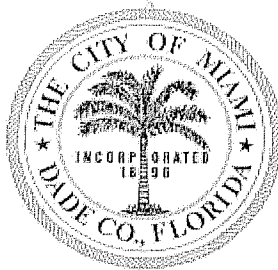


City of Miami

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Meeting Minutes

Tuesday, October 18, 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 10:09 a.m. The roll call for the Board Members at the commencement of the meeting was as follows:

Present: Chief Examiner Kaplan, Member Dames, Member Silverman and Member Moy

Absent: Chairperson de la O

NOTE: Chairman de la O arrived at 10:48 a.m., and a second roll call took place. The second roll call identified all members as being present.

A. APPROVING THE MINUTES OF:

Regular Meeting of October 4, 2011.

**Motion by Member Silverman, seconded by Member Dames, to APPROVE.
PASSED by the following vote.**

Aye: Kaplan, Silverman, Dames and Moy

Absent: de la O

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

- D.1 Copy of a letter from Maurice Kemp, Director, Department of Fire-Rescue, notifying Eric Hough, Fire Fighter, of his 48-hour suspension, effective September 27, 2011. (NOTIFICATION)

NOTIFIED

E. GENERAL ITEMS**F. REPORTS**

- F.1 Pending Hearings as of October 18, 2011. (NOTIFICATION)

PRESENTED

G. REQUESTS FOR HEARINGS

- G.1 A copy of a request from Min-Li Nar, for a Grievance hearing, pursuant to Rule 16.2, alleging a violation of Rules 11.1 and 12.1, as it concerns her layoff, effective September 23, 2011. (DISCUSSION)

Teri Guttman-Valdes, Attorney on behalf of Ms. Nar, stated that she was recently retained as counsel. She went on to say that Ms. Nar was transferred on a loan basis from the Department of Information Technology to Citistat without her consent, and that she was worked out of classification beyond 30 days without approval from the Board, which is a violation of Rules 11.1 and 11.2. She went on to say it is believed that Ms. Nar was not given proper seniority when making the computations necessary for the

layoff, which is the reason they feel the City violated rule 12.

Chairman de la O asked for the department's position. ACA Richard responded that prior to the meeting she read Ms. Nar's request and it appears that she is travelling under Civil Service Rule 16.2, alleging a violation of Rules 11.1 and 12. Attorney Guttman-Valdes responded that her client is claiming that the City violated Rules 11.1, 11.2 and 12. ACA Richard stated in that case, she would ask that opposing counsel prepare a definite statement explaining exactly what is it her client is claiming the City violated. Attorney Guttman-Valdes stated that she could have something in writing as to the specificity of her client's claim by the next meeting.

Following discussion, the Board entered a motion to grant Min-Li Nar's request for a grievance hearing pursuant to Rule 16.2, concerning a violation of Rules 11.1, 11.2 and 12. The motion resulted as follows:

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

Aye: Kaplan, Silverman, Dames and Moy

Absent: de la O

Having noticed that Ms. Nar was not offered the opportunity for a preliminary investigation as were the other employees listed under Agenda Items G.2 through G.7, Acting Chairman Kaplan asked Attorney Guttman-Valdes if she wished to have the Board conduct a preliminary investigation on behalf of her client pursuant to Rule 16.2(b). Attorney Guttman-Valdes responded that the facts of her client's case are different from the other employees; therefore, a preliminary investigation would not be necessary.

DISCUSSED

G.2

A copy of a request from Corina S. Esquijarosa, former Senior Project Representative, for a Grievance hearing, pursuant to Rule 16.2, alleging a violation of Rule 12.1, as it concerns her layoff, effective September 23, 2011. (DISCUSSION)

Acting Chairman Kaplan asked Ms. Esquijarosa to provide the Board with a brief explanation of what she is seeking from the Board. Ms. Esquijarosa responded that she is a former managerial/confidential, classified employee with the Department of Public Facilities, Asset Management Division. She went on to say that she is asking for a hearing of her layoff as it pertains to the letter and package that she submitted to the Board. Ms. Esquijarosa further stated that she was laid off pursuant to her classification being abolished; however, she requested a hearing to establish that her classification was abolished by Madeline Valdes, former Department Director, so that her duties would be given to an employee who was hired just a few months in an unclassified position.

Acting Chairman Kaplan asked for the department's position on Ms. Esquijarosa's request. ACA Richard stated that the department does not oppose the request for hearing, but she just needs clarification that this is a Rule 16 hearing for which Ms. Esquijarosa is travelling under Rule 12.1. Ms. Esquijarosa responded that she is seeking a hearing pursuant to Rule 16.2.

Following discussion, the Board entered a motion to grant Ms. Esquijarosa's request for a hearing, which resulted as follows:

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

Aye: Kaplan, Silverman, Dames and Moy

Absent: de la O

Following the approved motion, Member Dames stated that according to Rule 16.2(b), it indicates that the Board may conduct a preliminary investigation before the actual hearing; therefore, he is asking that the preliminary investigation take place first because the employee has made extensive allegations. Acting Chairman Kaplan asked Member Dames if he was suggesting that the Chief Examiner conduct the investigation. Member Dames responded in the affirmative. Acting Chairman Kaplan stated although he is the Chief Examiner, he has not had an opportunity to proceed on an investigation; however, if it is the Board's desire, he would discuss the matter with staff.

The Executive Secretary stated there needs to be clarification on what the investigation would cover that would not be covered under the grievance hearing. Member Dames stated the allegations that were brought up by Ms. Esquijarosa is what would be covered during the investigation.

