

City of Miami

*City Hall
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Miami, FL 33133
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Meeting Minutes

Tuesday, September 23, 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 10:08 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 September 9, 2008.

The Board entered a motion to APPROVE the minutes of the September 9, 2008 meeting which resulted as follows:

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

B. PERSONNEL MATTERS

- B.1 08-01104** Copy of a memorandum from Adam L. Burden, Assistant Chief, Department of Police, requesting an extension of probationary period of Julie Jean, Police Recruit, for 12 additional months beyond December 19, 2009. (DISCUSSION)

Chairman de la O asked Police Officer Jean if she was aware the department was attempting to extend her probationary period.

Julie Jean, Police Officer, responded in the affirmative.

Chairman de la O asked Officer Jean if she had an objection to the extension of her probationary period.

Officer Jean responded in the negative.

Following discussion, the Board entered a motion to APPROVE the Police Department's request to extend Officer Julie Jean's probationary period 12 additional months beyond December 19, 2009 which resulted as follows:

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

- B.2 08-01105** Copy of a memorandum from Adam L. Burden, Assistant Chief, Department of Police, requesting an extension of probationary period of Stephanie Rodriguez, Police Recruit, for 12 additional months beyond May 23, 2009. (DISCUSSION)

Chairman de la O asked Police Officer Rodriguez if she was aware the department was attempting to extend her probationary period.

Stephanie Rodriguez, Police Officer, responded in the affirmative.

Chairman de la O asked Officer Rodriguez if she had an objection to the extension of her probationary period.

Officer Rodriguez responded in the negative.

Following discussion, the Board entered a motion to APPROVE the Police Department's request to extend Officer Stephanie Rodriguez' probationary period 12 additional months

beyond May 23, 2009 which resulted as follows:

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

B.3 08-01106

Copy of memorandum from Mariano Loret De Mola, Director, Code Enforcement Office, requesting to extend the probationary period of Cornelius Pierre, Code Enforcement Inspector, for an additional 60 days beyond November 26, 2008. (DISCUSSION)

Chairman de la O asked Inspector Pierre if he was aware the department was attempting to extend his probationary period.

Cornelius Pierre, Code Enforcement Inspector, responded in the affirmative.

Chairman de la O asked Inspector Pierre if he had an objection to the extension of his probationary period.

Inspector Pierre responded in the negative.

Member Cruz stated that he thinks the Code Enforcement Inspectors need to educate people about compliance prior to ticketing residents who end up having to pay \$500 fines.

Following discussion, the Board entered a motion to APPROVE the Office of Code Enforcement's request to extend Inspector Cornelius Pierre's probationary period 60 additional days beyond November 26, 2008 which resulted as follows:

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

B.4 08-01107

Copy of memorandum from Mariano Loret De Mola, Director, Code Enforcement Office, requesting to extend the probationary period of Maria Zeinc, Code Enforcement Inspector, for an additional 60 days beyond November 26, 2008. (DISCUSSION)

Chairman de la O asked Inspector Maria Zeinc if she was aware the Office of Code Enforcement was attempting to extend her probationary period.

Maria Zeinc, Code Enforcement Inspector, responded in the affirmative.

Chairman de la O asked Inspector Zeinc if she had an objection to the extension of her probationary period.

Inspector Zeinc responded in the negative.

Following discussion, the Board entered a motion to APPROVE the Office of Code Enforcement's request to extend Inspector Maria Zeinc's probationary period 60 additional days beyond November 26, 2008 which resulted as follows:

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

C. MILITARY LEAVES OF ABSENCE

C.1 07-01179

Marvalyn Reid, Police Officer, requests re-employment as a Police Officer following her return from military leave. Copy of Orders submitted.

