, relative to his 40-hour suspension, effective June 4, 2004.

*The Board took no action on this matter 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 Chief Examiner Scarola, to APPROVE. PASSED unanimously.**

*Breaks were taken between: 11:35am-12:01pm, 1:54pm-2:50pm (LUNCH), 2:56pm-3:13pm, 3:35pm-3:48pm. The meeting adjourned at 5:43pm.*

**SIGNATURE:**

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**Miguel M. de la O, Chairperson**

**ATTEST:**

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**Tishria L. Mindingall, Executive Secretary**