Acting Chairman Kaplan asked if there was any more discussion regarding the preliminary investigation proposed by Member Dames. ACA Richard responded that this would also be her first time travelling under a preliminary investigation pursuant to Rule 16.2(b). She went on to say she believes the Executive Secretary was asking how is the preliminary investigation different from the hearing, (which she thinks is a valid question) because she wants to be able to challenge any rulings or things found in the investigation. ACA Richard further stated that she read the allegations and of course she objects to the allegations submitted by Ms. Esquijarosa. She stated if the preliminary investigation is going to be duplicative of the hearing, why would both need to be done when the result is going to be the same? Acting Chairman Kaplan stated that he understands what ACA Richard is saying; however, there was a valid request made for an investigation, which will be conducted pursuant to the direction of staff. Member Moy stated that he agrees with Member Dames that a preliminary investigation should be conducted.

Following discussion, the Board entered a motion to grant a preliminary investigation pursuant to Rule 16.2(b) and a grievance hearing pursuant to Rule 16.2 if necessary. The motion resulted as follows:

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

Aye: Kaplan, Silverman, Dames and Moy

Absent: de la O

G.3

Copy of a request from Michael Braverman, Attorney, on behalf of Ricardo Novas, Broadcast Engineer, for an appeal of his dismissal, effective September 23, 2011 and a grievance hearing pursuant to Civil Service Rule 16.2, Complaint by Employee, alleging a violation of Civil Service Rules 14, Dismissals, Suspensions, Demotions and Resignations and Rule 12 Layoff, Resignation, and Reinstatement. (DISCUSSION)

Attorney Braverman stated that he filed a request for a hearing pursuant to Rule 14 and an investigation pursuant to Rule 16.2. He went on to say that he is representing those employees under agenda items G.3 through G.7 and that all of one (Ricardo Novas)

stems from the Building Department. Attorney Braverman further stated that the Building Department sent out initial notices that resulted in the appeals being filed. He went on to say that since the filing of these notices, the Building Department is attempting to revise the letters. Attorney Braverman further stated as far as the appeals, he filed them under two premises, one being that the layoffs and retention rights of the employees have not been properly calculated. He stated there are other issues involving the employees that raise concerns as to why he requested appeal hearings.

Acting Chairman Kaplan asked Attorney Braverman of the five employees he is representing, did he wish to have a preliminary investigation on the issues of all employees similarly affected? Attorney Braverman responded whatever is the pleasure of the Chief Examiner as far as what he believes would be appropriate methodology to apply, he would have no objection.

Acting Chairman Kaplan asked for the department's position. Assistant City Attorney(ACA) Richard responded that it would be helpful if the Board took each of the cases one by one and decide whether the employee is entitled to a hearing based upon the employee's individual letter and the department for which the employee worked. She went on to say that with regards to Ricardo Novas' request, her only concern is that Attorney Braverman cited Rule 14 in addition to Rule 16. ACA Richard further stated this clearly is not an appeal pursuant to Rule 14 because the employee was not released for disciplinary reasons; therefore according to Rule 14, the burden is not on the City to prove that Mr. Novas was terminated for cause. She stated that according to the letter Mr. Novas received, he was laid off so if Attorney Braverman wishes to proceed under Rule 16, she would have no objection.

Acting Chairman Kaplan stated it seemed to him that the issue discussed concerning the previous request for a hearing was whether the Board should have an investigation before considering going forward with a hearing. He asked for the employee's position. Attorney Braverman responded that on the second page of his letter, he did request an investigation pursuant to Rule 16.2(b). He went on to say that Mr. Novas' situation is different and he does need an investigation so he would be happy to give the basic background of his case which is that Mr. Novas believes that he was terminated based upon an action he took relative to playing a videotape during the recent hearing regarding the termination of the Police Chief (Exposito). Attorney Braverman further stated without going into the facts of the case, this is the particular cause they believe does rise to the level where Mr. Novas would be entitled to a Rule 14 hearing.

Acting Chairman Kaplan stated he was under the impression that having an investigation was what Attorney Braverman and the employees wanted but he has a problem with to what extent it might adversely affect the employee in the scheduling of a hearing on the discharge. He asked Attorney Braverman if he was suggesting that the hearings be conducted contemporaneously. Attorney Braverman responded in the affirmative. Acting Chairman Kaplan asked the Executive Secretary if this could be done. The Executive Secretary responded in the negative. She went on to say that the investigation would be done prior to the hearing, in turn, the Chief Examiner would issue his report to the Board; therefore, the preliminary investigation has to be done first.

Attorney Braverman stated that he normally does not have the burden of proof in a Rule 14 hearing, but he is accepting that responsibility. He went on to say that he may be able to travel under a Rule 16 hearing because the reason for his presentation is going to be clear. Attorney Braverman further stated if the City chooses to say this is not the reason it took such actions against his client, then that would be for the Board to decide whether it is arbitrary or capricious and in fact a violation of the Rules by going forward under a layoff when he can prove in fact the action by the City was based on misconduct or an alleged violation of the Rules. He went on to say for the purposes of

going forward with an investigation, he would guess that as long as there is not going to be an objection by the City in saying that he is going into rules and regulations and cause when in effect they would be travelling under the layoff article pursuant to Rule 12 because he thinks that is an appreciable distinction as it relates to what was set forth. Attorney Braverman further stated that the Rules set forth that an employee has the ability to file a grievance if he/she feels that the rules have been applied arbitrarily, capriciously, or improperly. Acting Chairman Kaplan asked Attorney Braverman if he understood he has the burden to prove whatever claim he and his client are making. Attorney Braverman responded in the affirmative. Acting Chairman Kaplan asked Attorney Braverman if he also understood going forward with the Rule 14 dismissal hearing that he would also have the burden of proof. Attorney Braverman responded in the affirmative. Acting Chairman Kaplan stated the investigation that they spoke about will be collateral to and may or may not have an effect on the hearing. Attorney Braverman responded that he would agree that would not in any way confine what he believed would be his presentation. Acting Chairman Kaplan asked Attorney Braverman if what they have been discussing (travelling under a Rule 16 investigation he having the burden of proof) is his position on the remainder of the cases he represents. Attorney Braverman responded (that would be correct) for everyone with the exception of Ms. Greene, which he believes is different since her matter relates to a misclassification.

Member Moy stated before the Board votes, he would like to know which rule Attorney Braverman would be travelling under since he mentioned Rules 14 and 16. Member Silverman responded that the City's position is the classifications were eliminated and the employees were laid off; however, Attorney Braverman is saying that is not true. He went on to say that Attorney Braverman believes what really happened is the department did not use Rule 14 to fire Mr. Novas rather the department circumvented the Rule by saying that Mr. Novas was terminated because his position was eliminated, which is why the Board is going to have an investigation pursuant to Rule 16. Member Silverman further stated that the Chief Examiner will report back to the Board with his findings and the Board would go forward from there.

Chairman de la O stated he did not hear all of the discussion; therefore he would abstain from voting. Acting Chairman Kaplan asked Chairman de la O if he could turn the gavel over to him after the conclusion of Items G.4 through G.7. Chairman de la O responded in the affirmative.

Following discussion, the Board entered a motion to grant a preliminary investigation pursuant to Rule 16.2(b) and a grievance hearing pursuant to Rule 16.2 if necessary. The motion resulted as follows:

Motion by Member Silverman, seconded by Member Dames, that this matter be APPROVED

PASSED by the following vote.

Aye: Kaplan, Silverman, Dames and Moy

Abstain: de la O

Following Chairman de la O's arrival, a second roll call took place which resulted as follows:

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

G.4

Copy of a request from Michael Braverman, Attorney, on behalf of Carlos Jimenez, Structural Engineer, for an appeal of his dismissal, effective September 23, 2011 and a grievance hearing pursuant to Rule 16.2, Complaint by Employee, alleging a violation of Civil Service Rules 14, Dismissal, Suspensions, Demotions, and Resignations and Rule 12, Layoff, Resignation and Reinstatement. (DISCUSSION)

Attorney Braverman stated he has already spoken about all the issues relative to this case. Acting Chairman Kaplan asked for the department's position with regards to the employee's request for a hearing. ACA Richard responded that her position is the same. She went on to say that if the Board wants to conduct an investigation, that is the Board's prerogative but when it comes time to having the hearing, if necessary, that the hearing is conducted pursuant to Rule 16 and not 14. Acting Chairman Kaplan stated that is what was done with the last case and Attorney Braverman has assumed the responsibility to carry the burden of proof. He asked Attorney Braverman if this was correct. Attorney Braverman responded in the affirmative. He went on to say that he would just point out that Mr. Jimenez has appeals of disciplinary actions pending before the Board.

Following discussion, the Board entered a motion to grant a preliminary investigation pursuant to Rule 16.2(b) and a grievance hearing pursuant to Rule 16.2 if necessary. The motion resulted as follows:

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

Aye: Kaplan, Silverman, Dames and Moy

Abstain: de la O

G.5

Copy of a request from Michael A. Braverman, Attorney, on behalf of Joan Greene, Secretary II, for an appeal of her dismissal, effective October 6, 2011 and a grievance hearing pursuant to Rule 16.2, Complaint by Employee, alleging a violation of Civil Service Rules 14, Dismissals, Suspensions, Demotions and Resignations and Rule 12, Layoff, Resignation, and Reinstatement. (DISCUSSION)

Acting Chairman Kaplan asked Attorney Braverman if he had said earlier that Ms. Greene's case was different from the other clients that he is representing. Attorney Braverman responded in the affirmative. He went on to say that Ms. Greene was classified as a Secretary II and Dorcas Martin was classified as a Typist Clerk III; therefore the City made an error with the two classifications (as it relates to the bumping of classifications). Acting Chairman Kaplan asked for the department's position. ACA Richard responded that she had nothing new to add than what has already been added concerning the other requests for hearing.

Following discussion, the Board entered a motion to grant a preliminary investigation pursuant to Rule 16.2(b) and a grievance hearing pursuant to Rule 16.2 if necessary. The motion resulted as follows:

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

Aye: Kaplan, Silverman, Dames and Moy

Abstain: de la O

investigation, Member Moy stated that Ms. Greene has been employed with the City for 30 years so it makes him sick to know that she was transferred to the Police Department and then terminated. He went on to say that he hopes that the Board take this matter as an issue of urgency to bring the employees back to work. Member Moy further stated it seems to be that it does not matter how long a person has been employed with the City because the City can lay off a person without cause. He went on to say that according to the letter, Ms. Greene was transferred to another department and as a result of the abolishment of her classification, she was laid off.

Acting Chairman Kaplan stated as the Chief Examiner for the preliminary investigation, he certainly will take into consideration with great seriousness what was expressed by Members Moy and Dames concerning the urgency of these matters.

ACA Richard stated that she would like to respond to the comment made by Member Moy without getting into the facts of the case. She went on to say it is her understanding that Ms. Greene was a Secretary II and the position has been abolished. ACA Richard further stated there is no other Secretary II position within the City of Miami and what happens sometimes is positions are no longer feasible to be on the books. She stated that Ms. Greene was transferred to the Police Department, but it was mistakenly thought there was another Secretary II position available for her to take; however, it was not a Secretary II position, but a Typist Clerk III position so that is why Ms. Greene was eventually let go, but an effort was made to place her into a Secretary II position. ACA Richard went on to say that the City is not cold and callous; rather the City respects its long standing employees. Member Moy stated he understands what ACA Richard has said, but laying off Ms. Greene and abolishing her classification makes him wonder why was she transferred and her classification was abolished. Acting Chairman Kaplan stated that the comments are relevant and will be taken into consideration as background information (during the investigation).

DISCUSSED

G.6

Copy of a request from Michael Braverman, Attorney, on behalf of Alejandro Pascual, Building Inspector I, for an appeal of his dismissal, effective September 23, 2011 and a grievance hearing pursuant to Rule 16.2, Complaint by Employee, alleging a violation of Civil Service Rules 14, Dismissals, Suspensions, Demotions and Resignations and Rule 12, Layoff, Resignation and Reinstatement. (DISCUSSION)

Attorney Braverman stated he did not think there was anything else he needed to speak of regarding Mr. Pascual; however, he would reiterate that Mr. Pascual was laid off previously and was called back from the layoff for which he received a 15% reduction in pay and now he has been laid off again as a result of a reorganization in the Building Department. He went on to say that these are the issues he believes the investigation should uncover. Attorney Braverman further stated that a reorganization and abolishment of classifications are specific things that needs to take place and involve more than one or two positions.

Following discussion, the Board entered a motion to grant a preliminary investigation pursuant to Rule 16.2(b) and a grievance hearing pursuant to Rule 16.2 if necessary. The motion resulted as follows:

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

Aye: Kaplan, Silverman, Dames and Moy

Abstain: de la O

G.7

A copy of a letter from Michael Braverman, P.A., requesting a hearing pursuant to Civil Service Rules 14, Dismissals, Suspensions, Demotions and Resignations and 16.2, Complaint by Employee, on behalf of Dorcas Martin, Typist Clerk III, regarding her layoff and the abolishment of her position, effective September 23, 2011. (DISCUSSION)

Acting Chairman Kaplan stated according to this request, Attorney Braverman made no reference to Rule 14 or 12 which tells him that Attorney Braverman would not be using these rules as any part of his defense. He asked Attorney Braverman if his understanding is correct. Attorney Braverman responded in the affirmative. He went on to say that it is his understanding Ms. Martin will be offered the position that had been previously given to Ms. Greene. He went on to say based on this action; Ms. Greene's classification of Secretary II was abolished.

Acting Chairman Kaplan asked Attorney Braverman if he wished to embrace this case within the framework of the investigation. Attorney Braverman responded in the affirmative. Acting Chairman Kaplan asked for the department's position. ACA Richard stated that she did not think an investigation would be necessary in this case since the City is trying to work out the misunderstanding and fix it which would possibly result in Ms. Martin being returned to her classification of Typist Clerk III.

Member Silverman suggested that matter be deferred to the Board's next meeting for consideration by the Board. Following discussion, the Board entered a motion to DEFER this matter to the November 1, 2011 meeting, which resulted as follows:

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

Aye: Kaplan, Silverman and de la O

No: Dames and Moy

Following the approved motion in the matter of Dorcas Martin, Attorney Braverman stated if it is acceptable to the Board, he would like to be able to provide the Board and the department's attorney with more specifics that would aid the Board in what they believe is the basis of those individual cases. The Executive Secretary asked Attorney Braverman would these be exhibits that he would be bringing or would this be information he would provide before the hearing. Attorney Braverman responded that he would present the specifics before the hearing.

Acting Chairman Kaplan suggested that Attorney Braverman wait until the investigation begins. Attorney Braverman withdrew his suggestion and Acting Chairman Kaplan returned the gavel to Chairman de la O.

DISCUSSED

H. TODAY'S HEARINGS

H.1

Grievance Hearing on behalf of Glenn Marcos, former Director of Purchasing, relative to his Whistleblower hearing, pursuant to Florida Statute 112.3187. (DISCUSSION)

Mark Berkowitz, Attorney at Law on behalf of Glen Marcos stated that he is asking for a postponement of his client's case for two reasons. He went on to say that within the last week, Mr. Marcos has been asked to participate in a criminal investigation regarding his prior employment with the City. Attorney Berkowitz further stated Mr. Marcos is neither

a subject nor part of the investigation, but he is cooperating so they do not think it would be prudent to go forward with the hearing today because they are afraid that something might be said that could jeopardize the case. He stated that he informed Civil Service Staff of this development on October 14th. Attorney Berkowitz went on to say that in addition to this matter, there is also a Security Exchange Commission (SEC) investigation that is ongoing so in the abundance of caution, he does not think Mr. Marcos should testify while the SEC investigation is going on. Attorney Berkowitz stated his suggestion would be to place Mr. Marcos' case down for a status in 60 days so they can inform the Board of the status of the investigations as to whether they have been completed and whether they can go forward without compromising the investigations.

Chairman de la O stated what he does not get is Mr. Marcos is not a subject, so what is the prejudice to Mr. Marcos to truthfully testify today consistently with what he would tell anyone else? Attorney Berkowitz responded that according to the agent, there may be some prejudice to Mr. Marcos even though he is not a target or subject. He went on to say they have not been able to speak with the agent because he was on vacation this past week and will be back in town today. Chairman de la O asked Attorney Berkowitz if he could tell the Board what that prejudice might be to Mr. Marcos. Attorney Berkowitz responded that Mr. Marcos may say something that could compromise the investigation.

Chairman de la O asked for the department's position on the employee's continuance request. ACA Richard responded that she opposes any request for postponement, continuance, resetting the hearing for 60 days, or a status conference. She went on to say Mr. Marcos was terminated in August 2010; therefore this matter has been going on for over a year and two City Managers ago. She went on to say that Mr. Marcos is travelling as a whistleblower so the burden is on him to produce at least two things: (1) He prepares a signed, written complaint objecting to something within the City or (2) He participated in an investigation. ACA Richard further stated she does not understand how any current criminal investigation would jeopardize Mr. Marcos' ability to put forth his case for his burden of proof as a whistleblower. Chairman de la O responded there is definitely a prejudice to the City because if Mr. Marcos wins his case and is reinstated, he gets back pay for this entire time so a continuance does not cost Mr. Marcos any prejudice because he is terminated and remains terminated. Attorney Berkowitz stated that they can stipulate any continuance going forward would not be any prejudice to the City as far as back pay. Chairman de la O asked Attorney Berkowitz if he was saying that his client would waive the back pay. Attorney Berkowitz responded in the affirmative. He went on to say that any postponement going forward, there would be no further back pay liability to the City. Chairman de la O asked for the department's position. ACA Richard responded that she appreciates Attorney Berkowitz' gesture but it is not good enough because as long as this matter drags on, the City is prejudiced in presenting its defenses. She went on to say that she subpoenaed Carlos Migoya (former City Manager) and he was available to appear today. ACA Richard further stated the SEC investigation has been going on for a very long time and this is the first that she has heard of the criminal investigation mentioned by Attorney Berkowitz so she does not know whether it is a federal or state investigation and how long could it go on so this puts the City in an unfair position to have this case drag on. She stated that Mr. Marcos needs to proceed with his Rule 16 hearing and if not, it should be dismissed.

Following discussion, the Board entered a motion to grant Glen Marcos' request for a CONTINUANCE of his hearing which resulted as follows:

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

Aye: Kaplan, Dames and Moy

No: Silverman and de la O

Following the Board's approved motion; ACA Richard stated that she would like to know when Mr. Marcos' case will be rescheduled because she really is at a disadvantage. She went on to say that she prepares for hearing and each time, the opposing side requests a continuance and it is granted by the Board. ACA Richard further stated she has received no assurance of when this case will be heard and when she does not call witnesses, things are said such as this is the worst case the City has put on or I would have liked to have heard from this particular witness. She stated that she is placed in a difficult position to defend the City against these scandalous allegations that have been made by Glen Marcos who has the burden of proof. Chairman de la O responded that he thinks the Board should take up Attorney Berkowitz on his suggestion and let it be a status conference. He went on to say there is no point in setting the matter for a hearing and make the City prepare if the Board is going to grant continuances while the investigations continue.

Without objection from other Board Members, Chairman de la O stated the matter of Glen Marcos is set for a status conference in 60 days.

Member Kaplan stated that he would like to make it clear that he is very sympathetic to the City's position as it just has been described. Chairman de la O responded that he agreed with Member Kaplan.

DISCUSSED

H.2

Hearing of Appeal on behalf of Meredith Nation, Procurement Supervisor (former), relative to her termination, effective March 23, 2011. (DISCUSSION)
The Board entered into the scheduled appeal hearing of Meredith Nation, the Appellant.

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

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

Both attorneys presented opening statements. All witnesses were sworn in individually. Witnesses for the Department appeared in the following order:

- 1. Angela Roberts, Senior Labor Relations Specialist, City of Miami, Office of Labor Relations. Questions were posed by Board Members Dames, de la O, Kaplan and Moy during the testimony of witness Angela Roberts.*
- 2. Terrella Johnson, Senior Personnel Officer, City of Miami, Department of Human Resources. Questions were posed by Board Members de la O, Moy and Kaplan during the testimony of witness Terrella Johnson.*
- 3. Jair Espinosa, Payroll Supervisor, City of Miami, Department of Finance.*
- 4. Meredith Nation, Procurement Supervisor, City of Miami, Department of Purchasing. Questions were posed by Board Members de la O, Kaplan, Moy, Silverman and Dames during the testimony of the Appellant, Meredith Nation.*

The Department rested its case and Attorney Guttman-Valdes moved for a Directed Verdict. Following argument from both attorneys and Board discussion, the Board denied the motion on the basis that although someone other than the Department Director or City Manager signed the Appellant's dismissal letter, uncontested testimony was presented that the Assistant City Manager who signed the letter was given

permission by the City Manager to sign in his stead.

Witnesses for the Appellant appeared in the following order:

1. Kenneth Robertson, Director, City of Miami, Department of Purchasing.
2. Meredith Nation, Procurement Supervisor, City of Miami, Department of Purchasing.

The Appellant rested her case, the Department waived rebuttal, and the Board proceeded to closing arguments that were presented by both attorneys. Following final argument, the Board entered a motion to find the Appellant NOT GUILTY of Charge #1, Civil Service Rule 14.2(h) - Absenteeism without good cause.

Under discussion on the motion, Member Dames stated that Larry Spring (former Interim Director of Human Resources/Chief Financial Officer), who is the key to what happened in this situation knew that the Appellant was at home.

Chairman de la O stated that both Board Members Dames and Silverman see this case very clearly but he sees a lot of gray areas. He went on to say that a part of him says it seems, that Ms. Nation has rollback rights, but there is no guarantee of rollback rights because although it is not a letter from the City but a letter to the City from the Miami-Downtown Development Authority (MDDA) dated April 23, 2008, it supports the fact that Ms. Nation has rollback rights for the letter states, "upon the completion of her loaned-employee tenure, that she would be able to return to a position equal to her present position in the City", which . He went on to say that when an employee have such rights, there is a process to go through, but the process was not exercised in this case and yet month after month, Ms. Nation is sitting at home. Chairman de la O further stated this is a very difficult case.

Member Dames stated that the division Ms. Nation's was assigned to was gone so the Oracle system continued to register her as present so she received a check every two weeks. He went on to say if Ms. Nation would have set back and decided she was going to collect the money and not tell anyone (he would find her guilty), but Mr. Spring knew that she was at home. Chairman de la O responded it is not like this was the only matter Mr. Spring had on his plate so the question is when does it end? He went on to say if the checks did not stop, would Ms. Nation have continued to receive the checks today or at what point does it become ridiculous? Chairman de la O asked at what point is the honest on Ms. Nation to pick up the phone and remind someone that she is still collecting checks? He went on to say after all of this, the City gave me Ms. Nation a job; therefore, he thinks fundamentally part of what is going is that Ms. Nation embarrassed the City not through anything she did, but the City is embarrassed. Chairman de la O further stated it is clear from the testimony presented that the City did not have sufficient controls in place, but maybe the City does now and does this get Ms. Nation off the hook?

Member Kaplan stated he is concerned about whether they as Members of the Board can conclude from watching the Appellant, listening to the Appellant, and reading the documents, that Ms. Nation had the intention to deceive the City by collecting the money unlawfully. He went on to say it is his opinion after watching and listening to the employee and making whatever conclusion the Board thinks he might have made that he read from the Unemployment Compensation report which states, "It is counterintuitive that the claimant would not conclude she had been lost in the employer's system and was doing very little work for a salary." Member Kaplan further stated he did not think it was counterintuitive at all, but very intuitive for the employee to say that she is getting money, doing her best, they know where she is, and that she has contacted people via email so let the City do something to get her a job. He stated Ms.

Nation has been working for the City a long time and is an excellent employee so he trusts her testimony and he did not think she lied unless there is language in any of the listed violations that says just collecting the money constitutes a wrongdoing.

Member Silverman stated he sees the situation as if it was a bank taking someone's deposit and depositing it into Ms. Nation's account so every month that she receives the money, she spends it. He went on to say there is no justifying what the City did; it made a mistake and absolutely screwed things up and Ms. Nation took advantage of the situation. Member Silverman further stated Ms. Nation definitely was absent without good cause because she did not come to work, she did not pick up the phone for months, and suddenly her receiving of the (bi-weekly) check ends otherwise who knows (how long she would have continued to receive the checks if the City had not realized what happened and stopped her checks.) He stated he just did not see it; Ms. Nation received more than \$75,000 for doing nothing because she took advantage of the City's error so he thinks this is a simple case.

Member Dames stated he did not think Ms. Nation was the type of person (Member Silverman described).

Chairman de la O stated that he agreed with Members Kaplan and Dames because he does not think it was a situation where Ms. Nation was trying to steal the money and he was not even sure there was intent, but that does not mean that was the result. He went on to say this situation reminds him of the old saying, "Don't ask for permission ask for forgiveness." Chairman de la O further stated in a sense it was helpful to Ms. Nation not to continue to remind people that she was not working because if she did, then the City had a duty to begin the rollback which could result in a job or separation from the City. He stated when Member Kaplan mentioned that Ms. Nation was letting people know (that she was at home), that was not case because all she was doing was responding to emails. Chairman de la O went on to say that he thinks Ms. Nation was very honest in her testimony and some of it to her detriment because at one point she indicated that she was not contacting Mr. Spring or Employee Relations to remind them that she was collecting checks and not working, but she was only responding to emails in due course and looking for positions.

Member Kaplan stated the only testimony was that the Appellant was told to go home and this testimony was un rebutted. Chairman de la O responded there was testimony that the Director of General Services Administration (GSA) told her to go home and that he would get back to her. Member Kaplan responded the assumption is somebody in charge knew where she was.

Member Moy stated he thinks Mr. Spring could answer a lot of questions for the Board, but he is not present. He went on to say that he thinks Ms. Nation had the opportunity to come forward and let someone from Human Resources or Labor Relations know that she was available and even talk to them about her rollback rights. Member Moy further stated the fact that Ms. Nation did not contact Human Resources or Labor Relations made him think that she relied on Mr. Spring quite a bit to find her a good fit. He stated considering the testimony, there was much talk about finding the right fit so perhaps Ms. Nation was looking for the perfect position to be placed in, but not all the time it works that way so the employee must be willing to take whatever (job) is available even if that meant accepting a lower paying job to provide for her family. He further stated he thinks Mr. Spring protected Ms. Nation and time just lingered until a job was found for her in the Purchasing Department, which he did not understand how Ms. Nation got the job when there was no interview. Member Moy went on to say neither does he think Ms. Nation was a bad employee and nor does he think she was trying to be deceitful, rather he thought she was trying to be smart about the situation and perhaps saw that her option of rolling back would not place her in a position she felt was a perfect fit. He

further stated that he thinks Ms. Nation was under the protective umbrella of Mr. Spring; however, he thinks she needs to repay the money (she received for the period she was not working).

Chairman de la O stated another thought he had while Member Silverman made his point about a bank deposit erroneously deposited in someone else's account, is that when a bank gives a person excess funds, the person cannot be charged with theft, but similarly the Board could find that Ms. Nation had absenteeism without cause, but termination would not necessarily be the answer. He went on to say that to terminate Ms. Nation would be for the City to try to absolve itself of any of the responsibility it had for what happened in this case. Chairman de la O further stated part of what is bothering him is if the Board reinstate Ms. Nation, the City would have to pay her for all the time she has not worked since March 2010. He stated Ms. Nation would not have worked since March 2010 until she was terminated in 2011 until now (that she would receive back pay). Member Kaplan responded that the City had already paid her for that time. Chairman de la O responded his point is Ms. Nation would not have worked and gotten paid and she has not been paid since March 2011 and now she would be owed that money as well. He went on to say that the Board does not have to recommend Ms. Nation be terminated because that is not a requirement.

Member Dames asked if the Board could recommend that Ms. Nation receives no back pay. Chairman de la O responded that the Board can make whatever recommendation it wishes, but his point is maybe that is where the City overreacted and that is part of the point Attorney Guttman-Valdes made which is usually the City lets the employee work out something to repay the money, but instead jumped to terminating her as if the City had no responsibility as to what happened even though the City also dropped the ball in this matter.

Member Kaplan stated that he thinks the Board can make an assumption that something is missing in the City's understanding of its own case by Mr. Spring not testifying. ACA Richard responded that Mr. Spring no longer works for the City, but she did subpoena him to testify; however, he had an emergency where he could not attend so if it is the Board's pleasure to suspend the hearing and hear from Mr. Spring, she can try to arrange this to happen. She went on to say she agree Mr. Spring is the missing link and she wish this hearing would have gone forward when Mr. Spring was still employed but that is the problem with continuances that are granted. ACA Richard further stated she does not have access to witnesses although she did subpoena all of the people who were involved such as Mr. Spring and Basil Binns but unfortunately they no longer work for the City and she has no control over them.

Following discussion, the motion on the floor to find the Appellant NOT GUILTY of Charge #1, Civil Service Rule 14.2(h) - "Absenteeism without good cause" resulted as follows:

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

Aye: Kaplan, Silverman, Dames and Moy

Absent: de la O

The Board entered a motion to find the Appellant NOT GUILTY of Charge #2 - Civil Service Rule 14.2(h) - "Insubordination, Disgraceful Conduct", 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, Dames, Moy and de la O

No: Silverman

The Board entered a motion to find the Appellant NOT GUILTY of Charge #3 - Civil Service Rule 14.2(i) - "Wantonly offensive in Conduct or Language with City Officers of employees", which resulted as follow:

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

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

The Board entered a motion to find the Appellant NOT GUILTY of Charge #4 - Civil Service Rule 14.2(k) - "Inefficient or negligent in the performance of the duties held", which resulted as follow:

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

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

The Board entered a motion to find the Appellant NOT GUILTY of Charge #5 - Civil Service Rule 14.2(p) - "Intentionally falsified a time record or failed to report absence from duty to supervisor", which resulted as follow:

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

Aye: Kaplan, Dames and Moy

No: Silverman and de la O

The Board entered a motion to find the Appellant NOT GUILTY of Charge #6 - Civil Service Rule 14.2(q) - "Absence from duty without leave." Under discussion on the motion, Member Dames stated that he would have voted to find the Appellant guilty of this charge, but after learning the City offered the Appellant a job, this caused him to change his mind.

Following discussion, the motion on the floor resulted as follow:

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

Aye: Kaplan, Dames and Moy

No: Silverman and de la O

Chairman de la O stated the Appellant was found not guilty of all the charges and asked if there were any other matters to come before the Board. Member Kaplan responded that he would like for the Board to reconsider the motion made by the Appellant concerning who signed the letter of discharge. He went on to say that he thinks this matter needs to be reconsidered since the Chairman called for a motion and no motion was made. Member Kaplan further stated that he would like to make a motion that the letter of discharge did not follow the law. Chairman de la O responded what Member Kaplan is asking would basically be to include it in the findings of facts and conclusion of law. He went on to say that he think it is important to know how the Board feels about it.

Cynthia A. Everett, Special Counsel to the Board, asked if the Chairman could repeat what the Board is now discussing. Chairman de la O responded they are discussing whether one of the grounds for the Board's findings should be the fact that Mr. Spring signed the letter as opposed to the City Manager. He reiterated that he thinks it would be helpful in terms of the findings of fact for the Board Members to state their opinions

on the matter. Chairman de la O stated his opinion is there definitely can be a designee because the Civil Service Rules does not say there cannot be a designee or that it is an irrevocable power of the City Manager and the only testimony (that was not rebutted) is there was such as designation. He went on to say that he also does not think that the purpose of the Rule 14.1(a) is if the right person does not sign (disciplinary actions), but the power to do these things lies with Department Directors and the City Manager and not anyone else so he does not view this like signing the bottom of a ticket wherein if the police officer does not sign the ticket, it gets thrown out of court.

Chairman de la O asked if there was any other discussion on this matter. Diane Laurent, Civil Service Board Staff, reminded the Board that at a previous hearing the issue of designation came up and the Board ruled that because there was designation provided by the City Attorney to allow the second in command to sign in her behalf, the letter was proper. Chairman de la O stated that he recalled the case and the Board did agree that the letter was proper.

Following discussion, the Board entered a motion to include in the findings of fact that the disciplinary letter issued to the Appellant did not meet the requirements of law, which resulted as follows:

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

Aye: Kaplan and Dames

No: Silverman, Moy and de la O

Following the failed motion, Chairman de la O stated that the information about the disciplinary letter not being lawful, would not be included into the findings of fact report.

Member Dames stated what he would like to have included in the Board's recommendations is in the event the Appellant is reinstated no back pay shall be awarded. Chairman de la O asked if Member Dames' recommendation was lawful. Special Counsel Everett responded whatever the rules are is what the City will follow. Chairman de la O asked the department's attorney if she believed the recommendation to be lawful. ACA Richard responded that she did not know and that it never happened before. She went on to say that she has been with the City almost a year and has suffered many defeats so she just has to say for the record that this case by far is the most disappointing because the message the Board is sending to employees is not a good one. ACA Richard further stated that it has never been where she has seen the Board find an employee not guilty, exonerates the employee, and the employee does not get the back pay unless Ms. Nation is willing to stipulate or there is a recommendation to the City Manager that she does not get the back pay.

Chairman de la O asked the employee's attorney if she believes Member Dames' recommendation is lawful. Attorney Guttman-Valdes responded that she did not think the Board could include in its order about there being no back pay awarded because once the employee is found not guilty, then all of the commensurate things happen. She stated that she does not know what the City Manager is going to do, but her client has represented and she will continue to represent that they are willing to sit down and negotiate a fair resolution for the City's mistake.

Following discussion, the Board entered a motion to recommend to the City Manager that the Appellant receives no back pay for the period of March 23, 2011 to October 18, 2011. Under discussion, Member Silverman stated that the Board has no authority to recommend no back pay which is the reason he will not support the motion. Chairman de la O responded that he agreed with Member Silverman. He went on to say if someone was able to tell him that it was lawful, he would vote in favor of the motion, but

he does not think it is. Member Dames stated how he sees it if an employee is found not guilty in a different forum and it took three years to exonerate the employee, when that employee returned to work, the City decides that it will not award back pay which he feels is the same thing that is being recommended now. He went on to say that he believes the Appellant agrees (that she should not be awarded back pay) and just wants to get her job back. Member Dames further stated that he also sees it as a wash if no back pay is awarded because the time period from which she received the checks (while at home) is about the same number of months that she would be owed back pay.

Member Kaplan asked Member Dames if he was willing to amend his motion assuming the Board's Special Counsel finds that the Board has the power not to award back pay. Chairman de la O responded it is not whether the Board has the power to do so but whether the City Manager has the power not to award back pay. Member Dames responded in that case he would be willing to amend his motion. Chairman de la O responded that he would agree with the motion if language read, "Assuming the City Manager has the power, the Board recommends no back pay." Member Dames responded that he had no problem amending his motion to the wording spoke by the Chairman.

Following discussion, the Board voted on the amended motion to recommend no back pay to the Appellant if the City Manager has the power to do so, which resulted as follows:

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

Aye: Kaplan, Dames, Moy and de la O

No: Silverman

H.3

Hearing of Appeal on behalf of Vernell Reynolds, Police Officer (former), relative to her termination, effective July 25, 2011. (DISCUSSION)

Teri Guttman-Valdes, Attorney on behalf Vernell Reynolds, stated that the criminal matter related to the termination is still pending so she is asking for a continuance of her client's hearing.

Chairman de la O asked for the department's position on the continuance request. ACA Richard stated that she did not have an objection to the continuance as long as the employee signs the waiver of pay and emoluments form for the accrued time of the pendency of the criminal investigation because she did not want to wait two years from now (before the case is heard and have to award back pay if the Appellant were win her case). She went on to say that the Executive Secretary has the form prepared for the employee or her attorney to sign to waive any time that would be owed during the time of the continuance.

Attorney Guttman-Valdes responded that it is not a criminal investigation but criminal charges. She went on to say that she could send the document to Officer Reynolds because she could not sign it today without her knowledge, but she is sure it would not be an issue.

Chairman de la O stated that he thinks this matter needs to be set for the next meeting to get Officer Reynolds' position on the waiver of pay.

Following discussion, the Board entered a motion to grant Officer Reynolds' request for a continuance and that she is not awarded back pay from October 18, 2011 until the time her hearing is rescheduled. The motion resulted as follows:

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

Aye: Dames and de la O

No: Kaplan, Silverman and Moy

The Board entered a motion to grant Officer Reynolds' request for a continuance, which resulted as follows:

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

Aye: Kaplan, Silverman and Moy

No: Dames and de la O

Following the vote, ACA Richard stated that she respects the Board's vote, but is the Board saying that over the City's objection, an employee can continue a case for years and the City is required to award the employee back pay when it is the employee that requested a continuance of her hearing. Member Kaplan stated there are unique circumstances in this case. Chairman de la O stated the Board has voted on the motion; therefore, he would suggest that the next time a continuance is requested, the matter of waiving pay and emoluments would be considered.

DISCUSSED

ADJOURNMENT:

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

Motion by Member Silverman, seconded by Chairperson de la O, to APPROVED. PASSED by the following vote.

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

The meeting ADJOURNED at 4:22 p.m. Breaks were taken at 11:32-11:44 a.m, 1:04-1:37 p.m. (LUNCH), and 2:49 -3:07 p.m.

SIGNATURE:

Miguel M. de la O, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary