

City of Miami

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



Meeting Minutes

Tuesday, November 4, 2008

9:00 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 9:22am. The roll call for Board Members at the commencement of the meeting was as follows:

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

Absent: Member Dames

A. APPROVING THE MINUTES OF:

Regular Meeting of October 21, 2008.

The Board entered a motion to APPROVE the minutes of the October 21, 2008 meeting which resulted as follows:

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

B. PERSONNEL MATTERS**B.1**

Copy of a memorandum from Hector Mirabile, Ph.D., Director, Department of Employee Relations, requesting an extension of probation of Alonzo Baker, Personnel Assistant, for six (6) additional months beyond December 26, 2008. (DISCUSSION)

Chairman de la O called Mr. Baker to the podium and asked if he was aware that the Employee Relations Department director requested to extend his probation.

Alonzo Baker, Personnel Assistant appeared before the Board and responded in the affirmative.

Chairman de la O asked Mr. Baker if he had an objection to the request. Mr. Baker responded in the negative.

The Board entered a motion to APPROVE the department's request to extend the probationary period of Alonzo Baker, Personnel Assistant, for six (6) additional months beyond December 26, 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**

Terrance Montgomery, Contract Compliance Analyst, requests extension of military leave without pay for 1 additional year, beyond April 25, 2009. Copy of Orders Submitted. (DISCUSSION)
Records indicate request for military leave without pay was approved at the Civil Service Board meeting of April 25, 2006.

The Board entered a motion to APPROVE the request of Terrance Montgomery, Contract Compliance Analyst, for an extension of military leave without pay for 1 additional year, beyond April 25, 2009, which resulted as follows:

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

D. DISCIPLINARY MATTERS

- D.1 Copy of a letter from Mario Soldevilla, Director, Department of Solid Waste, notifying Julio Morina, Waste Collector Operator I, of his termination, effective October 14, 2008. (NOTIFICATION)

NOTIFIED

- D.2 Copy of a letter from Pedro G. Hernandez, City Manager, City Manager's Office, notifying Steven A. Dominguez, Clerk I, of his termination, effective October 20, 2008 and a copy of a request to appeal from Osnat K. Rind, Attorney, Cohen & Rind, P.A., on behalf of Steven A. Dominguez, Clerk I. A hearing will be scheduled in accordance with the Civil Service Rules and Regulations. (NOTIFICATION)

NOTIFIED

E. GENERAL ITEMS**F. REPORTS**

- F.1 Pending Hearings as of November 4, 2008. (NOTIFICATION)

PRESENTED

G. REQUESTS FOR HEARINGS

- G.1 Request for hearing from Mark Terry, Esq., pursuant to Civil Service Rule 14.1(b), concerning charges brought forth against Favian Rodriguez, Police Officer. (DISCUSSION)

Tabled from the meeting of October 21, 2008.

The Board was presented with discussion from its October 7th meeting, wherein this matter was first discussed.

Chairman de la O advised Mr. Terry that he had read his request as well as case law from the attorney for the officer in question, and asked if Mr. Terry wished to add anything to his request.

Mark Terry, Private Citizen, appeared before the Board and stated that in addition to what was in the request, there was recent case law from the Third District Court of Appeals, decided in September, 2008, which is Chief Timoney vs. the [City of Miami] Civilian Investigative Panel. He went on to say that the arguments made by Chief Timoney in this case were the same as those made by the attorney for Officer Rodriguez, on October 7, 2008, which is that Rule 14.1(b) violates the Police Officer Bill of Rights.

Chairman de la O advised that he analyzed the case law that Mr. Terry was referencing, as well as the other documents and advised that the Civilian Investigative Panel could not terminate anyone, nor could they make recommendations to terminate, and that they make investigation reports. He went on to say that the Civil Service Board could recommend to the City Manager and issue penalties up to and including termination, which makes the Board very different from the Panel. Chairman de la O stated that

after reading the documents provided, his first question was "What is difference; why does the Civilian Investigative Panel review the actions of officers and the Civil Service Board can't, according to this officer". He went on to say that he in fact spoke to the counsel for the Civilian Investigative Panel who told him that the Panel is independent and the Civil Service Board is part of the employing agency - the City of Miami. He further stated that he was reminded that the Civilian Investigative Panel does not have the same power that the Civil Service Board does, and [with this in mind] the Timoney case does not apply. He went on to say that he thinks the case law provided by Attorney Rind indicates that the issue Mr. Terry has with Officer Rodriguez has to go through Internal Affairs.

Mark Terry stated that he can see how the cases can be different; however, the holding in this case is not limited to the Civilian Investigative Panel for that reason. He went on to read from the decision which states that "the Civilian Investigative Panel is only restricted by Chapter 112 (the Police Officer's Bill of Rights) when the investigation is internal, by members of the police officer's agency". Mr. Terry went on to say that the Civil Service Board is not the employing agency of the officer and the investigation that would happen if the hearing is granted would not be internal, but external. He went on to state that the Judgment stated that Chapter 112 does not apply as in this case to an independent external investigation, and is not limited to a body that does not have the power to discipline.

Chairman de la O asked if Attorney Rind wished to comment.

Attorney Rind stated that she would comment if the Chair desired and added that her firm was counsel for amicus in [the Timoney] case. She went on to say that the decision rested on the fact that Chief Timoney is not a law enforcement officer under Chapter 112 and is not protected by it. She went on to say that the Civilian Investigative Panel has to comply with Chapter 112 when it concerns an officer who's covered by that statute. She went on to say that the Board has the opinions of the Attorney General for review.

Chairman de la O asked if the department's representative wished to comment. Assistant City Attorney Vizcaino stated that she had no comment.

Member Angel-Capo asked if the Board was to decide whether or not to grant a hearing, to which Chairman de la O responded in the affirmative.

Chairman de la O told Mr. Terry that pursuant to the Attorney General Opinion, the Board did not have the authority to apply Rule 14.1(b) to initiate an investigation against a police officer covered by Chapter 112 [of the Florida State Statutes], and advised him to consult the Civilian Investigative Panel or the Department of Police's Internal Affairs Division for further action. He went on to say that if Internal Affairs finds that the officer violated something and he appeals to the Board, then the Board would have a say in what happens to the officer.

Member Cruz stated that [if he were Mr. Terry] he would contact Internal Affairs [to conduct an investigation into the police officer's actions], and to Chief Timoney which he has done in the past.

Member Scarola stated that even if the discipline that an appealing employee receives is determined to be less than adequate, the Board could go above and beyond what was issued by the Chief. He went on to say that he sees Internal Affairs as the first step in the investigation process, and the Board may still become involved in this case if the officer is disciplined and appeals to the Board.

Following discussion the Board entered a motion to deny the hearing pursuant to Rule

14.1(b), requested by Mr. Terry, which resulted as follows:

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

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

Absent: Member Dames

G.2

Request for hearing from Osnat K. Rind, Attorney, Cohen & Rind P.A., pursuant to Civil Service Rule 16.1, Investigation by the Board and 16.2, Complaint by Employee on behalf of Marlon Chavez, AEO III. (DISCUSSION)

Osnat Rind, Attorney on behalf of Marlon Chavez appeared before the Board and gave an overview of her request. Ms. Rind went on to say that her client was qualified for the position (Labor Crew Leader II), which she believes has now been filled.

Chairman de la O asked if he was correct in his understanding that Mr. Chavez' application itself did not facially show that he qualified for the position although it appears that he was and the Employee Relations Department agrees that he was qualified.

Assistant City Attorney Diana Vizcaino stated that Mr. Chavez was not eligible because his application on its face was insufficient.

Chairman de la O stated that he is trying to crystallize the issue and asked whether the parties agreed that setting aside the application, Mr. Chavez did qualify for the position, but did not indicate the experience on the application.

Assistant City Attorney Diana Vizcaino responded that she can proffer that Mr. Chavez was deemed eligible for the position when he applied in 2006.

Chairman de la O stated that he understood Assistant City Attorney Vizcaino's response, however he was trying to crystallize the issue. He then asked whether the position requirements had changed from 2006 to 2008.

Assistant City Attorney Diana Vizcaino responded that the requirements had not changed; however, Mr. Chavez did not complete his 2008 application in the same manner as he did in 2006.

Chairman de la O stated that the issue then would be whether Director Mirabile had the power to disqualify an application because it was filled out incorrectly.

Attorney Rind responded in the affirmative. Attorney Rind went on to say that her client was notified that he had completed the application insufficiently prior to the time that the decision was made.

Chairman de la O asked whether he had listed his title as Heavy Equipment Operator and had he listed Automotive Equipment Operator he would have qualified.

Attorney Rind responded in the affirmative and added that the City does not have a position entitled Heavy Equipment Operator, so it was a mistake on the employee's part in the title.

Chairman de la O read the first line of Civil Service Rule 5.4 and asked whether Attorney Rind agrees that the application did not show that the employee met the minimum

requirements.

Attorney Rind responded in the negative and added that the application includes the duties that would qualify him for the position, however the title was incorrect. Attorney Rind went on to say that Director Mirabile admits that he knew that the title was incorrectly listed, but that the duties were entered correctly.

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

Assistant City Attorney Vizcaino stated that she has both applications and will pass copies to the Board to review. She went on to say that the duties entered were different in the 2006 and 2008 applications and on its face the 2008 application was insufficient and he did not meet the minimum requirements. She further stated that at the request of Attorney Rind, the application was reviewed three times and was deemed insufficient each time. Assistant City Attorney Vizcaino stated that Rule 5.4 was not violated and the employee is not entitled to a hearing.

Following discussion, Member Cruz made a motion to GRANT an investigation and grievance hearing pursuant to Rules 16.1 and 16.2. That motion died for lack of a second.

Member Scarola asked whether what was entered in the application was what was required in the job announcement. Chairman de la O stated that he had not seen the job announcement, but that the application does state the incorrect title and the duties that Attorney Rind cited.

Attorney Rind stated that the Rule does state that the application has to indicate on its face that the applicant has the minimum qualifications, and it would be wrong to rely on the title of the position if the description of the duties indicates that the employee has the qualifications.

Chairman de la O asked if the department could explain why the description does not meet the requirements of the position.

Joni Harris, Employee Relations Manager, Department of Employee Relations appeared before the Board and stated that the issue is not that the department looked at the title on the application and qualified or disqualified applicants; that the title is only considered when a recruitment is Promotional, which this one was not. She went on to say that this recruitment was open to the public and that anyone who possessed a CDL Class B or higher, a high school diploma and two years of the required experience would have qualified. She went on to say that the issue in this case is whether or not the duties that the employee described in each one of his entries supported what was required in the announcement for Labor Crew Leader II. She went on to say that the manner in which Mr. Chavez described his work experience in 2006 was different than how he did in 2008, and read from each application as example of her statement. Ms. Harris concluded by saying that based upon the application and what the employee submitted as compared to the minimum requirements that the department is obligated to screen on, Mr. Chavez did not meet the requirements.

Attorney Rind stated that Director Mirabile, in his letter indicated that the difference between the previous application and the current one is that in 2006 he listed his experience as an Automotive Equipment Operator I and in the 2008 application he didn't by calling himself a Heavy Equipment Operator I. She went on to say that she thinks Ms. Harris supports their position that the Board should grant a hearing on this matter.

Ms. Harris stated that she would not support Ms. Rind's position and read Director

Mirabile's July 1st appeal response into the record, which sustained the original ineligibility determination. She went on to say that the responsibility of the department per the Civil Service Rules is to review applications as they are submitted to make sure that they are acting on the application based upon [the posted requirements] and that is why Mr. Chavez was disqualified.

Ms. Rind reiterated that if the duties are what the Board is going to focus on, a hearing should be held to determine whether what Mr. Chavez submitted qualifies as construction experience. She went on to say that on another level, there is silliness here, in that prior to the ineligibility determination the employee relations department was notified that Mr. Chavez had entered the incorrect title in his application. She went on to say that although the incorrect title was entered into the application, the City should know that a person in a particular position has particular experience. She went on to say that although the Rules say what they say, they have to be administered in a way that makes sense, that is fair and doesn't result in something as silly as disqualifying someone from a position that everyone knows he's qualified for; but, due to the fact that he made an error he was deemed ineligible for a position that he qualified for in reality.

Ms. Harris responded that if the City is going to make decisions based on feelings or what we know, why do we have Rules and standards. She went on to say that if we are going to do something other than what the Rules say and go based upon what we know or what we believe to be true, then we don't need to have rules and can operate based upon what we figure is the case. She went on to say it would be like a person going to take a driving test and it's know that the person can drive, however, when they take the test they fail, but should be given the license anyway because we know that they can drive and it'll be okay. She went on to say that the title was not the issue; it would have been an issue had this been a promotional recruitment where one has to have time in grade in a particular title but that was not the case here.

Assistant City Attorney Vizcaino stated that Attorney Rind has requested a hearing under Rule 16.1 and in the request there is a claim of abuse of power. She went on to say that now Attorney Rind is asking the Board for a hearing to allow Mr. Chavez an opportunity to explain what he meant in his application and that is an inappropriate and improper request for a 16.2 hearing.

Following discussion Member Cruz made a motion to GRANT both the Rule 16.1 Investigation and the Rule 16.2 Grievance hearings.

Member Angel-Capo asked for clarification, if Mr. Chavez applied for the same position in both 2006 and 2008. Ms. Harris responded in the affirmative.

Member Angel-Capo asked if Mr. Chavez completed his applications differently each year. Ms. Harris responded in the affirmative. She went on to say that the department does not go back and pull previous applications and that it is important that applicants submit applications for the posted recruitment.

Member Cruz asked if the experience had to be maintenance and construction combined. Ms. Harris responded in the affirmative.

Dr. Hector Mirabile, Director, Department of Employee Relations, appeared before the Board and stated that the issue at hand is whether he abused his power in the denying of Mr. Chavez' application for the position. He went on to say that after receiving Attorney Rind's objection of his denial letter, the problem he was having was trying to be fair to the applicant and the other employees. He went on to say that he is not allowed by City ordinance and the Civil Service Rules to use discretion and say that an applicant

made a mistake; that the Rules say that the director "shall" disqualify an application that does not show on its face that it meets the requirements. He went on to say that if he did use discretion, that would be an abuse of power because he is not allowed such discretion.

Attorney Rind stated that frankly she feels like she's in a 16.2 hearing now because witnesses are coming before the Board and giving their position on the case and they are asking for that right. She went on to say that if they are granted a hearing then the Board could review documents and hear testimony or explanations to determine whether the application does show on its face that Mr. Chavez meets the posted requirements.

Chairman de la O asked Attorney Rind if she thought it would be an abuse of power if the director made a mistake in that he read the application and thought [the entered experience] didn't count as construction experience and it did.

Attorney Rind responded in the affirmative. She went on to say that if an application contains information that renders someone eligible and the director decides that the person is ineligible, then that is an abuse of power. She went on to say that if an application does not meet the requirements and they really are not eligible then they can be deemed ineligible; however, she believes that her client is eligible. She went on to say that this Rule was established for the protection of employees, not the Department of Employee Relations or the City.

Chairman de la O stated that his question may not have been clear. He went on to say that Rule 16.1 talks about an investigation into whether someone abused their power and Rule 16.2 talks about a violation of the Rules. He went on to say that a violation of the Rules could be that he was incorrectly disqualified and he was qualified, but that for 16.1 one has to show an abuse of power. He went on to say that it doesn't seem to him to be an abuse of power when someone makes a mistake, and that if someone had motives to make a particular decision, then abuse of power could be argued. He asked again whether Attorney Rind would consider it an abuse of power because Director Mirabile reviewed the application and came to a different decision that the Board could if a hearing were granted.

Attorney Rind responded that she was not exactly sure that she would agree with that statement in that if someone is informed of an error in a decision and in the face of that renders that same decision that is erroneous then that is an abuse of discretion. She went on to say that if the Board denied the 16.1 hearing and agreed to the 16.2 hearing that she would not object to that.

Ms. Harris stated that if the Board agreed to this hearing and started reviewing applications that the agendas would be full of other applicants wanting the same treatment.

Chairman de la O stated that the Board could not shy away from that and that the Rule requires the Board to hold a hearing if a Rule has been violated. He went to say that if there is a legitimate complaint then the Board has to hold a hearing.

Member Angel-Capo asked Attorney Rind if she could point to where Mr. Chavez' application showed construction experience.

Attorney Rind responded that if the Board wanted to get into that, the grievant is in attendance and will explain his application.

Marlon Chavez, Automotive Equipment Operator I, Department of Public Works,

appeared before the Board and after reviewing his subject application stated that certain equipment is used in excavation, loading and unloading dirt and Employee Relations didn't look at that. He read from other areas of his application and stated the equipment that he used in each entry of the application.

Attorney Rind stated that the Board has to remember that Mr. Chavez was qualified for this position two years ago.

Member Angel-Capo asked what was written differently in 2006 than in 2008. Ms. Rind stated that she didn't have a copy of the 2008 application.

Chairman de la O asked if Ms. Harris could read again the entries from both applications, and give Attorney Rind copies.

Ms. Harris read the duties entered in each application and showed Member Angel-Capo what the differences were. She went on to say that the duties described in the 2008 application did not include construction experience like the one Mr. Chavez completed in 2006.

Attorney Rind stated that all of this proves the point that at least a 16.2 hearing should be held to determine if Rule 5.4 was violated.

Member Angel-Capo stated that she was in agreement with the Chairman in that she doesn't believe there was an abuse of power.

Chairman de la O asked Member Cruz if he would amend his motion.

Member Cruz stated that he doesn't believe there was an abuse of power and amended his earlier motion to GRANT a hearing pursuant to Rule 16.2, which died for lack of a second.

Member Scarola entered a motion to DENY the hearings pursuant to Rules 16.1 and 16.2.

Member Angel-Capo asked for clarification of what the Board would be reviewing and discussing in a Rule 16.2 hearing.

Chairman de la O responded that if a hearing is granted under Rule 16.2 the Board would be determining whether the application should or should not have been rejected.

Member Scarola amended his motion and the Board entered a motion to DENY a hearing pursuant to Rule 16.1, which resulted as follows:

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

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

Absent: Member Dames

Following that vote, Chairman de la O asked if Member Angel-Capo would make a motion concerning the hearing requested under Rule 16.2.

Assistant City Attorney Vizcaino asked for clarification of what Rule would be evaluated for possible violation, if a hearing was granted pursuant to Rule 16.2.

Chairman de la O responded that the Rule alleged to have been violated is Rule 5.4.

Member Cruz stated that Mr. Chavez filed properly in 2006 and forgot to add what was needed in 2008. He went on to say that he was not sure whether he should be penalized for forgetfulness.

Member Scarola stated that based on what he read in the application, he didn't see where Mr. Chavez properly included construction experience. He went on to say that Mr. Chavez may know how to use certain equipment and may have the experience but he didn't include the required experience on the 2008 application. He further stated that for Director Mirabile to have to go back to rely on the 2006 application is not right, and the burden is on the employee.

Member Angel-Capo asked why Mr. Chavez didn't include the same information on his 2008 application that he included in his 2006 application.

Attorney Rind responded that a hearing should be held and Member Angel-Capo could ask that question.

Member Scarola stated that if an employee wants the job it's incumbent upon them to show that they meet the requirements.

Member Angel-Capo asked if the department was made aware of the applicant's mistake.

Attorney Rind responded that she believes her letter to Director Mirabile was sent before the hiring decision was made.

Member Angel-Capo asked if the letter was sent after the closing date. Attorney Rind responded in the affirmative.

Director Mirabile stated that it sounds logical that the benefit of the doubt could be given to the applicant but that would involve discretion which would be in violation of the Rules. He further stated that to allow some to submit applications that do not show on their face that they meet the requirements would be unfair to those who follow the Rules and submit everything required to qualify.

Attorney Rind responded that if the Board accepted Dr. Mirabile's argument that he has no discretion and that he shall deem someone eligible or ineligible based on the face of the application, then the Board should hold a hearing to determine whether the application meets the requirements.

Member Angel-Capo asked whether the position had been filled. Ms. Harris responded that two positions had been filled and a request to fill a third was submitted but is being held by Employee Relations.

Member Cruz asked whether recruitment for the position of Labor Crew Leader II would be open in the near future.

Attorney Rind responded that it was open now.

Ms. Harris responded that recruitment was not open now; that the recruitment ended in June, 2008, that the register was established on June 20, 2008, and that 15 persons were deemed eligible.

Member Cruz asked whether Mr. Chavez would get hiring preference as an employee. Ms. Harris responded that there are three levels of preference - for eligible veterans, for

employees and for City of Miami residents, then expounded on how that preference was applied.

Member Angel-Capo asked who determined Mr. Chavez' ineligibility. Ms. Harris responded that the screener for both the 2006 and 2008 recruitments was Asseline Hyppolite, Sr. Personnel Officer.

Member Angel-Capo asked when Mr. Chavez submitted his application. Ms. Harris responded that the application was submitted on June 13, 2008, which was the closing date.

Following discussion the Board entered a motion to DENY Marlon Chavez' request for a hearing pursuant to Rule 16.2, which resulted as follows:

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

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

No: Member Cruz

Absent: Member Dames

H. TODAY'S HEARINGS

H.1 Hearing of appeal on behalf of Osian Cruz, Auto Equipment Operator II, relative to his termination, effective August 6, 2008.

Assistant City Attorney Vizcaino stated that she was requesting a continuance of this hearing because her witnesses are out of the country and opposing counsel Loran Cohen did not have an objection.

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

H.2 Hearing of appeal on behalf of Juan Casiano, Police Sergeant, relative to his 20-hour forfeiture, effective February 2, 2006.

Chairman de la O asked both attorneys if they were ready to proceed with the case of Juan Casiano. Assistant City Attorney Vizcaino responded that she was ready, however, her witness had left the building and could not be located. She went on to say that apparently, the witness had only an hour for the meeting, and had to leave.

Member Scarola asked if this witness was the department's only witness. Assistant City Attorney Vizcaino responded in the affirmative.

Attorney Guttman-Valdes responded that she was ready to proceed.

Assistant City Attorney Vizcaino asked for a moment to contact her witness.

Following a brief recess, the Board entered into the appeal hearing on behalf of Juan Casiano, Police Sergeant, concerning his 20-hour Forfeiture, effective February 2, 2006.

Diana Vizcaino, Assistant City Attorney, represented the Department.

Teri Guttman-Valdes, Attorney at Law, represented the Appellant.

Assistant City Attorney Vizcaino introduced three (3) documents into the record, which

Chairman de la O confirmed as: the Record of Formal Counseling, an email from Rafael Suarez and the Charging Document.

The department rested.

Attorney Teri Guttman-Valdes moved for a dismissal of the charges levied against her client, citing that the department did not put on any direct evidence.

Chairman de la O asked Special Counsel Everett if he was correct that the Board cannot convict based solely on hearsay evidence. Special Counsel Everett responded in the affirmative.

Member Scarola asked if the proper motion would be one of not guilty on all charges (as opposed to a motion to dismiss). Special Counsel Everett responded in the affirmative.

Following discussion, the Board entered a motion of NOT GUILTY on each of the charges: Departmental Order 1, Chapter 11.6.17.33 - Neglect/Refusal to Comply; Departmental Order 1, Chapter 11.6.13.12 - Obeying & Executing Orders; Civil Service Rule 14.2 (e) - Violated Lawful Order; Civil Service Rule 14.2 (e) 1 - Act of Insubordination; and Civil Service Rule 14.2 (e) 2 - Breach of Proper Discipline, which resulted as follows:

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

H.3

Hearing of appeal on behalf of Alina Pena, Police Sergeant, relative to her 20 hour suspension, effective July 1, 2007.

Chairman de la O asked both attorneys if they were ready to proceed with the case of Alina Peña. Assistant City Attorney Vizcaino and Attorney Rind responded in the affirmative.

Diana Vizcaino, Assistant City Attorney, represented the Department.

Osnat Rind, Attorney at Law, represented the Appellant.

The Rule of Witnesses was invoked and Chairman de la O instructed potential witnesses to exit the room and not to listen to the hearing that is being broadcasted and not to speak to each other about their testimony either before or after they have testified.

Opening statements were waived by both attorneys.

All Witnesses were sworn in individually. Witnesses for the Department appeared in the following order:

1. *Carlos A. Suarez, Police Lieutenant/Deputy Commander-Overtown NET, City of Miami Department of Police.*

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

2. *Andrew Markowitz, Police Officer City of Miami, Department of Police.*

Questions were posed by Board Members Angel-Capo and Scarola during the testimony of witness Andrew Markowitz.

3. *Wilfred Cruz, Police Lieutenant, Allapattah NET, City of Miami Department of Police.*

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

The Department rested its case.

Chairman de la O stated that due to the time and the fact that another meeting was to take place in the Commission Chambers following the Civil Service Board meeting, this hearing would have to be continued at the November 18th meeting.

HEARING TO BE CONTINUED

Hearing of appeal on behalf of Jorge E. Agular, Police Officer, relative to his 80-hour forfeiture, effective October 26, 2008.

The Board entered a motion to continue the hearing and charge the continuance to the Board due to time constraints, which resulted as follows:

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

ADJOURNMENT:

The Chairman called for a motion to ADJOURN. The meeting adjourned at 2:07 pm.

Breaks were taken at 10:18-10:32 am, 10:36-10:46 am, 10:49 am-11:00 am, and 12:06-12:18 pm.

SIGNATURE:

Miguel M. de la O, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary