

City of Miami

*City Hall
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Meeting Minutes

Tuesday, July 12, 2011

10:00 AM

Commission Chambers

Civil Service Board

*Miguel M. de la O, Chairperson
Joseph Kaplan, Chief Examiner
Michael T. Dames, Board Member
Sean Moy, Board Member
Gerald Silverman, Board Member*

PLEDGE OF ALLEGIANCE

The meeting was called to order at 10:08 a.m. The roll call for the Board Members at the commencement of the meeting was as follows:

Present: Chief Examiner Kaplan, Chairperson de la O, Member Dames, Member Silverman and Member Moy

A. APPROVING THE MINUTES OF:

Regular Meeting of June 28, 2011.

**Motion by Chief Examiner Kaplan, seconded by Member Silverman, to APPROVE.
PASSED by the following vote.**

Aye: Kaplan, Silverman, de la O, Dames and Moy

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

- D.1 Copy of a letter from Chief Miguel Exposito, Director, Department of Police, notifying Harold Geisse, Police Officer, of his 10-hr suspension, effective July 8, 2011. (NOTIFICATION)

NOTIFIED

- D.2 Copy of a letter from Chief Miguel Exposito, Director, Department of Police, notifying Viona Browne-Williams, Police Officer, of her 10-hr forfeiture, effective June 28, 2011. (NOTIFICATION)

NOTIFIED

- D.3 Copy of a letter from Chief Miguel Exposito, Director, Department of Police, notifying Daniel Ubeda, Police Officer, of his 20-hour suspension, effective July 14, 2011. (NOTIFICATION)

NOTIFIED

- D.4 Copy of a letter from Chief Miguel Exposito, Director, Department of Police, notifying Miguel Baralt, Police Sergeant, of his 10-hour suspension, effective June 25, 2011. (NOTIFICATION)

NOTIFIED

E. GENERAL ITEMS

- E.1 Copy of Request for a continuance from Teri Guttman-Valdes, Attorney, on behalf of Jeffrey Locke, Police Lieutenant, relative to his 20-hour suspension, effective February 25, 2009. (DISCUSSION)

Hearing of Appeal is scheduled for today.

Attorney Guttman-Valdes stated that she cannot go forward with her client's case today because the main witness, Bridgette Lowe, is on vacation and another witness is unavailable due to a business meeting that was previously scheduled. She went on to say that she has secured contact numbers for all of her witnesses so that if the hearing is rescheduled, she can clear the new date with her witnesses and they would be committed to blocking off the date in their calendar so that she would not have a problem with the availability of her witnesses.

Chairman de la O asked for the department's position reference the continuance request. Janeen Richard, Assistant City Attorney (ACA) responded that she objects to the continuance request and provided the basis for her objection. Following discussion, the Board entered a motion to continue Lt. Locke's hearing; however, the motion died for lack of a second.

DISCUSSED : The motion having died, the Chairman stated that Lt. Locke's case will be heard today.

E.2

Copy of Findings of Fact in the Hearing of Appeal on behalf of Ansonia Chatfield, Communication Operator, relative to her 80-hour suspension, effective February 3, 2011. (DISCUSSION)

The Board entered a motion to APPROVE the findings of fact as amended, which resulted as follows:

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

Aye: Kaplan, Silverman, de la O, Dames and Moy

F. REPORTS

F.1 Pending Hearings as of August 9, 2011. (NOTIFICATION)

PRESENTED

G. REQUESTS FOR HEARINGS

G.1 Copy of a Request for an Investigation Hearing from Peter J. Kendrick, Lease Manager, pursuant to Civil Service Rule 16.1- Investigation by the Board, concerning an alleged abuse of power by his director Madeline Valdes. (DISCUSSION)

Peter J. Kendrick appeared before the Board and stated that he is asking the Board to investigate two incidents involving his Department Director, Madeline Valdes who purposely falsified a statement about him concerning a grievance filed against her (Ms. Valdes) that was later withdrawn. He went on to say that upon investigating this matter, the Board will find other incidents for which he was not involved where Ms. Valdes abused her power. Mr. Kendrick further stated that the second issue involves disciplinary action that was perpetrated upon him concerning an assignment he conducted with his Leasing staff. He stated that his position of Leasing Manager in the Asset Management Division includes the responsibilities of monitoring and negotiating leases, monitoring the collection of revenues on leases executed by the City, and representing various City departments concerning rental space.

Chairman de la O interrupted Mr. Kendrick and advised him that he did not need to

continue with his duties and responsibilities because he did read his grievance, which was very detailed; however, he did have one question to ask concerning his complaint. He asked Mr. Kendrick what happened with the Record of Formal Counseling that he received from Ms. Valdes after expressing his objection. Mr. Kendrick responded that there had been no action taken or response received from Ms. Valdes concerning his objection to the Record of Formal Counseling. He went on to say that he objected to the formal counseling because of the nature of the consequences and he felt it was unfair and based upon an innuendo which stemmed from a pattern that was used from an earlier incident that occurred on March 11, 2011. Mr. Kendrick further stated that he has been with the Department over 11 years and had never experienced a situation such as this, so he felt compelled to clear his name, which is the reason he is requesting the Board to conduct an investigation into these matters. He stated that it was not him only that was affected by this situation, but in this particular case he was singled out.

Chairman de la O asked for the Department's position on whether an investigation should be effected. ACA Richard stated that they oppose any investigation into Mr. Kendrick's complaint on the basis that Civil Service Rule 16.1 clearly states that there has to be a citation of a Civil Service Rule that has been violated and she had not heard from Mr. Kendrick which rule his Department Director allegedly violated that would lead to an investigation by this Board. She went on to say that her second objection is Mr. Kendrick is trying to appeal a Record of Formal Counseling which is not appealable because the Board does not have jurisdiction to decide whether or not the facts are what they are in a Record of Formal Counseling. ACA Richard further stated that Mr. Kendrick's only remedy in this matter would be to write a rebuttal to his complaint within five days, which is what he did, and it was included in his personnel file. She stated that the March 11th incident mentioned by Mr. Kendrick does not give rise to an abuse of power investigation rather it is basically a general complaint that Mr. Kendrick's director may have said something that was not true. ACA Richard went on to say that this is not the forum to address these types of allegations especially since the Board has ruled in the past that employees must make reference to a specific rule that has been violated when requesting an investigation pursuant to Rule 16.1. Mr. Kendrick responded that he specified Rule 16.1 as the rule that was violated. ACA Richard responded that there has to be a rule other than Rule 16.1 that must be cited as a rule violation.

Chairman de la O asked if there were any questions from Board Members. Member Silverman responded in the affirmative. He asked the Board's Special Counsel what authority Mr. Kendrick has to bring his charges before the Board if he is not a classified employee. Mr. Kendrick responded before Special Counsel Everett could answer and made clear that he is a classified employee. Chairman de la O responded that according to Civil Service Rule 16.1, it does not matter whether the employee bringing the complaint is classified because it states, "Whenever the Board has reason to believe that the rules and regulations have been violated . . . the Board shall investigate." Member Silverman asked Special Counsel Everett again whether Mr. Kendrick is a classified employee. Special Counsel Everett responded that she was not familiar with the positions that are classified but the individuals around her that are familiar with which positions are classified tend to indicate that Mr. Peters is a classified employee; therefore, this information can be verified.

Chairman de la O asked if there were any other questions from Board Members. Member Moy stated that he thinks the Board should grant Mr. Kendrick's request for a hearing because he did make reference to a violation, which is the abuse of power, under Rule 16.1.

ACA Richard stated that if the Board is going to grant a hearing pursuant to Rule 16.1, she would like to have a specific ruling from this Board that it does not have jurisdiction

to hear the issues surrounding a Record of Formal Counseling because it is not appealable before this Board. Chairman de la O responded that he believes Mr. Kendrick's matter is not an appeal otherwise what the Board would be saying if it denied Mr. Kendrick a hearing is that any Manager can put a Record of Formal Counseling into an employee's record regardless of whether it is based on a complete falsehood, but at this point, the Board has to assume that everything Mr. Kendrick alleged is true. He went on to say that if the Board is going to give immunity to Management and say that Management can write whatever it wants in a Record of Formal Counseling because it is not appealable to the Board and that the employee would have no recourse other than to object, then he thinks the Board would be abdicating its responsibility under Rule 16.1. Chairman de la O further stated that the whole point (of Rule 16.1) is if someone is abusing their power by using formal counseling, this Board has to have jurisdiction to hear the matter. He stated that ACA Richard is correct that Mr. Kendrick cannot appeal this matter, but he cannot see the Board not having jurisdiction over an abuse of power issue.

ACA Richard stated that Mr. Kendrick is asking that the Record of Formal Counsel be removed from his personnel file. She went on to say that her concern is that the Board is going to open up the floodgates because any employee that receives a Record of Formal Counseling will come before the Board to request an abuse of power investigation pursuant to Rule 16.1. ACA Richard further stated that if the Board reads Mr. Kendrick's statement, it will find that he is asking that the Record of Formal Counseling be rescinded or thrown out, which is not allowable. Chairman de la O reiterated if the Board does hear Mr. Kendrick's complaint, then the Board would be immunizing Management from taking any action it wants. He went on to say that he has no more interest than anyone else in opening the floodgates, but at the same time Mr. Kendrick has made specific allegations, cited witnesses, and he would have to assume what he included in his complaint is true, so he is not going to tell Mr. Kendrick that he has zero remedies and therefore cannot have his case heard because of the Record of Formal Counseling, and if he did, what would be the point of the Civil Service Board?

ACA Richard stated that she would like to know what Rule(s) had the Department Director violated. Chairman de la O responded that the rules under which he thinks the Board can investigate this matter are Civil Service Rules 14.2(h), (i) and (r). ACA Richard stated that past practice has been that the person bringing a grievance has to identify the rule violations, but in this case, Mr. Kendrick did not have to identify which rules were violated but the Chairman could and did identify the rule violations for the employee. Chairman de la O responded that Mr. Kendrick is not a lawyer and he does not think the Board should put formality over substances. ACA Richard responded this is not how Rule 16.1 hearings were handled by the Board in the past so she is trying to go with past practice. Chairman de la O stated in the past he has asked lawyers to come up with the rule violations, but he is not going to ask Mr. Kendrick to review the Rules when it takes him only five seconds to identify the rule violations. He went on to say that employees usually state in their abuse of power complaints that Management treated them badly; however, Mr. Kendrick made very specific allegations.

Following discussion, the Board entered a motion to grant the employee's request for an investigation pursuant to Rule 16.1, Abuse of Power, concerning a violation of Civil Service Rules 14.2(h), (i) and (r), which resulted as follows:

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

Aye: Kaplan, Silverman, de la O, Dames and Moy

H. TODAY'S HEARINGS

- H.1** Hearing of Appeal on behalf of Jeffrey Locke, Police Lieutenant, relative to his 20-hour suspension, effective February 25, 2009.

The Board entered a motion to CONTINUE Lt. Jeffrey Locke's hearing and charge the continuance to the Board since there was not sufficient time to hear this case. The motion resulted as follows:

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

Aye: Kaplan, Silverman, de la O, Dames and Moy

- H.2** Grievance Hearing on behalf of Louis A. Brennan, Firefighter, pursuant to Civil Service Rule 16.2- Complaint by Employee, alleging a violation of Civil Service Rule 6.4.

The Board entered into the scheduled grievance hearing on behalf of Luis A. Brennan, the Grievant.

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

Janeen Richard, Assistant City Attorney (ACA), represented the Department.

Attorney Guttman-Valdes presented opening statements and ACA Richard reserved opening statements. Prior to the calling of witnesses, discussion took place on the department's Motion for a Directed Verdict. The basis for the department's Motion is that the Board does not have jurisdiction to hear this case. Chairman de la O responded that to reach the conclusion of a Directed Verdict, the Board would have to hear testimony first. He went on to say that this issue of whether the Board has jurisdiction to hear Fire Fighter Brennan's case came up before at an earlier meeting so he think it would be easier if the Board listened to the testimony first and rule on all of the legal issues afterwards. Following discussion, the Board proceeded with the calling of witnesses. All witnesses were sworn in individually. Witnesses for the Grievant appeared in the following order:

- 1. Robert Suarez, President, International Association of Fire Fighters- Local 587. Questions were posed by Board Members Dames, Silverman, de la O, Kaplan and Moy during the testimony of witness Robert Suarez.*
- 2. Louis A. Brennan, Fire Fighter, City of Miami, Department of Fire-Rescue, testified on his own behalf. Questions were posed by Board Members Moy, Kaplan, de la O, Silverman, and Dames during the testimony of Louis Brennan, the Grievant.*

The Board broke for lunch at 12:38 P.M. and reconvened at 1:23 P.M. to continue with the grievance hearing on behalf of Fire Fighter Louis A. Brennan. However, before continuing with the hearing, Member Silverman asked that the Board adjourn at the conclusion of Fire Brennan's case since he had to leave at 4:00 P.M. and to continue Lt. Locke's case since it appeared there would not be sufficient time to hear his case. Hearing no objection from Board Members, Chairman de la O stated that the meeting will be adjourned following the conclusion of Fire Fighter Brennan's hearing.

Following discussion, Assistant City Attorney Guttman-Valdes continued with direct examination of Luis A. Brennan, ACA Richard followed up with cross-examination, and the Board asked questions of the Grievant. The Grievant then rested his case.

ACA Richard renewed her motion for a Directed Verdict on the basis that the Grievant did not satisfy his burden of proving that the Department of Employee Relations violated Civil Service Rule 6.4 and provided argument in support of her position. In response to the department's Motion for Directed Verdict, Chairman de la O stated that he needed to get a temperature of the Board to see if they feel this case should continue to the end. He went on to say there would be no point in continuing with the hearing if the Board is not convinced at this point that Fire Fighter Brennan should prevail because the evidence is not presumably going to get any better considering he has already put on his best case. Chairman de la O further stated if the Board is not convinced yet, the Board should make a motion now and he would give Attorney Guttman-Valdes an opportunity to respond. Attorney Guttman-Valdes stated that she preferred to hear the temperature of the Board before responding.

Chairman de la O asked if any of the Board Members wished to make a motion and if so, it could not be in favor of the Grievant because the Department did not have an opportunity to put on its case yet. Member Kaplan responded that he was ready to make a motion but before doing so, he wanted to be heard. He went on to say that there were obviously two overriding issues in this case, the first issue being: Is the Board supposed to be going through a hearing or had there already been a decision made by the Department of Veterans' Affairs (DVA) which supersedes everything that the Board may do in this case? Member Kaplan further stated that the DVA's hearing is valid because the Grievant knew it was ongoing and whether the Grievant authorized the Union (IAFF-Local 587) to proceed with that process is problematic because there is a conflict somehow in the evidence. He stated that the important thing is the Grievant knew the process was ongoing, he did nothing to stop it, and allowed the decision to be rendered. Member Kaplan went on to say that on that basis if the Board is going to decide only on the question of the validity of the DVA's decision, that decision overrides anything the Board could do (in terms of this case) and anything the Grievant wishes to do. He further stated that the second issue is: If it is decided that the DVA's decision does not override what the Board can do in this case, then he thinks the Board needs to determine whether the Grievant was entitled to receive veteran's preference points based upon some concept that there was unfairness done to the Grievant or the rules established were so egregious that it did not allow the Grievant to correct what he had erroneously filed with the City so that he would be entitled to the veteran's preference points.

Member Kaplan stated that the issue of whether the Grievant was entitled to the points is totally different from the first issue and that it is his opinion that the Board do not arrive at that point (about entitlement to veteran's preference points) yet because indeed the major issue is whether the DVA's decision supersedes anything that the Board may do with this case. He went on to say that when the Board was considering whether it would proceed with the Grievant's hearing at an earlier meeting, according to the minutes of November 26, 2010, the following language appeared: "Member Kaplan stated that the issue is not whether Mr. Brennan signed the Agreement, since in the normal course of union affairs, the employee may not sign an Agreement, but they must know about it. He asked whether the Chairman was saying that if the hearing was granted, the issues of the union's representation, and the ruling of Veteran's Affairs would all come up. Chairman de la O responded that he believes they should; it would be an affirmative defense." He went on to say there was no question that the Grievant knew about the agreement (between the City and the Union) and that the Department did establish an affirmative defense which had not been refuted by the Grievant. Member Kaplan further stated that the Department's affirmative defense was that the DVA made its decision,

therefore the Board does not need to go any further with deciding whether the Grievant should receive the veteran's preference points, and that the Grievant's claim be denied.

Chairman de la O stated that he saw two issues in this case: (1) Did the Grievant elect his remedy? and (2) If the Grievant had not elected his remedy and therefore had a right to be before the Civil Service Board, would he be entitled to a recommendation from the Board as to whether he is entitled to veteran's preference points? He went on to say that in answer to the two issues, he would have to respond in the negative. Chairman de la O further stated that he was not saying what happened to the Grievant was fair, but what upsets him is that the Grievant was clearly entitled to the points, but the rule is that all forms must be submitted on time. He stated what concerns him is if the Board were to change the rule now and reason because the Grievant was entitled to the points anyway that he should be granted the points, there may be other employees who had the same problem of not getting their forms in on time and could argue that they did not know the deadline was going to be extended or that they could submit the documents after the deadline. Chairman de la O went on to say that he could imagine the rush on the Human Resources Department if this were to occur. He further stated it is not a satisfactory solution, but we need not kid ourselves because this would only be a recommendation to the City Manager and he may in turn grant the points. He further stated that at the end of the day, the Board is charged with following the rules and the rules are clear. Chairman de la O stated that the Grievant elected his remedy, the DVA ruled against him, so he does not think the Board has jurisdiction on this matter and if the Board did have jurisdiction he would still rule that he should not be given the points.

Chairman de la O asked if any other Member wished to state their position concerning the motion on the floor. Hearing none, Attorney Guttman-Valdes presented argument and cited case law, *City of Jacksonville-Jacksonville Sheriff's Office vs. Cowan*, 973.S0.2d.503 in support of her opposition to the department's Motion for Directed Verdict.

Having heard Attorney Guttman-Valdes' argument, Chairman de la O stated that he read the case law cited by Attorney Guttman-Valdes and felt that she was correct in terms of the general principle of the law but what is different is there was a settlement agreement which brings about two other issues which are: (1) Did the Grievant elect his remedy by selecting the Grievance Procedure? and (2) Did the settlement agreement between the Union and the City make the decision binding and if it did not, does the Grievant have a right to be before the Board to know if he is to be awarded the points? He went on to say that Attorney Guttman-Valdes is correct that the Veterans' Administration does not have the authority to make a binding decision except for the fact that the City and the Union agreed. Chairman de la O further stated that what this all boiled down to was the Union President's (Robert Suarez) testimony that he tries not to be at odds with his members and that he told the Grievant about the settlement agreement between the Union and the City. He stated that somehow he had to break the tie and what he keeps coming back to is the person who initiated the complaint to the DVA, which was the Grievant and not the Union; therefore, it made a lot of sense to him to reason that when the Union informed the Grievant about the settlement that the Grievant would not have been against the settlement agreement because it was the Grievant who initiated the process with the DVA. Chairman de la O went on to say that setting aside the matter about the Grievant going to the DVA to discuss his complaint, it all comes back to the issue of what happens if someone does not turn in the correct document on time and his response is the Board has to follow the law, which is if the correct documents are not turned in on time, the application is deemed invalid.

Member Kaplan stated that in the settlement agreement between the Union and the City concerning the grievance filed about the veteran's preference points paragraph 3 (City Exhibit 18) states, "3. Adherence to Department's Findings: The City and Union agree

to abide by the final decision of the State of Florida Department of Veterans' Affairs regarding whether Louis Brennan was entitled to receive veteran's preference points." He stated that whether the City had the power to do so or not is sort of irrelevant since both the Union and the City agreed that they could do so (by entering into a settlement of allowing the DVA to remedy the matter). Member Kaplan went on to say that by entering into this settlement, it gave the DVA the responsibility of making the decision of whether the Grievant was entitled to receive the veteran's preference points. He further stated that subjectively he thinks the City treated the Grievant badly, but he did not think the Board would get to that point because the issue is the matter of the veteran's preference points as it is read in the Florida State Statutes and the DVA decided on this issue.

Member Dames stated there was another component to the DVA's finding, which was that the DVA did not feel that the Grievant was grieved because the Fire Fighter he would have preceded on the list had he been given the veteran's preference points had not been promoted at the time he filed his complaint. He went on to say that when the Grievant was able to grieve his complaint, he decided to have his complaint presented before the Civil Service Board as opposed to initiating the Grievance Procedure (via Labor Relations). Member Dames further stated that the Fire Union President testified that he suggested to the City that it develop a better program to inform employees about (military documents) because the same matter had come up some years prior. He stated that he recalled some years ago that an employee, who had served in the military was trying to attain veteran's preference points but he was told that he had to have a certain type of ribbon. Member Dames went on to say that the thing that got to him most was that the Grievant deserved the veteran's preference points, so it is in the Board's hands to correct the matter. He further stated that the Grievant was wrong (by not timely submitting the correct form prior to the closing date, but because the Grievant has the burden of proof; the department is supposed to let applicants know what type of DD-214 form they are supposed to submit with their application.

Member Moy stated that he recalled when he separated from the military, it took months before he received his DD-214 form (military separation document). He went on to say that if he had two separate DD-214 forms, he would not know which form to submit. Member Moy further stated that he did not think the Grievant maliciously or intentionally submitted the incorrect DD-214 form because he feels he just did not know any better. He stated that the most hurting thing about this situation is that the Grievant did serve during a war period so he feels he deserved the veteran's preference points. Member Moy went on to say that he does not know what the law says, but he feels that the City somewhat punished the Grievant based upon a technicality. He further stated that if the Grievant had turned in the right form, everything would have been okay; but at the same time, he heard that the same issue happened some years ago and the applicants were allowed to turn in their DD-214 form after the closing date and were promoted.

Following discussion, the motion on the floor to find in favor of the Department's Motion for a Directed Verdict resulted as follows:

Motion by Chief Examiner Kaplan, seconded by Chairperson de la O, that this matter be APPROVED. PASSED by the following vote.

Aye: Kaplan, Silverman and de la O

No: Dames and Moy

H.3

Hearing of Appeal on behalf of Raul Cabrera, Police Officer, relative to his 160-hour suspension, effective April 21, 2010.

Prior to entering into Officer Cabrera's appeal hearing, David Chonin, Attorney at Law on behalf Raul Cabrera appeared before the Board and stated that the Board granted a Motion to Dismiss the discipline (160-hour suspension) against his client about a year ago. He went on to say that the Board dismissed the discipline against Officer Cabrera as the department failed to issue the discipline within 180-days, which violated his rights under the Law Enforcement Officers' Bill of Rights. Attorney Chonin further stated that the matter was sent to the City Manager; however, the City Manager remanded Officer Cabrera's case back to the Board because no written findings, recommendations or evidence were submitted pursuant to Civil Service Rule 14. He stated at that time, the Board should have prepared findings and a recommendation that the discipline be dismissed due to a violation of the 180-day Rule; however, under the recommendation of its Special Counsel, the Board decided it did not have jurisdiction to rule on the 180-day Rule issue and that Officer Cabrera's remedy was through the Circuit Court. Attorney Chonin went on to say as it turned out however; the Circuit Court was not the place for his client to go to seek relief because under the recent Bill of Rights, all the court can do is enter an injunction for an ongoing violation but it does not address past violations; therefore, he think the Board was right under its original ruling.

Chairman de la O asked Attorney Chonin would the ongoing violation be the holding of the hearing on the charges? Attorney Chonin responded that he could not agree because the case law says that the court does not have the power to issue a Writ of Mandamus. He stated at the November 16, 2010 Civil Service meeting, he was told that he should obtain a Writ of Mandamus, but it is really a question of whether Officer Cabrera's rights were violated under the 180-day Rule. Attorney Chonin went on to say that the issue goes beyond the 180-day Rule violation because the Police Department has a policy of dismissing discipline that has been issued beyond 180 days. He further stated that he is asking the Board to make a finding of fact that his client's due process rights were violated and a recommendation that the discipline be dismissed based upon the department's violation of the 180-day Rule for submission to the City Manager.

Chairman de la O asked Attorney Chonin if he tried to get an Injunction in Circuit Court. Attorney Chonin responded that he filed the court action and then the City filed a Motion to Dismiss. He went on to say that after researching the law, he agreed with the City's position that the Court did not have the power to issue a Writ of Mandamus and that the remedy for his client does not sit with the Circuit Court. Chairman de la O responded that a Writ of Mandamus is different than an Injunction in that it is one of the results of an Injunction but it would seem to him that Attorney Chonin's complaint would be that the City is violating Officer Cabrera's rights under the Bill of Rights and therefore, he would want an Injunction. Attorney Chonin responded that the Court would not be able to do anything since his client's complaint involves a past violation. Chairman de la O stated that by holding a hearing to make his client answer to the charges would be considered a current violation. Attorney Chonin stated that the only Injunction available under the case law seems to be to restrain the hearing from taking place, but he did not want to stop the hearing. Chairman de la O stated that the Board still does not have jurisdiction on the 180-day Rule, so it would seem to him that all the Board can do is have the hearing and if Officer Cabrera is not found guilty, there would be no harm, no foul, but if the Board finds against Officer Cabrera, Attorney Chonin would have preserved his argument that the City should never have gone forward with the charges because it violated the 180-day Rule. He went on to say that Attorney Chonin's only remedy, which he believes is the right remedy, is to seek an Injunction to prevent this hearing if he views this hearing as a continuing violation of his client's rights, but he was not going to tell Attorney Chonin how to do his job. Chairman de la O further stated with

that being said, he did not see a reason not to go forward with Officer Cabrera's hearing today. Attorney Chonin responded that he is prepared to go forward with Officer Cabrera's case today.

Chairman de la O asked opposing counsel if she was ready to go forward with her case today. ACA Richard responded that she wants to be clear as to what the Board is going forward on in this case. She went on to say that the incident that led to Officer Cabrera's discipline happened over six years ago and that it has been bounced around from this Board to Circuit Court. ACA Richard further stated that the last time they met on this matter, the Board gave Attorney Chonin instructions to file for an Injunction or Writ of Mandamus in Court although she objected. She stated that Attorney Chonin did file his court action and voluntarily dismissed it, so there really is no ruling as to who has the power to answer the question of whether the 180-day Rule has been violated. ACA Richard went on to say that it has always been her position that this matter of hearing the case involving Officer Cabrera's 160-hour suspension is not within the Board's jurisdiction. She further stated that Attorney Chonin had an opportunity to remedy this matter, but he dismissed his court filing, so it is now three years later and the argument is still whether Officer Cabrera should be disciplined or not. ACA Richard stated that Officer Cabrera had already admitted to the facts, there was a stipulation of the facts, and while Officer Cabrera agreed with the penalty, he did not serve the 160-hour suspension because he was terminated the same day. She went on to say that this case has been dragging on absolutely for no reason other than to delay and prejudice the department. ACA Richard further stated that she would like to have a hearing, a finding of fact meeting indicating that Officer Cabrera stipulated to all of the facts in the reprimand, and for this Board to determine whether Officer Cabrera is guilty of the charges set forth in the charging document.

Chairman de la O stated that Special Counsel Everett agrees that the Board does not have jurisdiction on the issue of the 180-day Rule and the Board has agreed that it will have a hearing on the substantive charge. ACA Richard responded that her position is that the Board does not need to have a hearing because the facts have been stipulated to, so she is asking whether the Board could make a finding that the facts are what Officer Cabrera stipulated to. Chairman de la O responded that when the hearing begins and if both sides want to stipulate on all of the facts, the Board will at that time, take the matter up as with any other case when there is a stipulation of facts. ACA Richard stated this would also include the fact that Officer Cabrera never served the 160-hour suspension because he was terminated the same day; therefore, her argument is that Officer Cabrera was never harmed by the 160-hour suspension. Chairman de la O stated that the issue of the 160-hour suspension raised by ACA Richard will be taken under consideration in the hearing and that the Board would be going forward on the underlying charge.

Member Kaplan asked what was happening with Officer Cabrera's termination case. Attorney Chonin responded that matter was being handled in Arbitration.

For clarification purposes, Member Dames asked if the Board has jurisdiction to hear Officer Cabrera's case. Chairman de la O responded that the Board has jurisdiction over the charge; however, Special Counsel Everett advised that the Board does not have jurisdiction as to whether the Officers' Bill of Rights was violated by the 180-day Rule. For clarification purposes, Attorney Chonin asked if his argument on the appeal would be that department did not have the power to discipline. Chairman de la O responded in the affirmative.

Just before going to a break, Attorney Chonin brought to the Board's attention that Officer Cabrera was no longer going to oppose the 160-hour suspension and that they

were dismissing the appeal on the basis that it is the Board's position that it does not have jurisdiction on the issue of the 180-day Rule and they cannot go forward without the Board's consideration of this issue. Chairman de la O asked Attorney Chonin if he wished to preserve the hearing for some sort of appeal. Attorney Chonin responded in the negative.

WITHDRAWN : Officer Raul Cabrera's appeal is withdrawn and will be removed from the Board's Docket.

H.4

Grievance Hearing on behalf of Olatunbosun "Ola" Aluko, former Director of Capital Improvement Programs, relative to his Whistleblower Complaint, pursuant to Florida Statute 112.3187.

Katherine Grieve, Attorney at Law on behalf of Ola Aluko stated that the City may be asking for a continuance of Mr. Aluko's hearing and if granted she would ask for a short continuance because she wants to get this matter resolved as soon as possible.

Chairman de la O asked opposing counsel for her position. ACA Richard responded that she is asking for a continuance because she had to restart the process of the settlement as there was a change in administration, but she is confident they will reach an agreement quickly. Following discussion, the Board entered a motion to continue the hearing of Ola Aluko and charge the continuance to the Department, which resulted as follows:

Motion by Member Silverman, seconded by Chairperson de la O, that this matter be CONTINUED. PASSED by the following vote.

Aye: Kaplan, Silverman, de la O, Dames and Moy

H.5

Grievance Hearing on behalf of Julianne Diaz, former Assistant Director of Public Works, relative to her Whistleblower hearing, pursuant to Florida Statute 112.3187.

ACA Richard stated there has to be a continuance of this hearing because Ms. Diaz' attorney, who is not present, filed a motion to withdraw as her counsel so for this reason, she has no objection to the continuance. Following discussion, the Board entered a motion to CONTINUE the hearing and charge the continuance to the employee which resulted as follows:

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

Aye: Kaplan, Silverman, de la O, Dames and Moy

ADJOURNMENT:

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

Motion by Member Silverman, seconded by Member Moy, to APPROVED. PASSED by the following vote.

Aye: Kaplan, Silverman, de la O, Dames and Moy

Breaks were taken at 10:45-10:57 a.m.; 12:20-12:31 p.m.; and 12:38-1:23 p.m. (LUNCH BREAK). The meeting adjourned at 3:10 P.M.

SIGNATURE:

Miguel M. de la O, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary