

# **City of Miami**

*City Hall  
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## **Meeting Minutes**

**Tuesday, December 2, 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 9:35 A.M. Member Scarola announced that he would be chairing today's meeting in the absence of Chairman de la O. The roll call for Board Members at the commencement of the meeting was as follows:*

**Present:** Chief Examiner Scarola, Member Dames, Member Angel-Capo and Member Cruz

**Absent:** Chairperson de la O

**A. APPROVING THE MINUTES OF:**

Regular Meeting of November 18, 2008.

*The Board entered a motion to APPROVE the minutes of the November 18, 2008 meeting which resulted as follows:*

**Motion by Member Cruz, seconded by Member Dames, to APPROVE. PASSED unanimously.**

**B. PERSONNEL MATTERS****C. MILITARY LEAVES OF ABSENCE****D. DISCIPLINARY MATTERS**

- D.1 Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Tika Jones, Police Officer, of her 10-hour suspension, effective November 23, 2008. No appeal to date. (NOTIFICATION)
- D.2 Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Juan Herrera, Police Officer, of his 10-hour suspension, effective November 23, 2008. No appeal to date. (NOTIFICATION)
- D.3 Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Juan Herrera, Police Officer, of his 10-hour suspension, effective November 24, 2008. No appeal to date. (NOTIFICATION)
- D.4 Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Juan Herrera, Police Officer, of his 40-hour suspension, effective November 29, 2008. No appeal to date. (NOTIFICATION)
- D.5 Copy of a letter from Chief Bryson, Director, Department of Fire-Rescue, notifying Maurice Brighthaupt, Fire Fighter, of his 24-hour suspension, effective November 19, 2008 and a copy of a request to appeal from Maurice Brighthaupt. A hearing will be scheduled in accordance with the Civil Service Rules and Regulations. (NOTIFICATION)

**E. GENERAL ITEMS**

- E.1 Copy of Findings of Fact concerning the appeal hearing on behalf of Juan

Casiano, Police Sergeant, relative to his 20-hour forfeiture, effective February 2, 2006. (DISCUSSION)  
Deferred from the meeting of November 18, 2008.

*The Executive Secretary informed the Board that she received notice from both attorneys that they had no objections to the findings of fact as presented. Following discussion, the Board entered a motion to APPROVE the findings of fact which resulted as follows:*

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

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

**Absent:** Chairperson de la O

## E.2

Copy of Findings of Fact concerning the appeal hearing on behalf of Larry Walker, Heavy Equipment Operator, relative to his termination, effective November 26, 2007. (DISCUSSION)

*It should be noted that Member Dames was not present for the hearing on behalf of Larry Walker and abstained from discussion regarding the Findings of Fact.*

*The Board heard arguments from Attorneys Diana Vizcaino and Ramon Irizarri with regards to proposed language they wished to have included in or deleted from the findings of fact as follows:*

*Assistant City Attorney Vizcaino directed the Board to the third sentence, third paragraph, on the first page of the findings which read, "The Appellant was issued a reprimand for the following." She stated that because this was a termination and not a reprimand, she would ask that this sentence be changed to read, "THE APPELLANT WAS TERMINATED for the following:"*

*Acting Chairman Scarola asked opposing counsel if he had an objection to this proposed change and Attorney Irizarri responded in the negative.*

*Without objection from other Board Members, Acting Chairman Scarola approved the proposed language to be included in the findings as requested by Assistant City Attorney Vizcaino.*

*Assistant City Attorney Vizcaino referred the Board to page 2, paragraph 2, and stated that she had no objection to the proposed language that Attorney Irizarri would like to have added [at the end of the sentence to read, "On or about November 2, 2007, Appellant informed Mr. Babos that he had been chosen to serve on a jury; HOWEVER, APPELLANT TESTIFIED DENYING TELLING MR. BABOS THAT HE HAD BEEN CHOSEN FOR SERVICE ON JURY DUTY ON OCTOBER 31, 2007 OR AT ANY OTHER TIME."*

*Special Counsel Everett reminded both attorneys that the findings should reflect those facts upon which the Board based its decision. She went on to say that if the Board ultimately found Mr. Walker in violation of a rule, the question is did the fact that he denied telling Mr. Babos that he was not on a jury factor into the Board's decision to find that he did indeed violate the rules.*

*Attorney Irizarri provided argument as to why the language he proposed should be included in the findings.*

Assistant City Attorney Vizcaino stated that after rereading paragraph 2 with the language that Attorney Irizarri requested be added, she felt that the first sentence needed to be changed or else the paragraph would not make sense.

The Executive Secretary stated that to address Assistant City Attorney Vizcaino's concern, the first sentence could indicate what Mr. Babos testified to and the second sentence could read as to what the Appellant testified to.

Attorney Irizarri stated that he had no objection to the Executive Secretary's suggestion.

Following discussion, the Board entered a motion to amend finding #2 on page 2 under the subheading FINDINGS OF FACT to read, "Mr. Babos testified that on or about November 2, 2007, the Appellant had been chosen to serve on a jury. Appellant denies telling Mr. Babos that he had been selected." The motion resulted as follows:

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

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

**Abstain:** Dames

**Absent:** Chairperson de la O

Attorney Irizarri proposed that finding #5 be amended to read, "Upon his return ON NOVEMBER 13, 2007, Appellant INQUIRED OF MR. BABOS AS TO THE PROCEDURE FOR DOCUMENTING HIS STATUS AS BEING ON JURY DUTY. Mr. Babos ASKED him to complete a Request for Leave form and to attach the appropriate paperwork and submit it. Subsequently, Appellant submitted the leave form and attached his jury summons."

Acting Chairman Scarola asked opposing counsel if she had an objection to the proposed language and Assistant City Attorney Vizcaino responded in the negative.

Following discussion, the Board entered a motion to amend paragraph #5.

Under discussion, Member Angel-Capo suggested that the word "told" in the second sentence remain instead of changing it to "asked" as requested by Attorney Irizarri.

Special Counsel Everett responded that her recollection upon listening to the tape recording was that Mr. Babos told Mr. Walker to complete a Request for Leave form.

Both attorneys agreed to leaving the word, "told" in the sentence and amend finding #5 to read, "Upon his return on November 13, 2007, Appellant inquired of Mr. Babos as to the procedure for documenting his status as being on jury duty. Mr. Babos told him to complete a Request for Leave form and to attach the appropriate paperwork and submit it. Subsequently, Appellant submitted the leave form and attached his jury summons."

Following discussion, the motion on the floor to amend finding #5 resulted as follows:

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

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

**Abstain:** Dames

**Absent:** Chairperson de la O

Attorney Irizarri stated that he had no objection to the first sentence in finding #4 that reads, "On Monday, November 12, 2007, Appellant informed Mr. Babos that he would return to work the next day." but would like to add the sentence, "APPELLANT DENIES HAVING TOLD MR. BABOS THAT HE THOUGHT THE TRIAL WOULD BE ENDING SOON AND POSITS THAT BETWEEN FRIDAY, NOVEMBER 9, 2007 AND NOVEMBER 12, 2007 HE COULD NOT HAVE KNOWN THAT THE TRIAL WOULD END ON NOVEMBER 12 SINCE THE FEDERAL COURTS WERE CLOSED ON NOVEMBER 12."

Assistant City Attorney Vizcaino responded that she had no objection to the first sentence and expressed her objection to adding the second sentence as proposed by opposing counsel.

Special Counsel Everett stated that she believed Mr. Babos' testimony was that Mr. Walker informed him that he would return to work the next day. She went on to say that to include the language proposed by Attorney Irizarri, in her opinion, was self-serving. Special Counsel Everett further stated that based on the discussion that the Board had and its ultimate conclusions that were reached, she thought there was a sense that the Board perhaps did not believe that Mr. Walker was totally candid with his supervisors concerning the jury duty incident.

Member Angel-Capo stated that what she recalled from the testimony was that Mr. Babos and Mr. Walker spoke on Friday [November 9, 2007] and that Mr. Walker told Mr. Babos that he would be back to work on Tuesday [November 13, 2007] because the Monday was a holiday.

Following discussion, the Board entered a motion to amend finding #4 to read, "Mr. Babos testified that on or about Friday, November 9, 2007, Appellant informed him that he would return to work the next business day. Appellant testified denying having told Mr. Babos that the trial would be ending soon." The motion resulted as follows:

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

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

**Abstain:** Dames

**Absent:** Chairperson de la O

Acting Chairman Scarola called for a motion to APPROVE the findings of fact as amended, which resulted as follows:

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

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

**Abstain:** Dames

**Absent:** Chairperson de la O

### E.3

Copy of Findings of Fact concerning the appeal hearing of Christiane Octave, Typist Clerk II, relative to her 16 hour suspension, effective June 11, 2007. (DISCUSSION)

The Executive Secretary informed the Board that she received notice from both the attorney and the Appellant, Christiane Octave, that they had no objections to the

*findings of fact as presented. Following discussion, the Board entered a motion to APPROVE the findings of fact which resulted as follows:*

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

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

**Absent:** Chairperson de la O

- E.4** Copy of Findings of Fact concerning the appeal hearing of Alina Pena, Police Sergeant, relative to her 20-hour suspension, effective July 1, 2007.  
(DISCUSSION)  
*Attorney Rind stated that she received the findings the Wednesday before the holiday break [which did not provide her sufficient time for review] so she requested (via e-mail) that this matter be rolled over to the next meeting.*

*Without objection from other Board Members, Acting Chairman Scarola deferred this item to the Board's next regular meeting.*

**DEFERRED TO THE MEETING OF DECEMBER 16, 2008**

## **F. REPORTS**

- F.1** Pending Hearings as of December 2, 2008. (NOTIFICATION)

## **G. REQUESTS FOR HEARINGS**

- G.1** 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)  
Deferred from the meeting of November 18, 2008.  
*Osnat K. Rind, Attorney on behalf of Officer Raul R. Delgado, stated that she submitted a letter to the Executive Secretary withdrawing her client's request for a hearing.*

*The Executive Secretary confirmed that she received Attorney Rind's letter and stated Officer Delgado's request would be considered withdrawn.*

**WITHDRAWN**

- G.2** Request for Chief Examiner action from Osnat K. Rind, Attorney, on behalf of Fernando Bosch, Police Officer, concerning the Police Sergeant promotional examination. (DISCUSSION)  
*Attorney Rind stated that she sent a letter dated October 29, 2008 to William Scarola, Chief Examiner of the Civil Service Board (the Board), that set out Officer Bosch's request asking that [the Chief Examiner] exercise his obligation under the Rules and Ordinances of the City to instruct the Director of Employee Relations to proceed with the process of grading and scoring the police sergeant exam that took place a few months ago. She went on to say that the basis for their request was set forth in the letter and that they were willing to answer any questions the Chief Examiner might have concerning her client's request.*

*Iliana Forte, Assistant City Attorney on behalf of the department, responded that it is*

*their position that this matter had already been resolved by the Third District Court of Appeals in the case of the Miami Association of Fire Fighters versus the City of Miami. She went on to say that essentially the Board does not have jurisdiction to tell the Employee Relations Director what to do. ACA Forte then distributed a copy of the decision to opposing counsel and the Board.*

*Ronald J. Cohen, Attorney, Law Offices of Cohen and Rind, P.A., stated that he and Attorney Rind were representing Officer Bosch in this matter. He went on to say that the case law submitted by Attorney Forte indicated that the trial court concluded and agreed that neither the Civil Service Board nor the Board's Chief Examiner have the authority to direct the Department Director of Personnel Management [currently Employee Relations] to announce a minimum rating in advance of a Civil Service examination. Attorney Cohen stated that (what this means is that) the City cannot say that 75% of the candidates who take an exam would pass because the exams are weighted and curves are always used. He went on to say that he was not sure, but he believed the Fire Fighters were asking that curves not be used and to not determine beforehand the minimum score that would be needed, but that is not what they are asking the Chief Examiner in this case.*

*Attorney Cohen stated that the Chief Examiner is a constitutional officer meaning that this position is provided in the City Charter, which provides that the Board would elect a Chief Examiner. He went on to say that the duties of the Chief Examiner are different and separate from the Board as a whole and he could say that up until (August) 1979 the Chief Examiner was responsible for giving and grading exams and creating [Eligible Registers]. Attorney Cohen further stated that after 1979, these responsibilities were given to an administrative agency to administer and grade the exams but under the direction of the Chief Examiner. He stated that in order to change this responsibility the law (City Charter) would have to change and since it has not, the Chief Examiner has the duty to provide for examinations which is by making sure that the Employee Relations Director gives and grades examinations. Attorney Cohen went on to say that providing an exam means the person responsible must provide and grade exams.*

*Attorney Forte responded that the City has already filed a grievance against the Fraternal Order of Police [FOP] and the Chief Examiner on this matter and that they are currently trying to get an arbitrator that they all could agree upon. She went on to say that she also believes that there is an inherent conflict, but besides that they are going through the process of trying to get this matter arbitrated through the process of the (Union) Contract so her position is that the Board does not have jurisdiction to hear this matter; this should go through the process of arbitration and that should be the final determination.*

*Acting Chairman Scarola asked if the Chief Examiner was also named in the grievance.*

*Attorney Forte responded that the grievance was filed against the Treasurer of the FOP and not the Chief Examiner. (Member Scarola also serves as the Treasurer of the Fraternal Order of Police, Local 20). She went on to say that the City filed a grievance because it has been past practice to have a Review Committee that would look at the exam questions being challenged and notice of the Review Committee (and who the members were) was included in the Register Announcement, but the City could not go forward since on the day of the meeting the City learned after contacting the FOP that no representatives would be attending. Attorney Forte further stated that on at least two prior occasions, the FOP has sat on the Review Committee; however, decided not to participate this time; therefore, the City filed a grievance accordingly.*

*For clarification purposes, Acting Chairman Scarola asked Attorney Forte if it is because the FOP participated in the past and did not do so this time that the grading of exams*

was held up.

Attorney Forte responded in the affirmative. She went on to say that the FOP's decision not to participate created a problem because the information about the Review Committee was included in the register announcement, the FOP has participated in the last two Review Committees and it was a successful situation, and the City wants to continue that practice. She went on to say that there was no notice and that the FOP decided that day of the Review Committee meeting not to appear.

Attorney Rind stated that the grievance filed by the City was on October 3, 2008. She went on to say that Officer Bosch was not a part of that grievance between the City and the FOP; therefore, he had a right to request relief under the Civil Service Rules. Attorney Rind further stated that the register announcement and past practice that was alleged in the grievance did not divest the Board of its jurisdiction or obligation under the rules and ordinances or for the Chief Examiner to ensure that the exams are graded and done in accordance with the rules. She stated that they have asked the City to come to the FOP and explain to them what the grievance meant [i.e. forcing the FOP to sit on a panel] but the City refused to meet with them to discuss it. Attorney Rind stated that the City allowed the grievance to linger until the FOP demanded that without waiving their rights that frankly the City did not have the right to file a grievance under the Contract. Attorney Rind went on to say that up until today, they did not have any type of an agreement on who the arbitrator should be and as a matter of fact they are no closer to arbitration in that case. She further stated that the Union did not draft the Register Announcement which indicated the Union would participate in the Review Committee, but it was done unilaterally by the City especially since no one from the City came to the Union and asked if someone could sit on that Committee. Attorney Rind stated that she had never seen a case where Management asserted this theory of past practice against the Union especially since there is nothing in the FOP Contract that requires the Union to sit on a Challenge Review Committee. She went on to say that past practice would be inapplicable in this situation since past practice is something that is utilized to make sure that terms and conditions of employment continue that may not be addressed in the Contract. Attorney Rind further stated that this matter is not a term and condition of employment because the only entity that establishes terms and conditions of employment is the employer. She stated that the Contract between the union and the City does not have benefits that flow from the union to the City, but are benefits that the union negotiated on behalf of its employees and in exchange for their labor, the City pays its employees and gives them other terms, conditions and benefits under the contract. Attorney Rind went on to say that the grievance filed by the City had no merit and regardless of its merit, the Chief Examiner still is obligated under the Ordinance to make sure the Director of Employee Relations does what he is supposed to do with regards to the Rules.

Attorney Forte stated that they have been going back and forth trying to obtain arbitrators so that this matter can be resolved, but because an arbitrator had not been identified that they both agree upon is to say that the City had not been proactive in trying to resolve the matter as quickly as possible. She stated that their priority was to get this matter resolved by the end of the year, but they had not been able to agree. She went on to say that as far as past practice, she did not think it was limited only to the employees to claim past practice because she thinks the City has relied on a member of the FOP in this particular appellate level. Attorney Forte further stated that the fact that the register announcement was prepared by the City, there was an expectation from the employee that there was going to be a panel to review the questions that were being challenged. She stated that the FOP's participation prevents future problems and litigation which is a benefit to both the employee and the City. Attorney Forte went on to say that she felt it was totally inappropriate for the Union not to participate especially when the employees knew they would be a part of the promotional

process since the information about the Union's participation was included in the register announcement. She further stated that she believed the City had a right to file a grievance and that they are at the third step of the Grievance Process.

Acting Chairman Scarola asked the City's attorney if she attempted to meet with the Union prior to the grievance hearing actually being filed.

Attorney Forte stated that the Union decided not to show up for the [Review Committee Meeting] so the City proceeded to arbitration because they felt it was the best approach rather than trying to argue back and forth without trying to reach an agreement.

Acting Chairman Scarola asked Attorney Forte if there had been any other discussion other than the City filing a grievance and Attorney Forte responded that she discussed the matter with Attorney Rind.

Acting Chairman Scarola stated that he was present with the Union president when the Assistant City Attorney delivered the grievance packet, but he had not been involved since then with the discussions of what was going on with the grievance.

Attorney Cohen read into the record a portion of a letter from Attorney Rind to Deputy Director Elsa Jaramillo-Velez, dated October 7, 2008 in which the Union asked for a meeting with the City, and added that they refused to have one. He went on to say that he thinks everyone saw the very strange actions put on by the City and the motivation is that the City is afraid that it will be sued. Attorney Cohen further stated that he wanted to see where this right came from which gives the City the right to tell the Union that it must participate. He went on to say that what the City is doing is saying that the union must participate because the City says so. He proceeded to cite a Public Employee Relations Commission case - Big Ben Police Benevolent Association vs. City of Quincy, 21f per, par. 26041, in support of his argument that this matter is not a term and condition of employment. Attorney Cohen went on to say that in essence the City is saying that it has a right to negotiate the questions on a test and that this is a Management right. He went on to say that there is no basis for the City's claim that the Union has to participate in the Review Committee; and that the fact that the Union decided not to participate is not a term and condition of employment that can be forced upon them. Attorney Cohen concluded by saying that in terms of the grievance, the union is willing to proceed and that the parties always meet at step three, but the City does not want to meet. He went on to say that the City is not rushing the matter through as quickly as they can, as they claim, because the parties could have met and possibly narrowed the issues. He further stated that it can be true that employees who file a grievance have to elect to proceed via the Contract or the Civil Service Board, and having chosen one waives his or her rights before the other, but the union in this case has not done that. He went on to say that it is the duty of the Chief Examiner to make this determination to provide examinations, and it should happen without delay.

Member Cruz asked when the current Police Sergeant list expires. Acting Chairman Scarola responded that he believes the current list expired November 20, 2008.

Member Dames asked Attorney Cohen if the City is asking for a union representative to be present when challenges are brought regarding the test.

Attorney Cohen stated that the City is demanding that the representative be present and that's the problem; but, they have every right to ask.

Member Dames asked if the union participated in prior Sergeant Exam appellant processes. Attorney Cohen responded that on two occasions they have.

*Member Dames asked what the problem was (with participating now). Attorney Cohen responded that the union does not want to participate this time and it's their choice.*

*Member Dames stated that he could see the City's point in that if an employee were to challenge a question, nine times out of ten he would take it to the Union to grieve it anyway, so he can't see why the Union would not want to sit in on the challenge process.*

*Attorney Cohen stated that what Member Dames said is not true and that the Union has a policy not to file grievances on tests except in special circumstances. He went on to say that with all due respect it is not the job of the Civil Service Board to decide what would be a reasonable negotiating position for a Union to take, and that is decided by the democratic process of the union.*

*Member Dames stated that people want to know (what their scores are) and their futures are on the line, and the City is just saying to have a representative present when the challenges are reviewed.*

*Attorney Cohen stated that it is not all that the City is saying, and it is the business of the Union to decide what determination they are going to make.*

*Member Dames asked how this matter could be resolved. Attorney Cohen stated that the City should grade the test; that unions don't grade tests, Management does. He went on to read from Civil Service Rule 2.3 regarding the duties of the Chief Examiner, and stated that there is no legal basis for the City to require the Union to participate and therefore prohibit grading the examination.*

*Member Cruz stated that there are always problems with the promotional tests.*

*Assistant City Attorney Forte stated that she thinks the argument that Attorney Cohen is making regarding management rights or past practice belongs in arbitration because there is a conflict with the parties. She went on to say that the FOP wanted to participate in this panel back in the 90s and in fact that Mr. (Armando) Aguilar and Mr. (Ornel "Al") Cotera went to the City asking to participate just like the Fire Union does. She went on to say that they can't come now and say that on advice of counsel they don't want to participate, and that even in 2006 the Chief Examiner participated in this panel. She went on to say that to decide now, after the Announcement has been prepared, there's past practice and there has been a reliance on this process, is completely inappropriate. She went on to say that this matter should proceed to the process that is being followed.*

*Member Angel-Capo asked Member Dames if (participating in a review panel) is part of the Fire Union contract.*

*Dr. Hector Mirabile, Director of the Department of Employee Relations, appeared before the Board and stated that this portion of the challenge process is not part of any of the four union contracts. He went on to say that with regards to Fire, there is a Management/ Union agreement that they do something of this nature as it benefits all parties concerned. He went on to say that the challenge process does not require or include writing test questions or validating the test, it formalizes having employee representation at the challenge process to have someone watch over the process.*

*Attorney Rind stated that this idea of the Union participating in the review process came about at a time when there was an Article in the Contract called "Labor-Management Partnership Committee", which no longer exists in the Union Contract. She went on to say that the provision provided that the purpose of the committee would be to discuss*

*quality of work life and other matters which are not the subject of the collective bargaining agreement and shall not be used to renegotiate the Agreement.*

*Member Angel-Capo asked if the Union participated willingly before and if this time they chose not to.*

*Assistant City Attorney Forte stated that they chose not to on the day of the meeting; that they never told the City that they would not participate and apparently on advise of Counsel, the union just did not show up for the meeting. She went on to say that pursuant to the Announcement, there was an expectation from the officers who took the exam that there is going to be a panel who will look at the challenges and there is a reliance on the City that based on past practice that they would participate, and for them to just not show up when the Announcement had a provision for that was inappropriate.*

*Attorney Cohen stated that they are not willing to concede that the union participated in the review process 2006 or at any other time, just so the Board was clear.*

*Member Angel-Capo stated that she understood that not showing up was inappropriate, but asked if the union was required to participate because that information was stated on the announcement.*

*Assistant City Attorney Forte stated that it was done in the past, the same process was stated on the current Announcement and everyone was expecting that they would participate. She went on to say if the union had stated before-hand that they had no intention of participating then it might have been challenged before the exam, but they waited and at this point it creates a tremendous inconvenience to the City because the panel is not complete to review these challenges.*

*Member Angel-Capo asked if the test went forward. Assistant City Attorney Forte responded that the scoring has not been completed.*

*Acting Chairman Scarola gave an overview of the examination process thus far and stated that the next step would be the Oral Board.*

*Member Angel-Capo asked what would happen if the Union stated that they did not want to participate in the future.*

*Assistant City Attorney Forte stated that she was not sure if this was going to be part of the Collective Bargaining Agreement, but there is an expectation of this process and clearly this type of process has been used before.*

*Member Angel-Capo asked why the Union did not challenge the Announcement.*

*Attorney Cohen stated that he was not sure if there was an opportunity to challenge it. He went on to say that the City is stating that this process is in the officer's best interest, but the FOP represents the officers and those issues can be brought up at the collective bargaining table, not in connection with grading a test. He went on to say that the union is not even sure that they participated in this type of process before. He reiterated that whatever decision the Union makes on this issue is their decision and they cannot be forced to participate in something because the City stated that they have to.*

*Assistant City Attorney Forte stated she is not sure why Attorney Cohen stated that he is not aware of a past participation because they sent a records request and the information was provided to them. She went on to say that in the past they did participate which is why there was no need to address the matter in collective bargaining, and that this time there was not indication that the union would not*

*participate and their not showing up took everyone by surprise.*

*Attorney Cohen stated that he thinks the Rules are very clear and that's what they are here on. He went on to say that the people have spoken through the Charter and they say that the Chief Examiner has to provide examinations. He further stated that it is the Union's right not to participate in the challenge process, they haven't continually done it and it is not a term and condition of employment. He went on to say that the Rules require that the Chief Examiner has a legal obligation to provide examinations, and that the City has to grade the test.*

*Assistant City Attorney Forte stated that the Chief Examiner does not have the jurisdiction under the direction of Third District Court of Appeal. She further stated that besides that this is an argument that belongs in arbitration not before the Chief Examiner, who has sat on the panel before. She went on to say that there was a reliance by the City and the officers on the Announcement wherein this process was delineated and the City does not want to be in a position where they are against the officers. She went on to say that on two occasions the FOP has sat on the panel and this is an integral part of the testing process.*

*Acting Chairman Scarola stated that when he received this letter, he spoke with special counsel and was advised that he had three options - to do nothing, allow the Chief Examiner to review the issues, and the third was to allow the Board to investigate the issues. He asked Special Counsel Everett if he was correct.*

*Cynthia Everett, Special Counsel stated that at the outset, the Chief Examiner was presented with one side of the story and that this matter was on the agenda today in order for the City to present its side. She went on to say that now the Chief Examiner has additional information, he could decide whether there was a need for him to do anything further.*

*Acting Chairman Scarola asked if there was any recommendation from the Board.*

*Member Dames asked if the matter was in the courts now.*

*Assistant City Attorney Forte responded that the matter was going through the Arbitration process.*

*Member Cruz asked if this was binding arbitration. Assistant City Attorney Forte responded in the affirmative.*

*Attorney Cohen stated that to be clear, the question [in arbitration] is not whether the Chief Examiner has the authority and should exercise his authority to provide examinations under the Charter and the Rules.*

*Member Angel-Capo stated that the case law furnished to the Board by the City relates to announcing a minimum score prior to giving a test.*

*Assistant City Attorney Forte responded that Member Angel-Capo was correct that the case cited was limited to that issue; however, they can use that case to say that the Chief Examiner cannot direct the department to take certain action. She went on to say that they cannot go forward without determining which of the candidates can proceed and that [the review panel] is an integral part of the process.*

*Special Counsel Everett stated that the way she understands the Rules, the Chief Examiner is responsible to ensure that examinations are conducted appropriately and all the responsibilities that go with that via the Department of Employee Relations. She*

went on to say that in this instance the department is attempting to carry out that process, but there has been a glitch and as to who is right or wrong, she is not sure, nor does she know if it's within the Board's purview to say. She went on to say that apparently a process has been established or entered into (arbitration) in order to resolve that glitch, so that the process can be carried forward, which is no more than the Chief Examiner would do or want to see done. She went on to say if there is an objection to this process the other side has remedies which they can pursue; but ultimately everyone is entitled to due process, both the employee and the City. She further stated that as Chief Examiner, he is to ensure that the examination process is carried out appropriately.

Attorney Cohen reiterated that there is no case that divests the Board of jurisdiction and an employee has a right to come before the Board and ask that the Chief Examiner follow the Rules.

Following further discussion, the Board entered a motion to direct the Chief Examiner to conduct an investigation into the challenge review process for the 2008 Police Sergeant Examination, which resulted in the following:

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

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

**No:** Dames

**Absent:** Chairperson de la O

## H. TODAY'S HEARINGS

### H.1

Continuation of the hearing of appeal on behalf of Debra Grant, Police Officer, relative to her 20-hour suspension, effective July 3, 2006.

*The Board proceeded to hear the continuation of Officer Debra Grant's hearing which began on December 2, 2008.*

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

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

*Both sides having rested their cases at the meeting of November 18, 2008, the Board continued the hearing with closing arguments. Following closing argument by both attorneys, the Board entered a motion to vote on the charges all together, but the motion DIED FOR LACK OF A SECOND.*

*The motion having failed, Acting Chairman Scarola stated that the Board would vote on each charge individually to determine the Appellant's innocence or guilt.*

*The Board entered a motion to find the Appellant NOT GUILTY of Charge #1 - Departmental Order 1.11.6.17.33 - Neglect to Duty, which resulted as follows:*

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

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

**Absent:** Chairperson de la O

*The Board entered a motion to find the Appellant NOT GUILTY of Charge #2 - Departmental Order 1.11.6.17.8 - Insubordination, which resulted as follows:*

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

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

**Absent:** Chairperson de la O

*The Board entered a motion to find the Appellant GUILTY of Charge #3 - Departmental Order 1.11.6.18.6 - Tardiness, but it DIED FOR LACK OF A SECOND.*

*The motion having failed, the Board entered a motion to find the Appellant NOT GUILTY of Charge #3.*

*Under discussion, Member Dames stated that Officer Grant testified that she was late so he did not understand how the Board could find her not guilty of this charge.*

*Member Angel-Capo stated that Officer Grant testified that she was told it was okay that she was late and to come in to work.*

*Following discussion, the motion on the floor resulted as follows:*

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

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

**No:** Dames

**Absent:** Chairperson de la O

*The Board entered a motion to find the Appellant NOT GUILTY of Charge #4 - Civil Service Rule 14.2(e)(1) - Act of Insubordination, which resulted as follows:*

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

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

**Absent:** Chairperson de la O

*The Board entered a motion to find the Appellant NOT GUILTY of Charge #5 - Civil Service Rule 14.2(e)(2) - Breach of Proper Discipline, which resulted as follows:*

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

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

**Absent:** Chairperson de la O

**NOTE:** As a result of the Board finding the Appellant NOT GUILTY of all the charges brought against her, a penalty was not recommended. Findings of fact will be prepared and submitted to the City Manager for issuance of a judgment, which would close this case.

## H.2

Hearing of appeal on behalf of Angela Glass, Communications Operator, relative to her 40-hour suspension, effective September 11, 2006.

*Attorneys Rind and Vizcaino agreed to take the hearings out of turn by proceeding with*

*the grievance hearing of Officers Stanley Jean-Poix and Andre Paul-Noel and requested that a Board continuance be charged in Angela Glass' hearing since the grievance hearing would probably not finish today.*

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

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

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

**Absent:** Chairperson de la O

### H.3

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.

*The Board entered into the scheduled grievance hearing on behalf of Stanley Jean-Poix and Andre Paul-Noel.*

*Osnat K. Rind represented the Grievants.*

*Iliana Forte represented the Department.*

*The Rule of Witnesses was invoked and Acting Chairman Scarola instructed all witnesses to leave the room and that they were not to discuss their testimony.*

*Both attorneys made opening statements.*

*All witnesses were sworn in individually. Witnesses for the Grievant appeared in the following order:*

1. *Stanley Jean-Poix, Police Officer, City of Miami, Department of Police.*

*Questions were posed by Board Member Angel-Capo during the testimony of witness Jean-Poix.*

2. *Vernell Reynolds, Police Officer, City of Miami, Department of Police.*

*Questions were posed by Member Dames during the testimony of witness Vernell Reynolds.*

3. *Lorenzo Whitehead, Commander, City of Miami, Department of Police.*

*Questions were posed by Board Members Cruz and Dames during the testimony of witness Lorenzo Whitehead.*

*Acting Chairman Scarola advised that this hearing would be continued to the December 16, 2008 meeting because the Board would not have sufficient time to finish today. He instructed Assistant City Attorney Forte to contact the Executive Secretary should she or her witness, have a conflict with the rescheduled date.*

**HEARING TO BE CONTINUED**

H.4 Hearing of appeal on behalf of Gilberto Gomez, Police Sergeant, relative to his 40-hour forfeiture, effective January 14, 2008.

*The Board entered a motion to CONTINUE the hearing of Sgt. Gilberto Gomez and charge the continuance to the Board due to insufficient time to hear this case. The motion resulted as follows:*

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

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

**Absent:** Chairperson de la O

**ADJOURNMENT:**

*The Acting Chairman called for a motion to ADJOURN.*

**Motion by Member Cruz, seconded by Member Dames, to APPROVE. PASSED unanimously.**

*The meeting adjourned at 4:47 p.m. Breaks were taken at 11:09-11:24 a.m., 11:43-12:01 p.m., 1:43-2:36 p.m. (LUNCH) and 4:01-4:12 p.m.*

**SIGNATURE:**

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

**ATTEST:**

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**Tishria L. Mindingall, Executive Secretary**