

# **City of Miami**

*City Hall  
3500 Pan American Drive  
Miami, FL 33133  
www.miamigov.com*



## **Meeting Minutes**

**Tuesday, November 3, 2009**

**10:00 AM**

**Commission Chambers**

### **Civil Service Board**

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

**PLEDGE OF ALLEGIANCE**

*The meeting was called to order at 10:13 a.m. The roll call at the commencement of the meeting was as follows:*

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

**Absent:** Member Cruz

*NOTE: Member Cruz' absence was due to a personal matter.*

**A. APPROVING THE MINUTES OF:**

Regular Meeting of October 20, 2009.

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

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

**Absent:** Cruz

**B. PERSONNEL MATTERS**

- B.1** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Cindy A. Borges, Litigation Assistant (probationary), her services are no longer required by the City, effective October 1, 2009. (NOTIFICATION)

**NOTIFIED**

- B.2** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Ana M. Cabrera, Litigation Assistant (probationary), her services are no longer required by the City, effective October 1, 2009. (NOTIFICATION)

**NOTIFIED**

- B.3** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Doris E. Quevedo, Typist Clerk II, of her layoff, effective October 16, 2009 and that her name will be placed on a "Layoff" register for a period of no more than 36 months. (NOTIFICATION)

**NOTIFIED**

- B.4** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Shirley Richardson, of her assignment as an Investigator, CIP, effective October 19, 2009. (NOTIFICATION)

**NOTIFIED**

- B.5** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Carol Abia, of her assignment as an Investigator, CIP, effective October 19, 2009. (NOTIFICATION)

**NOTIFIED**

- B.6** A copy of a memorandum from Pedro G. Hernandez, P.E., City Manager, notifying Mary Delafuente, Service Center Representative, of her return to former classification, effective October 21, 2009. Mary Delafuente is being rolled back to Administrative Aide I. (NOTIFICATION)  
**NOTIFIED**
- B.7** A copy of a memorandum from Pedro G. Hernandez, P.E., City Manager, notifying Karen Cooper, NET Administrator, of her return to former classification, effective October 23, 2009. Karen Cooper is being rolled back to Planner II. (NOTIFICATION)  
**NOTIFIED**
- B.8** A copy of a memorandum from Pedro G. Hernandez, P.E., City Manager, notifying Alberto Zamorano, NET Administrator, of his return to former classification, effective October 23, 2009. Alberto Zamorano is being rolled back to Code Enforcement Inspector. (NOTIFICATION)  
**NOTIFIED**
- B.9** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Juana B. Guerrero, Service Center Aide, of her layoff, effective October 21, 2009 and her name will be placed on a "Layoff" register for a period of no more than 36 months. (NOTIFICATION)  
**NOTIFIED**
- B.10** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Sally I. Delgado, Service Center Aide, of her layoff, effective October 21, 2009 and her name will be placed on a "Layoff" register for a period of no more than 36 months. (NOTIFICATION)  
**NOTIFIED**
- B.11** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Allan I. Santiago, Service Center Aide, of his layoff, effective October 21, 2009 and his name will be placed on a "Layoff" register for a period of no more than 36 months. (NOTIFICATION)  
**NOTIFIED**
- B.12** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Murlande Sam, Service Center Aide, of her layoff, effective October 21, 2009 and her name will be placed on a "Layoff" register for a period of no more than 36 months. (NOTIFICATION)  
**NOTIFIED**
- B.13** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Chante Sweet, Assistant to the Director, of her layoff, effective October 23,

2009. (NOTIFICATION)

**NOTIFIED**

- B.14** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Marcela R. Montoya, Service Center Aide, of her layoff, effective October 21, 2009 and her name will be placed on a "Layoff" register for a period of no more than 36 months. (NOTIFICATION)

**NOTIFIED**

- B.15** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Heriberto Padilla-Morales, NET Administrator, of his layoff, effective October 23, 2009. (NOTIFICATION)

**NOTIFIED**

- B.16** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Maria T. Mascarenas, NET Administrator, of her layoff, effective October 23, 2009. (NOTIFICATION)

**NOTIFIED**

- B.17** A copy of a letter from Pedro Hernandez, P.E., City Manager, notifying Toshiba Symonette, Service Center Representative, that her layoff, effective October 21, 2009 is rescinded. Ms. Symonette is returning to her former classification of Service Center Aide, effective October 22, 2009. (NOTIFICATION)

**NOTIFIED**

- B.18** A copy of a letter from Pedro Hernandez, P.E., City Manager, notifying Shannon Mills, Service Center Aide, that her layoff, effective October 21, 2009 is rescinded. (NOTIFICATION)

**NOTIFIED**

- B.19** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Derrick L. Cook, Planner II, of his layoff, effective October 21, 2009 and his name will be placed on a "Layoff" register for a period of no more than 36 months. (NOTIFICATION)

**NOTIFIED**

- B.20** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Providencia Velasquez, Historic Preservation Planner, of her layoff, effective October 21, 2009 and her name will be placed on a "Layoff" register for a period of no more than 36 months. (NOTIFICATION)

**NOTIFIED**

- B.21** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Darling J. Jarquin, Special Projects Coordinator-NET, of her layoff, effective October 23, 2009. (NOTIFICATION)  
**NOTIFIED**
- B.22** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Trelana Haines, Information Clerk of her layoff, effective October 21, 2009 and her name will be placed on a "Layoff" register for a period of no more than 36 months. (NOTIFICATION)  
**NOTIFIED**
- B.23** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Natalia Onikienko, Code Enforcement Inspector, of her layoff, effective October 21, 2009 and her name will be placed on a "Layoff" register for a period of no more than 36 months. (NOTIFICATION)  
**NOTIFIED**
- B.24** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Oscar Bravo, Code Enforcement Inspector, of his layoff, effective October 21, 2009 and his name will be placed on the current eligible register for his classification. (NOTIFICATION)  
**NOTIFIED**
- B.25** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Ricardo Valdes-Flores, Code Enforcement Inspector, of his layoff, effective October 21, 2009 and his name will be placed on the current eligible register for his classification. (NOTIFICATION)  
**NOTIFIED**
- B.26** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Pedro Alvarado, Code Enforcement Inspector, of his layoff, effective October 21, 2009 and his name will be placed on the current eligible register of your classification. (NOTIFICATION)  
**NOTIFIED**

## **C. MILITARY LEAVES OF ABSENCE**

- C.1** Maria E. del Rio, GIS Developer, requests re-employment as a GIS Developer following her return from military leave. (DISCUSSION)  
**Motion by Chief Examiner Scarola, seconded by Member Dames, that this matter be APPROVED. PASSED by the following vote.**
- Aye:** Chairperson de la O, Dames, Angel-Capo and Scarola
- Absent:** Cruz

**D. DISCIPLINARY MATTERS**

- D.1 Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Cesar Villafana, Police Officer, of his 40-hour suspension, effective October 25, 2009. (NOTIFICATION)

**NOTIFIED**

- D.2 Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Alfred Hernandez, Police Officer, of his 10-hour suspension, effective October 26, 2009. (NOTIFICATION)

**NOTIFIED**

**E. GENERAL ITEMS**

- E.1 Copy of a "Motion for Consolidation" filed by Barnaby Min, Assistant City Attorney, on behalf of the City of Miami, concerning the hearing of appeal on behalf of Bernard Troutman, Electrical Lineman. (DISCUSSION)  
Hearing of appeal is scheduled for March 23, 2010.

*Chairman de la O stated that the Board would consider together for discussion Assistant City Attorney (ACA) Min's Motions for Consolidation that appear under Items E.1 (Bernard Troutman, represented by Attorney Rind) and E.2 (Victor L. Cornier, represented by Attorney Guttman-Valdes) and then asked ACA Min to tell the Board why he felt the hearings should be consolidated.*

*ACA Min responded that he requested to consolidate the cases because they involve a verbal altercation between Mr. Troutman and Mr. Cornier that was captured on video, the facts and witnesses are the same, the witnesses would be testifying to the same incident, it would not be necessary to watch the video twice, and there would be no due process issues because both Mr. Cornier and Mr. Troutman would be subject to cross-examination by the attorneys.*

*Chairman de la O asked if the video had sound and ACA Min responded in the negative.*

*Chairman de la O asked Attorney Guttman-Valdes to present her position on ACA Min's Motions for Consolidation. Attorney Guttman-Valdes responded that her client objects to consolidating the hearings because his issues are different from Mr. Troutman's issues, Attorney Rind advised her that she would not be available on November 17th for which Mr. Cornier's hearing is scheduled; therefore, consolidating the cases would require rescheduling her client's hearing to a later date which she does not want to do because the case has been pending for some time.*

*Chairman de la O asked Attorney Guttman-Valdes to tell the Board how her client's case was different from Mr. Troutman's case. Attorney Guttman-Valdes responded that the cases are different because her client and Attorney Rind's client were charged with doing something wrong.*

*Chairman de la O asked Attorney Guttman-Valdes if she meant that both employees were charged with different violations and Attorney Guttman-Valdes responded that both employees committed different acts which caused them both to be written up.*

*Attorney Guttman-Valdes continued with her position on why she felt the cases should not be consolidated. She went on to say that the video is relatively short, it does not*

have any audio, and the reason the employees were written up was due more to what they said. Attorney Guttman-Valdes further stated that there were only a handful of witnesses and that would not result in a great duplicity of work (as indicated by ACA Min).

Chairman de la O asked Attorney Guttman-Valdes if there had been any continuances granted on behalf of her client or was this the first time the hearing was scheduled. Attorney Guttman-Valdes responded that she would have to defer to the Executive Secretary because she did not know.

The Executive Secretary responded that on the matter of Mr. Cornier's hearing, no continuances were granted by the Board.

Chairman de la O asked what would Mr. Cornier suffer if the cases were consolidated, other than the fact that Attorney Rind's client would not be able to proceed on November 17th. Attorney Guttman-Valdes responded that the theory she believed Attorney Min was operating under was the example of two co-defenders who participated in a robbery, which would make sense in a criminal case to consolidate the cases for a hearing. She went on to say that the pending cases before the Board deals with two mutual combatants for which the cases should not be consolidated since the Board would lose focus on her client's case while also listening to a lot of evidence relevant to charges brought against Attorney Rind's client. Attorney Guttman-Valdes further stated that this is the same issue they have repeatedly argued and each time the Board has denied the department's request to consolidate cases.

Chairman de la O stated that he has always voted in favor of consolidating the hearings and that he would be happy to deny the department's request if there is a real prejudice to Attorney Guttman-Valdes' client, but what Attorney Guttman-Valdes has told him is the same thing that would happen in any case involving multiple defendants. He asked Attorney Guttman-Valdes if there was anything else other than a delay of Mr. Cornier's hearing that would befall him if the cases were tried together.

Osnat Rind, Attorney at Law on behalf of Bernard Troutman, interceded and responded that Mr. Cornier would be subject to her and ACA Min cross-examining him and the same would apply with her client. She went on to say that she was at a disadvantage because she did not know the Motions for Consolidation were noticed for today; however, she has been before the Board on similar issues [of consolidating cases] and the requests have always been denied by the Board under the idea that every employee is entitled to have his/her hearing heard by the Board. Attorney Rind further stated that she was not provided with a copy of the video [that the department will present] so she did not know what it contained nor did she know the facts of the case enough in detail to answer specific questions because her client's case is scheduled in 2010. She stated that in the past, the department's Motion for Consolidation has also been denied under the idea that the employees are being cross-examined by two attorneys on potentially different theories so she was not in favor of consolidating the cases.

Chairman de la O asked why couldn't the Assistant City Attorney call either attorney's client and the other attorney cross-examine that witness. Attorney Guttman-Valdes responded that there was no authority under the Board's rules and regulations that allowed for consolidating cases. Chairman de la O responded that there was nothing in the rules that would forbid the Board from consolidating the cases and then asked ACA Min if he wished to say anything further on the matter.

ACA Min responded that due process only requires that the employee be given notice of the violations and the opportunity to be heard, but there was no due process violation as far as being subject to multiple cross-examination. He went on to say that the

department would be within its rights to call Mr. Troutman as a witness for the hearing of Mr. Cornier and that Mr. Troutman would be subject to cross-examination by Attorney Guttman-Valdes. ACA Min further stated that he was not sure why representation was made that Attorney Rind would not be available on November 17th because according to his communication with Attorney Rind she never advised him that she would not be available on the 17th.

Attorney Rind responded that during her conversation with Attorney Min, she did not advise him that she would not be available, but that she would not be prepared to go forward with [Mr. Troutman's case on November 17th].

ACA Min stated that it is the department's position that it is a fairly simple case, Attorney Rind has two weeks to watch the video, and that they could make this a priority case for November 17th or it could be pushed back to the meeting of December 1, 2009.

Attorney Guttman-Valdes stated that the Board does not dictate the attorneys' workload.

Chairman de la O responded that while Attorney Guttman-Valdes is correct, given the fact that this is the first time Mr. Cornier's hearing has been scheduled, the Board normally gives first-time continuance requests freely so he did not think it would be a prejudice to Mr. Cornier if his case was moved to a different date.

Following discussion, the Board entered a motion to DENY the department's Motion for Consolidation of the cases of Bernard Troutman and Victor L. Cornier.

Under discussion, Member Scarola stated that in the past the Board did not consolidate cases for the reason that they were not the same as co-defendant cases whereby two or more defendants were doing something together at the same time. He went on to say that the cases that the department requested to be consolidated in the past dealt with employees who were involved in one-on-one combative situations. Member Scarola further stated that in such cases, the matter was dealt with via the Workplace Violence Policy where one employee was determined to be the aggressor and the other as the defender. He stated that he did not think it was a good idea to consolidate the cases, but if it is determined that the employees conspired in doing something together, he would lean towards consolidating the cases.

Following further discussion, the motion on the floor to DENY the department's Motion to Consolidate the hearings of Bernard Troutman and Victor L. Cornier resulted as follows:

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

**Aye:** Dames, Angel-Capo and Scarola

**No:** Chairperson de la O

**Absent:** Cruz

## E.2

Copy of a "Motion for Consolidation" filed by Barnaby Min, Assistant City Attorney, on behalf of the City of Miami, concerning the hearing of appeal on behalf of Victor L. Cornier, Materials Specialist Supervisor. (DISCUSSION) Hearing of appeal is scheduled for November 17, 2009.

The Board entered a motion to DENY the department's Motion for Consolidation of the hearings of Bernard Troutman and Victor L. Cornier. (NOTE: See Item E.1 for a detailed discussion on this matter.) The motion resulted as follows:

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

**Aye:** Dames, Angel-Capo and Scarola

**No:** Chairperson de la O

**Absent:** Cruz

**E.3**

Status Report from Ricardo Martinez, Classification and Pay, Department of Employee Relations, regarding the audit of Suzann E. Nicholson's Customer Service Representative position. (DISCUSSION)

*ACA Min informed the Board that the audit (requested by Ms. Nicholson in June) was completed and that he had copies to distribute to the Board and Ms. Nicholson. He went on to say that based upon the completion of the audit, he would ask that Ms. Nicholson's grievance be withdrawn because it was his understanding that the basis for having a grievance hearing was due to the department's lack of completing the audit as requested.*

*Chairman de la O asked if the Board needed to do anything at this time other than wait until Ms. Nicholson returned to the Board. Member Scarola responded that for the last two meetings, the Board requested Mr. Martinez bring a completed report of the audit and now that it is completed, he believed that Ms. Nicholson could move on with her case.*

*The Executive Secretary responded that Ms. Nicholson has the right to withdraw her case if she chooses to do so upon reviewing the audit (completed by Mr. Martinez.) She went on to say that her hearing had not been scheduled as yet; therefore, she could wait to hear from Ms. Nicholson and advise the Board at a future meeting of her decision.*

**DEFERRED**

**F. REPORTS**

**F.1** Pending Hearings as of November 3, 2009. (NOTIFICATION)

**G. REQUESTS FOR HEARINGS**

**G.1** Copy of a Request for Grievance Hearing from Osnat K. Rind, Attorney, on behalf of Suzanne Bermudez, Administrative Aide I, alleging a violation of Civil Service Rules 1, 8, 12, 14, and the City Charter, regarding her return to former classification (rollback) to a Typist Clerk III. (DISCUSSION)

*Attorney Rind stated that Ms. Bermudez held the position of Administrative Aide I and was notified of her roll back to the position of Typist Clerk III that she currently holds. She went on to say that Ms. Bermudez was rolled back as a result of Mary Delafuente, NET Services Center Rep, who was rolled back to the classification of Administrative Aide I. Attorney Rind further stated that the AFSCME Union received from the City a copy of a seniority list of employees holding the position of Administrative Aide I. Attorney Rind further stated that according to the [history] information they received on Ms. Bermudez, she has been an employee with the City since December 1985 and was promoted to the position of Administrative Aide I in 1999 and has held this position for 10 years. She stated that she had a list of all employees holding the classification of Administrative Aide I which indicated some of the employees were hired by the City in*

2008, 2005, 2004, and 2002. Attorney Rind went on to say that she did not have all of the information so she did not know when these individuals were placed into the classification of Administrative Aide I; however, she did not think any argument could be made that someone hired in 2008 would have more seniority than someone who has held that position for 10 years.

For clarification purposes, Chairman de la O asked Attorney Rind if the dates provided to her referred to an employee's date of hire into the City, but not the hire date as an Administrative Aide I. Attorney Rind responded in the affirmative. She went on to say that the Union wrote to the City advising of Ms. Bermudez' letter notifying her of her return to her former classification of Typist Clerk III due to the displacement of Mary Delafuente who held the position of NET Service Center Representative because they did not understand how the City selected Ms. Bermudez for the displacement when there were a dozen employees holding the position of Administrative Aide I who had less seniority than Ms. Bermudez. Attorney Rind stated that Ms. Delafuente should have displaced Ms. Loren Diaz who was hired by the City in 2008 because she held the least amount of seniority as an Administrative Aide I. She went on to say that the City could present its position on this matter, but what they are understanding is, the City took a position on Rule 12.1(c) which pertains to layoffs. Attorney Rind further stated that she was supposed to obtain copies from the City this morning [pertaining to this matter], but the department's representative forgot to bring them along with her to today's meeting.

Chairman de la O stated that the only issue today is whether the Board should grant a hearing and not whether the employee or department is right. He asked ACA Min for his position on why the Board should not grant the hearing. ACA Min responded that the hearing request should be denied because the department followed the Civil Service Rules. He went on to say that the department would concede there were a number of employees whose date of hire was after Ms. Bermudez' date of hire and that according to Rule 12.1(c) the department has to compute the seniority credit to determine who gets laid off and who gets rolled back to a former classification. ACA Min further stated that in order to determine proper seniority credit, the department has to look at a full month of service. He proceeded to read into the record a portion of Rule 12.1 (c) in support of his argument. ACA Min went on to say that it is the department's position that Ms. Bermudez' first 35 months of employment as an Administrative Aide I were not full months of employment because she took leaves without pay during that time so she did not receive credit for those months. ACA Min went on to say that even though Ms. Bermudez' date of hire may be earlier than some of those employees on the list, her seniority score was lower so there was no violation of the Civil Service Rules.

Chairman de la O stated that at first blush, that is not how he understood Rule 12.1(c). He went on to say that it would seem to him that according to the Rule if a person was hired on the 15th of the month, that person would not receive credit for that month, but to say that a person does not receive credit because they took a leave during a month seemed odd to him.

ACA Min stated that [if a person was hired on the 15th] a full month would be from December 15th to January 15th and if an employee took leave during that period, the employee would not receive credit for that month.

Chairman de la O asked what types of leaves are sufficient for an employee to lose their seniority credit for the month. ACA Min responded that any leave without pay would cause an employee to lose their seniority credit.

Chairman de la O asked if an employee had a leave of absence with pay would that employee retain their seniority. ACA Min responded that if an employee took vacation or sick time with pay, that employee's seniority would be retained, but an employee

would lose seniority for any leave without pay.

Chairman de la O asked if this policy was spelled out anywhere else other than in Civil Service Rule 12.1(c). ACA Min responded in the negative.

Chairman de la O stated that he was aware that the City has put out information about Workplace Violence to employees; therefore, he wanted to know if anyone ever put out a memo letting employees know that when they take a leave of absence without pay that they would lose an entire month of seniority. ACA Min responded in the negative. He went on to say that while the information is contained in Rule 12.1(c) a memo has not been distributed on this issue.

Member Scarola asked ACA Min if an employee was suspended for a day, would the employee lose the day or would a one-day suspension equate to an employee losing an entire month of seniority. ACA Min responded that the employee would lose a month of seniority because the suspension would be without pay.

Member Scarola asked for pension purposes, would an employee lose only that day. ACA Min responded that pension matters were totally a separate issue.

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

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

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

**Absent:** Cruz

Following the Board's approved motion to grant Suzann Bermudez' request for a grievance hearing, Attorney Rind requested that the hearing be scheduled expeditiously since this has been the practice for cases involving layoffs.

ACA Min responded that he respectfully disagreed because the other cases involving layoffs pertained to employees who did not keep their job (unlike Ms. Bermudez who was rolled back to a lower classification.) He went on to say that he believes the Board's concern at the time was that the employee did not have a job and was not receiving a paycheck therefore the hearing should be scheduled expeditiously. ACA Min further stated that in Ms. Bermudez' case, she does have a job and her only issue would be backpay.

Member Angel-Capo stated that in the past special meetings were set; therefore, she wondered if the Executive Secretary could look into scheduling additional meetings because of hearings about the many layoffs and rollbacks of employees.

Member Scarola stated that if the calculations (of seniority) were already done by the department, it should not take the department a lot of time to prepare its case. He went on to say that the department needs to send the information to Attorney Rind so that she can review it and make a determination [on how the department calculated seniority] especially since this most likely would be the concentrated area for argument.

ACA Min stated that he agreed with Member Scarola that it should not take a lot of time for the department to prepare for the case, but his only concern is the huge backlog of Civil Service cases and with all due respect to Ms. Bermudez, he thinks there are other City employees that need to have their cases heard.

Chairman de la O advised both attorneys that the Executive Secretary would schedule

*Ms. Bermudez' hearing.*

*No other discussion took place on this matter.*

**G.2**

Copy of a Request for a Whistleblower Hearing from Robert Anthony Bogdan, Attorney, on behalf of Steven S. Wolf, Investigator, relative to his termination, effective October 1, 2009. (DISCUSSION)

*Chairman de la O called for the appearances of Attorney Robert Bogdan and Steven Wolf. Hearing none, the Chairman asked the Executive Secretary if she heard from either of the two parties. The Executive Secretary responded in the negative.*

*ACA Min stated that he believed proper notice was sent to Attorney Bogdan on behalf of his client; therefore, he would ask that Mr. Wolf's request for a hearing be denied.*

*Chairman de la O stated that normally the Board reaches out to individuals to find out if they wish to reschedule so he did not think the Board needed to deny the request at this time.*

**DEFERRED : Executive Secretary will follow-up with Attorney Bogdan in reference to rescheduling this item.**

**H. TODAY'S HEARINGS****H.1**

Continuation of the Hearing of appeal on behalf of Clive Vernon, Police Officer, relative to his termination, effective December 1, 2008.

*Chairman de la O asked both attorneys if they were ready to proceed with Officer Vernon's appeal hearing. Both attorneys responded in the affirmative.*

*Attorney Guttman-Valdes stated that while she is ready to proceed, she would ask that Member Cruz somehow weigh in on the hearing, but she did not know how this could be accomplished.*

*Chairman de la O responded that the problem is the case has been heard by four Board Members, one of whom is missing today and whom the Board does not know will be available the next time the Board meets. He went on to say that the Board does have a quorum today; therefore the Board can proceed; however, Attorney Guttman-Valdes was making a motion to continue the hearing.*

*Attorney Guttman-Valdes stated that she did not want to continue Officer Vernon's hearing, but she was opened to suggestions. She went on to say that she did not know whether Member Cruz was available, but the meeting is televised on the Internet and cable, so one option would be that he watch the meeting and vote via telephone or the Board could finish with the evidence, have Member Cruz watch the video and finish up with closing arguments and Board deliberations at the next meeting.*

*ACA Min stated that he had no problem with being creative, but his only concern is that it is uncertain when Member Cruz will return as indicated by the Chairman. He went on to say that he personally believed that Member Cruz would return next week, but that certainly was no guarantee. ACA Min further stated that this case has been going on for two meeting dates, a quorum is available today, three of the Board Members (present today) have already heard the case, and a number of other cases have been continued in order to finish with this hearing so he would like to go forward today and finish with this case.*

Chairman de la O stated that what is being discussed is to finish Officer Vernon's hearing today, but the only question would be whether the Board votes if there is an adoption of any procedure for which Member Cruz could listen in or view the information. He went on to say that if this were to happen, the four Board Members would vote at the next meeting.

Attorney Guttman-Valdes stated that Member Cruz is very dedicated to the Board so if he is unable to appear physically she was wondering if arrangements could be made to have him appear by telephone. Chairman de la O responded that Special Counsel Everett would have to weigh in on whether Member Cruz could vote via telephone.

Cynthia A. Everett, Special Counsel to the Board, asked if Member Cruz made the request to appear via telephone. Attorney Guttman-Valdes responded in the negative.

Chairman de la O stated that the request is being made by the employee, but ultimately the Board needs to vote on whatever it is going to do.

Special Counsel Everett stated that if Member Cruz did not make the request, and unless Attorney Guttman-Valdes is telling the Board that she has been in contact with Member Cruz and made arrangements, she did not see how the Board could go down that road. She asked Attorney Guttman-Valdes if she had communications with Member Cruz. Attorney Guttman-Valdes responded that she would not have ex-parte communications with a Board Member.

Chairman de la O stated that the other part of Attorney Guttman-Valdes' question had not been answered which was whether Member Cruz could vote by telephone.

Special Counsel Everett responded that the Board has no procedures in place that would allow a Board Member to vote by telephone so she would be hesitant to advise the Board to take this extraordinary step. She went on to say that the Board has a quorum so the Board can go forward; however, the situation would have been different if the Board needed another Member to make a quorum to take care of a Board matter, but at the same time she did not see the need for the Board to take the extraordinary step when it was not necessary.

Attorney Guttman-Valdes stated that her client has been subjected to the most serious level of discipline that you can avail an employee to which is termination. She went on to say that the department has put on a lot of evidence and her client agreed to go before a four Member Board who have heard a huge amount of evidence over two meetings so she did not think her client could be forced to go before a three Member Board if there is a possibility that the fourth Member can weigh in on the hearing. Attorney Guttman-Valdes further stated that the Board did not need to discuss the telephone issue because it might be a moot point.

Chairman de la O asked ACA Min for his position. ACA Min responded that if they get to the point where the Board is ready to deliberate today, he prefers to do so for purposes of finishing the case. He went on to say that the case has dragged on too long, the Board Members have listened to two meetings of testimony, and if there was going to be an issue of proceeding before a four Member Board, Attorney Guttman-Valdes should have made that argument at the beginning.

Chairman de la O stated that it appeared to him that the Board should proceed with the hearing since there is a quorum and as they get to the end of the day, the matter of whether to deliberate could be taken up at that time. He went on to say that ultimately the Board will make a decision in the form of a vote.

Attorney Guttman-Valdes stated that if the Board was not going to decide whether it was going to deliberate on the matter concerning Member Cruz at this moment, she would ask that her client's case be continued.

Chairman de la O asked ACA Min for his position on the employee's request for a continuance. ACA Min responded that there is a quorum present, this case has been pending and going forth for approximately 1 1/2 months, and if there was a concern that there would be less than four Members present, that concern should have been raised at the beginning of the hearing especially when there is always the potential that a Board Member could get sick, be delayed or be on vacation. He went on to say that other cases have been delayed because Officer Vernon's case is not finished.

Member Angel-Capo asked if there were any other cases scheduled to go forward today. ACA Min responded in the affirmative.

Chairman de la O stated that there is no basis for objecting when there is a four-Member Board and the Board has gotten passed that issue in the last year so there was nothing Attorney Guttman-Valdes could have done to stop the hearing when he was absent two meetings ago. He went on to say that he did not want the record to reflect that Attorney Guttman-Valdes should have objected to proceeding before a four-Member Board when the Rule says that three Board Members constitute a quorum.

Chairman de la O called for a motion to continue Officer Vernon's hearing. Members Dames and Scarola responded that they wanted to hear the case today.

Chairman de la O stated that Attorney Guttman-Valdes' request for a continuance was denied and that the Board would hear Officer Vernon's case today.

Following discussion, the Board continued (from the meetings of October 6 & 20, 2009) with the appeal hearing on behalf of Officer Clive Vernon, regarding his termination effective December 1, 2008.

Chairman de la O asked for an update on the hearing since he was absent from the last meeting. ACA Min responded that they had gone out of turn to hear witnesses' testimony and view videotapes because of the limited time the Commission Chambers was available, but he believed at this point the department had already introduced the video and it was a matter of publishing the video statement of Officer Vernon.

Chairman de la O asked if the department rested its case. Attorney Guttman-Valdes responded that the department had not rested, some of her witnesses were taken out of turn because they were present and their testimony was short. She went on to say that the department's first witness was the Internal Affairs Investigator who she had yet to cross-examine so the department's witness Ronald Luquis, is still an open witness.

ACA Min asked the Chairman if he was not going to be a deliberating Member for this case. Chairman de la O responded in the affirmative. He went on to say that he would rule on evidentiary issues, oversee the discussions, but he would not vote on the charges and/or recommendation in this case.

ACA Min informed the Chairman that Member Scarola did an outstanding job as Acting Chairman.

Attorney Guttman-Valdes stated that the department called her client in his case in chief.

Chairman de la O announced for the television audience's viewing that there were

*salacious allegations in this case and that there may be language and topics that are unsuitable for minors so parents should act accordingly.*

*ACA Min stated that if Attorney Guttman-Valdes had no objection, he would skip all of the Garrity issues and go directly to the substance portion of the video which entails Officer Vernon's statement and his reviewing all of the evidence while sitting in the interview room [with Internal Affairs investigators]. Attorney Guttman-Valdes responded that she had no objection.*

*The Board proceeded with the viewing of a videotape that was presented by the department followed by Attorney Guttman-Valdes' cross-examination of the department's witness, Ronald Luquis, who was already sworn in. Questions were posed by Board Members Scarola and Dames during the testimony of witness Ronald Luquis.*

*The Department rested its case.*

*The department called all of the witnesses that the Appellant wished to call, and they testified at the October 20, 2009 meeting. The Appellant called no other witnesses and rested his case.*

*The Board took a break, reconvened at 2:06 p.m. and took up discussion as to how the Board would proceed since the room had to be vacated by 2:30 p.m.*

*Following discussion, the Board entered a motion to hear closing arguments at the Board's next meeting 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, Dames, Angel-Capo and Scarola

**Absent:** Cruz

## H.2

Investigation hearing on behalf of Teresa Borkowski, Police Sergeant, pursuant to Rule 16.1, Abuse of Power.

*Chairman de la O asked Attorney Rind if she was prepared to proceed with Sgt. Borkowski's hearing today. Attorney Rind responded in the affirmative.*

*ACA Min responded that he was ready to proceed. He went on to say that there was discussion at the last meeting of a potential settlement of Sgt. Borkowski's case; however, the language had not been agreed to and he did not think there was going to be an agreement at this time.*

*Chairman de la O stated that it sounded like both attorneys needed more time to get together on the agreement.*

*Following discussion, the Board entered a motion to CONTINUE the hearing and charge the continuance to the Board for the reasons that both attorneys have agreed to hear Officer Lubin's case ahead of Sgt. Borkowski's case and the Board would not have sufficient time to hear Sgt. Borkowski's case. The motion resulted as follows:*

**Motion by Member Angel-Capo, seconded by Chief Examiner Scarola, that this matter be CONTINUED. PASSED by the following vote.**

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

**Absent:** Cruz

## H.3

Hearing of appeal on behalf of Fignole P. Lubin, Police Officer, relative to his 40-hour forfeiture, effective August 29, 2006.

*Attorney Rind stated that she was prepared to go forward with Officer Lubin's case today. She went on to say that she would request that if a second case is heard today, she would ask that Officer Lubin's case be heard ahead of Sgt. Borkowski's hearing.*

*Chairman de la O asked if Sgt. Borkowski was in agreement with this request. Attorney Rind responded in the affirmative.*

*ACA Min stated that he believed Officer Lubin's case was older than Sgt. Borkowski's case so he had no objection to hearing Officer Lubin's case ahead of Sgt. Borkowski's case.*

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*The Board had use of the Commission Chambers until 2:30 p.m. and it was already 1:30 p.m. and the Board had not completed Officer Vernon's hearing; therefore, the Chairman advised Attorney Rind that the Board would not have sufficient time to hear Officer Lubin's case today.*

*Following discussion, the Board entered a motion to CONTINUE Officer Lubin's hearing and charge the continuance to the Board which resulted as follows:*

**Motion by Member Angel-Capo, seconded by Chief Examiner Scarola, that this matter be CONTINUED. PASSED by the following vote.**

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

**Absent:** Cruz

## H.4

Hearing of appeal on behalf of Gilberto Gomez, Police Sergeant, relative to his 40-hour forfeiture, effective January 14, 2008.

*ACA Min stated that he was prepared to go forward today; however, there was prior communication that this case would be continued due to insufficient time to hear the case.*

*Chairman de la O stated that the Board definitely would not have time to hear this case.*

*Following discussion, the Board entered a motion to CONTINUE the hearing and charge the continuance to the Board which resulted as follows:*

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

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

**Absent:** Cruz

**ADJOURNMENT:**

*The Chairman called for a motion to ADJOURN which resulted as follows:*

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

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

Absent: Cruz

The meeting adjourned at 2:10 p.m. Breaks were taken at 10:51-11:02 a.m.;  
12:13-12:47 p.m. and 2:03-2:06 p.m.

**SIGNATURE:**

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

**ATTEST:**

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**Tishria L. Mindingall, Executive Secretary**