(DISCUSSION)

The Board entered a motion to APPROVE Officer Marvalyn Reid's request for re-employment following her return from military leave which resulted as follows:

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

D. DISCIPLINARY MATTERS

- D.1 08-01055 Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Katina Rush, Communications Assistant, of her 24-hour suspension, effective September 5, 2008. No appeal to date. (NOTIFICATION)

E. GENERAL ITEMS

- E.1 05-01281 Copy of Findings of Fact concerning the grievance hearing on behalf of Khalil Mangabadi, Engineer I, Department of Public Works, pursuant to Civil Service Rule 16.2, Complaint by Employee. (DISCUSSION)

Chairman de la O asked the department's attorney if she had any objections to the proposed Findings of Fact.

Diana Vizcaino, Assistant City Attorney, responded in the affirmative and referred the Board to page 2 of the report under the section entitled "FINDINGS OF FACT". She asked that the word "deleted" that appears in the fourth sentence in finding #2 be replaced with the word "modified" so that it reads, "One change MODIFIED the requirement for ABET certification and made the ABET certification "highly desirable."

Chairman de la O asked opposing counsel if she had an objection to the department's recommended change to the findings of fact.

Osnat K. Rind, Attorney at Law, responded in the negative.

Assistant City Attorney Vizcaino referred the Board to page 3, finding #4 and asked to delete the second sentence which reads, "Complainant was a city employee, had the ABET certification and had 20 years and 9 months of experience but he was not selected for an interview. (See Employee's Exhibit #9). She stated that this sentence should be deleted because the Board heard testimony that Florida International University (FIU) did not have an ABET Certified Program at the time Mr. Mangabadi received his degree in 1981 and that in fact, FIU did not begin the ABET Certification Program until 1987.

Chairman de la O asked Attorney Rind for her position on the department's recommendation to amend the findings.

Attorney Rind responded that she opposes the department's position and as a matter of fact, she has a problem with the entire document. She went on to say that Mr. Mangabadi's testimony was that he was ABET certified and she disagreed with the findings because the department did not enter any documentation to support their claim. Attorney Rind stated that she does not recall there being a dispute about the ABET certification at the time Mr. Mangabadi was deemed qualified.

Chairman de la O asked the department's attorney if she had any other objections to page 3 of the findings.

Assistant City Attorney Vizcaino responded in the negative.

Chairman de la O stated that he does not think the entire sentence should be deleted as recommended by the department's attorney because Mr. Mangabadi is a City employee and he does have 20 years and 9 months of experience. He went on to say that the appropriate motion would be to delete the words "had the ABET certification"

Following discussion, Member Cruz made a motion to delete the words "had the ABET certification" from finding #4, but it DIED FOR LACK OF A SECOND.

Chairman de la O asked the department's attorney if she had any other objections pertaining to the Rule 16.2 report.

Assistant City Attorney Vizcaino responded in the negative.

Chairman de la O asked Attorney Rind if she had any objections to the Rule 16.2 report.

Attorney Rind responded in the affirmative. She stated that she does not know if the Board had an opportunity to read the reports, but the Rule 16.1 and 16.2 reports basically read the same. Attorney Rind stated that in reading the documents she honestly has a feeling that they are reports on a different hearing than she heard because she does not think the rendition of the facts are really close to what the Board actually found. She stated that there is nothing in the Report and Recommendations section of the report about misrepresentations on the applications that made Mr. Beylin arguably ineligible for the position and how Ms. Grindell influenced the interview process. Attorney Rind went on to say that the Board needs to keep in mind that this document is the Board's explanation to the City Manager about why the Board found there to be an abuse of power and why the recommendation(s) should be adopted by the City Manager. She further stated that there is information in the report that talks about Ms. Grindell telling Mr. Mangabadi to check his references but that is not all that Mr. Mangabadi testified to, and there is also information in the report that makes it sound like Ms. Grindell based her decision on the fact that Mr. Mangabadi was speaking negatively about co-workers and the City in paragraph 7, but it does not go on to say that Ms. Grindell testified that it was not a basis for her decision. Attorney Rind stated that the portion that talks about what Joni Harris said Ms. Grindell told her in paragraph 7 is not accurate because Ms. Harris testified that Ms. Grindell told her that someone told her that Mr. Mangabadi was a difficult employee; however, the report does not indicate that Ms. Grindell denied Mr. Mangabadi an interview based on [that fact]. She went on to say that after reading this report, she wondered in her mind how could anyone come to the conclusion as stated in paragraph 9 that Ms. Grindell abused her power by attempting to unfairly shape the selection process when there is no mention of how she did this, which was by removing someone with the most seniority to manipulate as much as she could who would be ultimately selected through the interview process. Attorney Rind further stated that the report is lacking in the explanation of what she believes the Board concluded at the hearing.

Chairman de la O asked for the department's position on this matter.

Assistant City Attorney Vizcaino responded that the report was prepared by Special Counsel to the Board, Cynthia A. Everett, based upon the evidence and the testimony she heard. She went on to say that she is in agreement with the report other than the two suggestions that she raised previously and that as she argued the first day of the hearing, Attorney Rind is speaking of things she feels should be included in the findings that are not relevant to Mr. Mangabadi's grievance. Assistant City Attorney Vizcaino stated that incidents that occurred approximately 5 years ago involving Ms. Grindell and her now step-son are not relevant to the grievance that Mr. Mangabadi filed; therefore,

she would ask that the Board adopt the proposed findings and recommendations that were prepared by Special Counsel Everett.

Chairman de la O asked Attorney Rind if she had any proposed additions to the report that would clarify what she is concerned about.

Attorney Rind responded that essentially she would have to rewrite the document.

Chairman de la O stated that he does not think the report needs to be rewritten, but he does think there could be things added to flush out the concerns Attorney Rind has. He went on to say that if Attorney Rind would propose what those paragraphs are in the report, the Board could look at them and vote on whether they agree or not. Chairman de la O further stated that unless the Board has a written document to review, he would suggest that this matter be tabled.

Following discussion, the Board entered a motion to TABLE this matter to the next meeting which resulted as follows:

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

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

E.2 05-01281

Copy of a Report concerning the investigation hearing on behalf of Khalil Mangabadi, Engineer I, Department of Public Works, pursuant to Civil Service Rule 16.1, Abuse of Power. (DISCUSSION)

Member Scarola referred the Board to page 4 of the report, recommendation #2, under the subheading, RECOMMENDATIONS which states, "Labor-Management Policy (LMP) 3-92 should be revised to require the interview process to include consideration of the position requirements." He went on to say that the language may not be needed in this recommendation, but he wants to make sure that the appropriate unions are involved in reviewing and revising the interview policy.

The Executive Secretary stated that [the inclusion of the general employees' and other appropriate unions] is what makes it a Labor-Management Policy, which has agreement between the administration and unions, as opposed to an Administrative Policy, which is handed down by administration.

Cynthia A. Everett, Special Counsel to the Board, stated that so that everyone is on the same page, when it comes to preparing the findings she has always urged the Board to be as specific as possible so that it makes her job easier, and the findings more complete. She went on to say that she has repeatedly suggested to counsel to submit her proposed findings so that the Board does not have this after the fact outrage about what is or is not in the document. She went on to say it is fine with her if the findings have to be considered two weeks later, but she has urged both attorneys to submit findings because she thinks it would help all parties and save time through this process, but unfortunately, most times it does not happen.

Member Angel-Capo referred the Board to page 3, finding #7, third and fourth sentences, under the subheading, RESULTS OF INVESTIGATIONS, which states, "Ms. Grindell testified that she had previously observed Grievant's demeanor in two social occasions speaking negatively of his co-workers and the City. Ms. Grindell found such behavior to be divisive." She asked if language could be added in the report to indicate that Ms. Grindell had no recollection of the events as to where and when the incident occurred and the persons involved.

Chairman de la O stated that the Board would have to vote whether to add the language suggested by Member Angel-Capo, but he thinks the conclusion is the Board did not find that testimony credible.

Member Dames offered as a recommendation that the department pay attorney fees since it was such an egregious abuse of power by the department director.

Chairman de la O asked Member Dames if he wished to add this recommendation to the Rule 16.2 report as a fourth recommendation to the City Manager.

Member Dames responded in the affirmative.

Assistant City Attorney Vizcaino responded that she believes the Board deliberated on this recommendation at the last meeting and it failed.

Member Dames responded that it was mentioned but never acted upon by the Board.

Chairman de la O stated that there was no motion on the attorney's fees that he recalls, but he does remember that the matter was discussed. For clarification purposes, the Chairman asked if any Board Member could bring up the motion since this is a recommendation that has not failed.

Special Counsel Everett responded that at the time the Board considered this matter, there was no decision made, so it would only be appropriate to move to reopen deliberations since the Board is allowing both counsels to submit proposed additional findings if they wish.

Following discussion, the Board entered a motion to reopen deliberations on the matter of attorney fees which resulted as follows:

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

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

The Board entered a motion to add a recommendation for the City to pay the attorney's fees for Mr. Mangabadi's grievance hearing.

Under discussion, Attorney Rind stated that she supports the motion completely and Assistant City Attorney Vizcaino stated that the motion would be over the City's objection.

Following discussion, the motion on the floor to recommend to the City Manager that the City pay the attorney's fees for Mr. Mangabadi for bringing his grievance resulted as follows:

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

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

Chairman de la O asked if anyone had something more to relate regarding the Khalil Mangabadi findings.

Member Angel-Capo responded in the affirmative and directed the Board to the Rule 16.2 Report, page 3, finding #6, second and third sentences which state, "Mr. Beylin was ultimately selected for the Engineering II position. Mr. Beylin would not have been

eligible under the original requirements for the position." She went on to say that she would like to add that Mr. Beylin's application was not accurate in its entirety; however, she did not know if this language should be added to finding #6 or elsewhere in the report; therefore, she was deferring to the Chairman for guidance.

Chairman de la O responded that he thinks that is language that Attorney Rind is going to suggest be included in the report.

No other discussion took place on this matter.

DEFERRED

E.3 07-00354

Copy of a memorandum 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.
(DISCUSSION)

Grievance hearing is scheduled for today.

Chairman de la O asked for the department's position on the continuance request submitted by Administrator Ferrer-Miralles.

Assistant City Attorney Vizcaino responded that Ms. Ferrer-Miralles is on leave and will not be present at today's meeting. She went on to say that it is her understanding that the investigation being handled by the Dade County Equal Opportunity Board continues and remains ongoing, but aside from that, she will be requesting a continuance. Assistant City Attorney Vizcaino further stated that she discussed the matter of continuing Lt. Hervis' case with Attorney Rind last week because an essential key witness is on medical leave and she does not have a date when her witness will return to work.

Chairman de la O stated that the fact that the employee is on medical leave means that employee cannot report to work; then asked whether the employee was able to testify over the telephone. He went on to say that there are times when persons retire from the City, but they still are able to testify.

Assistant City Attorney Vizcaino responded that she has been unable to meet with her witness to prepare for her defense because he is on leave.

Chairman de la O stated that normally it would not be much of an issue but when the Board does not know when the medical leave will end, he can anticipate Attorney Rind asking when is her client's case going to be set for a hearing.

Attorney Rind responded that with regards to Ms. Ferrer-Miralles' request to continue Lt. Hervis' hearing, she believes the Board has already considered this matter. She went on to say that with regards to the continuance, Attorney Vizcaino did ask her if she would be objecting to her continuance request and she related to Attorney Vizcaino that under the circumstances she would not object provided that they make a request to the Board that Lt. Hervis' hearing be rolled over to the next meeting date, which she believes is October 7, 2008. Attorney Rind informed the Board that she is aware this will be a short meeting date because the room is scheduled for use up until 2:00 P.M.; however, as it stands now both sides have one witness each and because this case has been rolled over so many times, that was her contingent agreement.

Chairman de la O asked Attorney Vizcaino for the name of her witness that is on leave.

Assistant City Attorney Vizcaino responded that her witness is Assistant Police Chief Burden.

Chairman de la O stated that he does not want to get the Chief's medical history on the record but asked Attorney Vizcaino if she knows when Chief Burden will return from leave.

Assistant City Attorney Vizcaino responded that she did not know when Chief Burden would return, but she does not think it is likely that he will be out beyond October 7. She went on to say that she agreed to roll Lt. Hervis' case over to the October 7 meeting date, but she cannot guarantee that Chief Burden would have returned to work.

Chairman de la O stated that makes a lot of difference because when Assistant City Attorney Vizcaino mentioned that she did not have an expected date, he thought she was talking about an indefinite date.

Assistant City Attorney Vizcaino stated that she just does not want to commit that Chief Burden will return to work on October 7.

Chairman de la O stated that the more fundamental issue is the department really wants a more open-ended continuance based on the fact that there is a pending investigation.

Assistant City Attorney Vizcaino stated that she believes this argument has been considered by the Board in the past. She went on to say that there is an ongoing County investigation of which sworn statements have been taken from numerous witnesses, some of which are City employees. Assistant City Attorney Vizcaino further stated that these witnesses were subjected to testimony under oath and they have not had an opportunity to review their testimony prior to taking a stand before the Board and being subjected to cross-examination. She stated that although these arguments have been made in the past, she will continue to make the same arguments and she would ask that the Board continue this matter until the County has concluded its investigation.

Chairman de la O stated that as he understands it, the Board had this argument before, but never "crossed the bridge" because the last time Lt. Hervis' case was scheduled, it was continued due to time constraints.

Attorney Rind agreed that there was extensive discussion regarding Lt. Hervis' case and that the Board never ruled on the matter.

Chairman de la O asked Attorney Rind if it is her position that she should be able to go forward with Lt. Hervis' case.

Attorney Rind responded in the affirmative and stated that opposing counsel can bring any witness she chooses because it has no bearing on whether opposing counsel can defend the case or she can bring the case.

Member Cruz stated that the Americans With Disabilities Act is enforced by the Labor Department and he knows they are very particular about enforcing the law because he has been dealing with this department for over 10 years. He went on to say that the City has to accommodate Lt. Hervis because that is the law.

Assistant City Attorney Vizcaino stated that she would alert the Board that depending on the County's findings, this case may or may not end up in Federal Litigation so she would caution the Board that it would make perfect sense to continue this matter until the end of the County's investigation.

Chairman de la O stated that whether Lt. Hervis' case ends up in litigation is not unique to this case because the Board is the administrative remedy that has to be exhausted. He went on to say that the more fundamental question he has is "what prejudice does the department suffer if it has to put on its defense when there is a pending investigation?"

Assistant City Attorney Vizcaino responded that she would raise the same argument which is the Board would be subjecting witnesses to cross-examination without an opportunity to review sworn statements that they have made in the past and possibly litigating issues that may or may not result in further State or Federal Court litigation. She went on to say that her explanation is aside from her request for a continuance based upon her witness who is not available due to medical reasons.

Chairman de la O stated that he understands the department's position on the matter of continuing this case, but that statement is not unique to this case. He went on to state that the issue is whether Lt. Hervis' case gets rolled over to the October 7 meeting because if it is decided to wait until the County investigation is complete, there would be no need to reschedule the case to the October 7 meeting.

Assistant City Attorney Vizcaino stated that she did reach out to the County's Equal Opportunity Board to get an approximate completion date of the investigation; however, it is her understanding that the Director was unable to provide Ms. Ferrer-Miralles with a response. She went on to say that they may soon have some kind of an indication, one way or another.

Member Scarola stated that he recalls when this matter was last discussed, both attorneys were asked to present case law to support their position, but this has not been done.

Chairman de la O stated that he does not think there is anything that would block the Board from having the hearing. He went on to say that if he felt that the department would be hurt by putting on the hearing, it would be unfair to the department and if he felt it would be unfair to the employee to go forward while there is an outside investigation, that would be an argument that he feels would be persuasive. Chairman de la O further stated that he does not hear anything that is going to hurt anyone and he understands that the witnesses would not be able to read their statements, but as long as they testified truthfully they should have no problems.

Member Scarola stated that both sides have already agreed to continuing this case for two weeks and Ms. Ferrer-Miralles is not available to defend her memo, so he does not understand why the Board is wasting its time today on this matter unless the case is going to be scheduled in two weeks.

Chairman de la O stated that the case is going to be scheduled in two weeks unless it is put off indefinitely until the County is done with its investigation. He went on to say that there is no point in coming back on October 7 to say that the Board is not going to hear the case until the investigation is completed by the County. Chairman de la O further stated that he may be at a disadvantage because he does not remember what Lt. Hervis' grievance is about.

Attorney Rind responded that Lt. Hervis filed a discrimination complaint for not being promoted based upon his disability. She went on to say that the City created Civil Service Rule 17 for City employees; therefore, he has a right to come before the Board and have his case heard. Attorney Rind further stated that both sides will bring in their witnesses and she can say that she would have the same disadvantage as the department because she does not get to see [the witnesses'] statements. She stated

that to put off her client's case off to an indefinite time whenever the County complete its investigation, which is something not binding on the Board, would be unfair to Lt. Hervis. Attorney Rind went on to say that Lt. Hervis has come to the Board on more than one occasion to have his case heard and he has a right to have it heard.

Member Angel-Capo asked if the Board has to wait until the County investigation is completed prior to hearing Lt. Hervis' case.

Chairman de la O responded in the negative. He went on to say that there is one motion the department is making which is to continue Lt. Hervis' case until the next Board meeting and the second motion is the department is asking that the hearing be continued indefinitely (until the County completes its investigation).

Following discussion, the Board entered a motion to GRANT the department's request for a continuance of Lt. Hervis' hearing and to reschedule Lt. Hervis' hearing to the October 7, 2008 meeting which resulted as follows:

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

Chairman de la O asked if anyone wished to make a motion to continue Lt. Hervis' hearing because of the pending investigation being conducted by the County's Office of Equal Employment Opportunity.

Hearing none, Chairman de la O stated that Lt. Hervis' hearing will not be delayed.

No other discussion took place on this matter.

CONTINUED

F. REPORTS

F.1 08-00018 Pending Hearings as of September 23, 2008. (NOTIFICATION)

G. REQUESTS FOR HEARINGS

G.1 08-01103 Request for hearing from Raul R. Delgado, Police Officer, pursuant to Civil Service Rule 16.2 - Complaint by Employee, concerning an alleged violation of Civil Service Rule 8.14, Police Promotions. (DISCUSSION)

After calling for the appearance of Officer Delgado to address the Board regarding his request for a hearing, Chairman de la O noted that neither Officer Delgado nor a representative on his behalf was present to speak on this matter.

Member Scarola asked if Officer Delgado was notified about today's meeting and the need for him to be present.

The Executive Secretary responded in the affirmative.

Chairman de la O asked the Executive Secretary if the Board normally reschedules items for the next Board meeting when an item is scheduled for the first time and the requester does not appear.

The Executive Secretary responded in the affirmative. She asked the Chairman if he would like for her to add this item to the October 7 agenda and renote Officer Delgado.

Chairman de la O responded in the affirmative and in addition instructed the Executive Secretary to telephone Officer Delgado to find out if he still wants his matter heard because he could have read the letter sent to him by the Executive Secretary and probably felt that he was not qualified.

Member Scarola stated that there is the possibility that he could have received notice at the last minute to go to court; therefore, he would like to give Officer Delgado an opportunity to appear.

TABLED BY THE BOARD FOR DISCUSSION AT THE OCTOBER 7, 2008 MEETING.

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.

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

CONTINUED TO THE MEETING OF OCTOBER 7, 2008.

- H.2 05-00587** Hearing of appeal on behalf of Edward Lugo, Police Officer, relative to his 80-hour suspension, effective June 15, 2005.

Prior to discussing the matter of Officer Lugo's case, Member Scarola advised Board Members that he has to attend a pension meeting that will be taking place today and tomorrow; therefore, he would not be available to sit for any of the hearings that are scheduled today.

Following Member Scarola's announcement, Chairman de la O asked Attorney Rind for her position on Officer Lugo's case.

Attorney Rind stated that she would ask that this case be continued.

Assistant City Attorney Vizcaino responded that the department is prepared to go forward with its case today. She went on to say that for the past two days, she has been in discussions with Attorney Rind regarding this case and that she advised Attorney Rind that she had no objection to her continuance request; however, she would be prepared to go forward. Assistant City Attorney Vizcaino further stated that she has three witness present, one of which is a retired police sergeant and because Attorney Rind failed to confirm that she would be requesting a continuance, she would be objecting to the continuance request.

Chairman de la O asked Attorney Rind to provide the Board with the basis for wanting to continue Officer Lugo's hearing.

Attorney Rind responded that the basis for the continuance is the department, grievant, and the union is involved in trying to resolve the issue. She went on to say that she did not hear of the City's objection until today and that the last e-mail she received from opposing counsel was that if she were to request a continuance, they would not object. Attorney Rind further stated that if she had her preference, she would not go forward today because she is not prepared to do so.

Chairman de la O asked for the scheduling history of Officer Lugo's case.

The Executive Secretary responded that Officer Lugo's case had been continued for a total of 4 times, one of which was at the request of the department and three at the request of the Board.

Attorney Rind responded that according to the scheduling history, the employee has not requested a continuance of his hearing.

Assistant City Attorney Vizcaino stated that she has a copy of the e-mail she sent to Attorney Rind at 12 noon yesterday which stated that if Attorney Rind were to request a continuance, she would have no objection, however, she would be prepared to go forward. She went on to say that Attorney Rind did not confirm whether she was going to request a continuance; therefore, she had to assume that the case was going forward and that is why her witnesses are present today.

Chairman de la O advised Assistant City Attorney Vizcaino that it might just be the way she paraphrased the e-mail but the way he hears the message, it sounds to him as though Ms. Vizcaino is saying that if Attorney Rind asked the Board for a continuance she would have no objection.

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

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

H.3 07-01190

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

Attorney Rind stated that a different City Attorney will be handling this case and that they spoke last week about which cases would go forward and at that time she had just received some documents from Internal Affairs concerning this case and they agreed to ask for a joint continuance.

Assistant City Attorney Vizcaino stated that this case is being handled by Assistant City Attorney Ileana Forte; however, she is in a meeting, but can be present if the Board would like for her to appear since she is ready to proceed with her case. She went on to say that she does have e-mails from Attorney Forte to Attorney Rind advising that she is prepared to go forward and opposing counsel's continuance request for the Board's review.

Attorney Rind stated that if the Board wishes to know what happen, on Monday, she and Attorney Forte had an agreement to jointly continue the grievance hearing and on Friday while out of the office, she received an e-mail from Attorney Forte at approximately 2:00 P.M. advising that she was ready to proceed and she wrote back letting her know that she was not in the office so there was no way she could be prepared to go with her case on Tuesday. She went on to say that Attorney Forte e-mailed her and asked her to let her know what she wanted to do with regards to the case.

Chairman de la O asked if the department's witnesses are present.

Assistant City Attorney Vizcaino responded in the affirmative and also that she could contact Attorney Forte, who can be available within 20 minutes.

Chairman de la O asked Attorney Rind for her position.

Attorney Rind responded that she is not prepared to go forward with her case today.

Assistant City Attorney Vizcaino stated that she does not believe Attorney Forte has an objection to the continuance request.

Following discussion, the Board entered a motion to grant a JOINT CONTINUANCE in this case which resulted as follows:

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

ADJOURNMENT:

The Chairman called for a motion to ADJOURN.

Motion by Chief Examiner Scarola, seconded by Member Angel-Capo, to APPROVE. PASSED unanimously.

The meeting adjourned at 10:52 a.m.

SIGNATURE:

Miguel M. de la O, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary