

# **City of Miami**

*City Hall  
3500 Pan American Drive  
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[www.miamigov.com](http://www.miamigov.com)*



## **Meeting Minutes**

**Tuesday, October 30, 2012**

**10:00 AM**

**Commission Chambers**

### **Civil Service Board**

*Gerald Silverman, Chairperson  
Sean Moy, Chief Examiner  
Carlos Lago, Board Member  
Lillie Harris, Board Member  
Christine Gomez, Board Member*

**PLEDGE OF ALLEGIANCE**

*The meeting was called to order at 10:04 a.m. The roll call at the commencement of the meeting was as follows:*

**Present:** Member Lago, Chairperson Silverman, Chief Examiner Moy, Member Harris and Member Gomez

**A. APPROVING THE MINUTES OF:**

Regular Meeting of October 16, 2012.

*The Board entered a motion to APPROVE the minutes of October 16, 2012 which resulted as follows:*

**Motion by Chief Examiner Moy, seconded by Member Harris, to APPROVE. PASSED by the following vote.**

**Aye:** Silverman, Moy, Gomez, Lago and Harris

**B. PERSONNEL MATTERS**

- B.1** Copy of a letter from Beverly Pruitt, Director, Department of Human Resources, confirming Mary Leckband's, Assistant Director, Department of Human Resources, voluntary return to her former classification of Organizational Development and Training Specialist, Department of Human Resources, effective October 19, 2012. (NOTIFICATION)

**NOTIFIED**

- B.2** Copy of a letter from Beverly Pruitt, Director, Department of Human Resources, notifying Steven Margolis, Principal Staff Auditor, of the reclassification of his position to Staff Auditor. (NOTIFICATION)

**NOTIFIED**

**C. MILITARY LEAVES OF ABSENCE**

- C.1** John Perez, Police Officer, requests retroactive Duty Military leave without pay from December 9, 2011 through January 11, 2013. Copy of orders submitted. (DISCUSSION)

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

**Aye:** Silverman, Moy, Gomez, Lago and Harris

- C.2** John Perez, Police Officer, requests Active Duty Military leave extension up to 12 additional months beyond January 11, 2013. Copy of orders submitted. (DISCUSSION)

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

**Aye:** Silverman, Moy, Gomez, Lago and Harris

**D. DISCIPLINARY MATTERS**

- D.1** Copy of a letter from Lillian Blondet, Director, Office of Grant Administrations, notifying Harry James, Environmental Compliance Coordinator, of his three (3) day suspension, effective October 24, 2012. (NOTIFICATION)  
**NOTIFIED**
- D.2** Copy of a letter from Chief Manuel Orosa, Department of Police, notifying Osmar Martinez, Police Officer, of his 10-hr suspension, effective September 30, 2012 and a copy of a request to appeal from Officer Martinez. A hearing of appeal will be scheduled in accordance with Civil Service Rules and Regulations. (NOTIFICATION)  
**RECEIVED AND FILED**
- D.3** Copy of a letter from Chief Manuel Orosa, Department of Police, notifying Osmar Martinez, Police Officer, of his 40-hr suspension, effective October 25, 2012. (NOTIFICATION)  
**NOTIFIED**
- D.4** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Raul Valdes, Police Officer, of his 10-hour forfeiture, effective October 11, 2012. (NOTIFICATION)  
**NOTIFIED**
- D.5** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Dayanna Frederick, Police Officer, of her 20-hour suspension, effective October 19, 2012. (NOTIFICATION)  
**NOTIFIED**
- D.6** Copy of a letter from Angel Zayon, Chief Communication Officer, Office of Communications, notifying Cesar Nunez, Videographer/Editor, of his termination, effective October 9, 2012 and a copy of a request to appeal from Michael Braverman, Attorney. A hearing of appeal will be scheduled in accordance with Civil Service Rules and Regulations. (NOTIFICATION)  
**RECEIVED AND FILED**
- D.7** Copy of a letter from Keith Carswell, Director, Department of Solid Waste notifying Chadrick R. Brunson, Waste Collector, of his termination/abandonment of position, effective immediately. (NOTIFICATION)  
**NOTIFIED**

- D.8** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Andrew Soto, Police Officer, of his 80-hour suspension, effective October 19, 2012. (NOTIFICATION)
- NOTIFIED**
- D.9** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Andrew Soto, Police Officer, of his termination, effective November 2, 2012. (NOTIFICATION)
- NOTIFIED**
- D.10** Copy of a letter from Keith Carswell, Director, Department of Solid Waste, notifying Angelo Perry, Waste Equipment Operator, of his three (3) day suspension, effective October 8, 2012. (NOTIFICATION)
- NOTIFIED**
- D.11** Copy of a letter from Chief Maurice Kemp, Director, Department of Fire-Rescue, notifying Michael Mesa, Lieutenant, of his 24hr forfeiture, effective January 13, 2013. (NOTIFICATION)
- NOTIFIED**
- D.12** Copy of a memorandum from the City Manager accepting the Report from the Board and advising no further action is needed concerning the Grievance Hearing of Min-Li Nar, former Process Design Analyst, pursuant to Rule 16.1 and 16.2, alleging a violation of Rule 12. (NOTIFICATION)
- NOTIFIED**

## **E. GENERAL ITEMS**

- E.1** Notice of a Request to Withdraw from Michael Braverman, Attorney, on behalf of Alan Blonder, Administrative Aide, relative to his three (3) day suspension, effective June 12, 2012, (NOTIFICATION)
- Case will be removed from the Board's docket; hearing of appeal was scheduled for today.
- NOTIFIED**
- E.2** Notice of a Request to Withdraw from Sheana Haslem, Clerk I, relative to her 160-hr suspension, effective June 25, 2012. (NOTIFICATION)
- Case will be closed and removed from the Board's docket; hearing of appeal was scheduled for today.
- NOTIFIED**

**E.3**

Copy of a Report concerning the Grievance Hearing of Frank Rodriguez, former Building Inspector I, pursuant to Rule 16.2, alleging a violation of Rule 12.1, as it concerns a violation of Rule 12, Layoff, Resignation, and Reinstatement. (DISCUSSION)

Deferred from the meeting of October 16, 2012.

*The Board entered a motion to APPROVE the Findings of Fact and Recommendation Report as amended. The motion resulted as follows:*

**Motion by Chief Examiner Moy, seconded by Member Gomez, that this matter be APPROVED. PASSED by the following vote.**

**Aye:** Silverman, Moy, Gomez, Lago and Harris

**E.4**

Copy of a Report concerning the Grievance Hearing of Alejandro Pascual, former Building Inspector I, pursuant to Civil Service Rule 16.2, concerning a violation of Rule 12, Layoff, Resignation, and Reinstatement. (DISCUSSION)

Deferred from the meeting of October 16, 2012.

*The Board entered a motion to APPROVE the Findings of Fact and Recommendation Report as amended. The motion resulted as follows:*

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

**Aye:** Silverman, Moy, Gomez, Lago and Harris

**E.5**

Motion to Dismiss or in the Alternative to Schedule an Investigation Hearing or in the Alternative for a Continuance from Jon Kreger, Attorney, Ronald J. Cohen, P.A., on behalf of Daniel Fernandez, Police Officer, relative to his termination, effective November 6, 2010. (DISCUSSION)

Hearing of Appeal is scheduled for December 11, 2012.

*Jon Kreger, Attorney on behalf of Daniel Fernandez, stated that it is unfortunate he is before the Board again in reference to documents he did not receive pursuant to a public records request. He went on to say that he did not know if everyone had an opportunity to read the motion he submitted, but it speaks for itself.*

*Chairman Silverman stated that he read Attorney Kreger's motion and wished to hear from opposing counsel. ACA Richard responded that she received Attorney Kreger's Motion less than two weeks ago and she was not aware of any issues pertaining to the Police Department or the Internal Affairs Unit failing to respond to Attorney Kreger's public records request. She went on to say that a phone call from Attorney Kreger would have been nicer than a Motion to Dismiss but she supposes that is how he practices law. ACA Richard further stated that Detective Benitez is present to testify that the documents were in fact turned over to Attorney Kreger last week.*

*Chairman Silverman asked Attorney Kreger was it true that he now had everything he needed (since the Internal Affairs Unit complied with his public records request.) Attorney Kreger responded that he was not going to go on the record and say they received everything they requested. He went on to say that it was communicated to him last Thursday that (Internal Affairs) was making copies of everything it had in its files but he had not had a chance to read through the documents. Chairman Silverman asked Attorney Kreger again if he received everything from Internal Affairs that he needed to*

prepare for his case. Attorney Kreger responded that he was not sure whether he received everything he requested; however, he did receive documents from Internal Affairs which was a start. Chairman Silverman stated that Attorney Kreger submitted a Motion to either dismiss his client's case, schedule an investigation, or continue the hearing so he would like to know from Attorney Kreger what he wanted the Board to do with his Motion now that he received the documents he requested from Internal Affairs. Attorney Kreger responded in the event Internal Affairs did provide all of the documents he requested, the underlined problem is still apparent that Internal Affairs did not provide everything (documents) in a reasonable fashion. He went on to say that it was about 18 months ago since the incident (involving his client) so he did not know how many times he had to follow-up (with the department concerning the documents.) Attorney Kreger further stated that he represented Officer Candace Jones about three months ago and the department did not provide the video (he requested via a public records request) until the day of her scheduled hearing and the same thing probably would have happened with Officer Fernandez' case if he did not make this Motion that is before the Board today. He stated that he thought it was still within the Board's power to dismiss Officer Fernandez' case because of the department's failure to provide documents within a reasonable time frame. Attorney Kreger went on to say that in the event he makes the determination that there are still more documents (he did not receive) he could then file another Motion to see if the department had any more documents but ultimately if the Board denies both of the Motions (dismiss case or schedule investigation), then considering there is still a criminal case pending and now a new Civil case, he would ask the Board to continue the case.

Chairman Silverman asked Attorney Kreger for the status of Officer Fernandez' criminal case. Attorney Kreger responded it was his understanding that they were still trying to take depositions but a couple of the witnesses are apparently transients so they have been unable to subpoena them. He went on to say that the Civil case was filed in mid-September and they just filed the answer to this case about a week ago. Chairman Silverman stated he was only interested in the criminal case and asked if it was set for trial. Attorney Kreger responded that he was not sure because his office was not handling the criminal case.

Chairman Silverman asked ACA Richard for her position on continuing Officer Fernandez' case based upon his pending criminal case. ACA Richard responded that she thought it was already agreed to continue the case because Officer Fernandez signed a waiver indicating that he would not ask for back pay during the time his criminal case was pending. She went on to say that the Board has heard today about this added layer of there now being a civil case that was recently filed; however, historically, it has been the practice to continue cases until a pending civil case relating to the same underlining facts was resolved. Chairman Silverman asked counsel whether she agreed or had an objection to continuing Officer Fernandez' case. ACA Richard responded she had no objection.

Following discussion, the Board entered a motion to grant the employee's request for a CONTINUANCE which resulted as follows:

**Motion by Chief Examiner Moy, seconded by Member Harris, that this matter be APPROVED. PASSED by the following vote.**

**Aye:** Silverman, Moy, Gomez, Lago and Harris

#### E.6

Notice of a Settlement Agreement relative to the Appeal hearing of Eddy Rodriguez Jr., Police Officer, concerning his 40-hour forfeiture, effective February 4, 2010. (DISCUSSION)

*The Executive Secretary stated that she received a signed copy of the settlement this morning so no action was required by the Board.*

**NO ACTION TAKEN : Case will be closed and removed from the Board's docket.**

## **F. REPORTS**

**F.1** Pending Hearings as of October 30, 2012. (NOTIFICATION)

**PRESENTED**

## **G. REQUESTS FOR HEARINGS**

## **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.

*Prior to entering into Glen Marcos' case, Chairman Silverman asked the Board's Special Counsel to advise the Board as to the procedures to be followed since this is a whistleblower case. Cynthia A. Everett, Special Counsel to the Board, responded that this Board has been deemed by the Courts to be an appropriate entity to hear whistleblower complaints. She went on to say that essentially the Board will be conducting a Rule 16.2 hearing by listening to the evidence. Special Counsel Everett further stated the issue is whether or not retaliatory personnel action has been taken against a particular employee for an action the employee has taken such as reporting a wrongdoing by the governmental agency and in turn the governmental agency looks at the employee's allegation and takes some type of disciplinary action (i.e. dismissal, suspension, fine) against the employee that might be available to the government. She stated the Board upon hearing the evidence, asking questions, and listening to witness testimony will make findings of fact and conclusion of law which will be presented to the City Manager who would ultimately make a decision.*

*For clarification purposes, Chairman Silverman asked if the Board would be making a recommendation to the City Manager. Special Counsel Everett responded that is what she would recommend. She went on to say that the Whistleblower Statute speaks to findings of fact and conclusion of law, the courts cases have cited to Civil Service Rules 16.1 and 16.2 procedures which provide for reports and recommendations so she would recommend submitting findings of fact, conclusion of law, and a report to the City Manager.*

*Chairman Silverman asked Attorney Berkowitz if he wished to make an opening statement. Attorney Berkowitz responded that before making his opening statement, he would like to provide a point of information. He went on to say that he would ask that the procedures be bifurcated as to liability and damages in that if a determination is made that there is liability, they be allowed a subsequent date to submit documentation as to damages.*

*Chairman Silverman asked opposing counsel for his position on Attorney Berkowitz' request of bifurcating the hearing. ACA Jones responded that it was unnecessary to bifurcate the hearing. He went on to say that this is a Rule 16.1 hearing for which the Board would be making a recommendation to the City Manager so there is no need for Attorney Berkowitz and his client to return on a subsequent date to ask for money, etc. because all the Board can do is make a recommendation. ACA Jones further stated there was no reason the Board could not hear Mr. Marcos' case in its entirety today*

*because it was his understanding that this case has been pending for two years. He stated whatever preparation Attorney Berkowitz needed to make over the past 24 months in order to tell the Board what his client needs or thinks he wants should have already been done so he would object to bifurcating this hearing. ACA Jones went on to say that there was only one witness on both sides so they should be able to get this case completed expeditiously.*

*Attorney Berkowitz stated with all due respect, the City did not promptly respond to his public records request. He went on to say that he submitted the public records request in February, heard nothing from the City for months, and all of sudden sometime in October he was told the records were available on a hard-drive for him to pickup. Attorney Berkowitz further stated he was asking for the bifurcation merely for the convenience of the Board because it would be no need to go forward with damages if the Board found against his client. He stated he thought it was perfectly logical that if the City Manager were to give findings of fact and a recommendation in his client's favor, that they would then be allowed to submit evidence on damages. ACA Jones reiterated that Mr. Marcos' case has been pending for 24 months and whether public records had suddenly become an issue could not possibly relate to any aspect to damages. He went on to say that Mr. Marcos is going to either ask the Board for money or to reinstate him either of which could have been requested well before today or before he received the public records request. ACA Jones further stated he certainly was not accusing Attorney Berkowitz or his client of lobbying, but the only thing that could possibly come from the Board finding in Mr. Marcos' favor and then delaying it for sometime would be to give them an opportunity to do just that. He stated there was no reason this Board could not hear Mr. Marcos' case in its totality today.*

*Chairman Silverman suggested that the Board proceed with the case and advised Attorney Berkowitz that he would be given an opportunity to proceed with his motion.*

*The Board entered into the scheduled hearing of Glen Marcos, the Complainant.*

*Mark Berkowitz, Attorney at Law, represented the Complainant.*

*Kevin Jones, Assistant City Attorney, represented the City.*

*Both attorneys presented opening statements which was followed by the calling of the Complainant's witnesses. Witnesses for the Complainant appeared in the following order:*

- 1. Glen Marcos, former Director, City of Miami, Department of Purchasing. Questions were posed by Board Members Moy and Harris during the testimony of Glen Marcos.*

*Prior to ACA Jones' cross-examination of Mr. Marcos, Attorney Berkowitz renewed his Motion to bifurcate his client's hearing if in fact a ruling is made in favor of Mr. Marcos that they be allowed to submit any financial records or documentation at a later date concerning his present employment.*

*Chairman Silverman asked for the City's position on the employee's renewed motion. ACA Jones responded the only thing the Board can do is make a recommendation to the City Manager to bring Mr. Marcos back as an employee in order to right some sort of employment decision that was made. He went on to say that he would like to lean on the side that the Board cannot request the City Manager pay Mr. Marcos money outside of bringing him back as an employee so if Attorney Berkowitz and his client are headed towards asking for a sum of money, he did not think this was a remedy the Board could give even under the best set of circumstances. Chairman Silverman interjected and stated all the Board does is make a recommendation to the City Manager and asked*



why the Board could not recommend a relief for the employee assuming that is the Board's result. ACA Jones responded the Board's result would be to reemploy Mr. Marcos. For clarification purposes, Chairman Silverman asked whether the Board could recommend compensating Mr. Marcos for his loss since this is a whistleblower complaint. ACA Jones responded without some vehicle driving the payment, the Board could not recommend compensation. He went on to say this was the first in a whistleblower claim that he heard someone asking for money. ACA Jones further stated without some vehicle or mechanism, the Board would not be able to justify writing Mr. Marcos a check. ACA Jones further stated this case had been going on for 24 months and that Mr. Marcos was unemployed for 8 of those months so there definitely was no reason and nor had the Board heard any reason they could not get their numbers together over the past two years. He stated that they are in the middle of this hearing and Attorney Berkowitz wants to delay the case again so that he and his client can put some numbers together which they should have been prepared to do today since this case began in 2010.

Without objection from Board Members, Chairman Silverman DENIED the employee's motion to bifurcate the hearing and suggested that Attorney Berkowitz put on his case for damages at today's hearing. Following Attorney Berkowitz' presentation of damages, the Board took a break. Following the break, Member Lago recused himself from the hearing.

ACA Jones continued with cross-examination of Mr. Marcos. Subsequent to cross-examination of the only witness, Glen Marcos, both the Complainant and the City rested their case. The Board then proceed to closing argument which was presented by both attorneys. Following final argument, Board discussion took place.

Member Harris stated she did not feel Mr. Marcos met the burden of a whistleblower claim. She went on to say that when you talk about temporal proximities of the situations that Mr. Marcos raised, she did not see the connection of what led up to Mr. Marcos' termination; however, she did see more clearly the temporal proximity regarding the City's case particularly as it related to the Police Department's Mural Project and it being revenue producing which she thought was a key point. Member Harris further stated even if the Complainant felt there was a whistleblowing situation, she did not think it was in the Board's power, as Mr. Marcos put it, to give him the remedy that he is seeking. She stated that she also did not think it would be a good recommendation to the current City Manager to overturn a former City Manager's decision. Member Harris went on to say that Mr. Marcos worked at the pleasure of the City Manager so the City Manager can terminate Mr. Marcos without cause and hire whomever he wants as well. She reiterated that she did not think the Complainant met his burden.

Chairman Silverman stated that Mr. Marcos was the Director of the Purchasing Department so he was not covered under the Civil Service Rules rather he served at the pleasure of the City Manager. He went on to say that the City Manager does not have to give a cause for the termination as long as it is not illegal because that is not how it works. Chairman Silverman further stated in his opinion the Complainant had insufficient evidence to support a whistleblower claim. He stated that he thinks the Board should recommend to the City Manager that no remedy is necessary because the Complainant did not meet his burden.

Following discussion, the Board entered a motion to report to the City Manager that the evidence does not support a whistleblower claim and that no further remedy is necessary, which resulted as follows:

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

**Aye:** Silverman, Gomez and Harris

**No:** Moy

**Abstain:** Lago

## H.2

Grievance Hearing on behalf of Ricardo Novas, Broadcast Engineer, pursuant to Rule 16.2, concerning a violation of Rule 12, Layoff, Resignation, and Reinstatement.

*Chairman Silverman asked both attorneys if they were prepared to go forward with their case today. Attorney Braverman responded in the affirmative and stated he had four witnesses that would be testifying. ACA Richard stated that two of her witnesses are unavailable today because they are on vacation. She went on to say that she spoke to Attorney Braverman thinking that if the Board were to finish Mr. Marcos' case today and begin with Ricardo Novas' case, she did not think the Board would have time to hear the testimony of all four of Attorney Braverman's witnesses plus her three witnesses.*

*Chairman Silverman asked ACA Richard if she was asking for a continuance. ACA Richard responded in the negative. She went on to say her position was that if the Board were to finish Glen Marcos' case today and subsequently entered into the hearing of Ricardo Novas that the Board would not get to finish Mr. Novas' case today. Chairman Silverman asked Attorney Braverman for his position on the matter of continuing his client's hearing. Attorney Braverman stated that ACA Richard accurately related their conversation that if the Board were to start Ricardo Novas' case that it probably would not get to finish it today. He went on to say the only thing he would not want to do (if the Board were to start Novas' case) is rest his case today and then continue the hearing. Chairman Silverman responded that he did not want to try cases in a piece-meal fashion so the Board was not going to start Mr. Novas' case unless it could finish it today. He went on to say that it appeared the City wanted to continue this case so he needed to know Attorney Braverman's position. Attorney Braverman responded that his client wants to go forward today along with a lot of other people but ACA Richard has been gracious and professional with him so he did not want to say something contrary to his client's representation or what they would like him to do. He went on to say that he is prepared to go forward but he did speak to ACA Richard and he knows that she has an issue with witnesses so he was in agreement with the process he and ACA Richard spoke about. Attorney Braverman further stated if the Board was not willing to start the case (unless it could finish it today), the only thing he could do is take a few minutes to speak to his client about continuing his case and advise the Board.*

*Chairman Silverman stated that Mr. Novas wants to go forward with his case today and asked ACA Richard if she wanted to request a continuance. ACA Richard responded that she still proposes what she proposed earlier. She went on to say that Attorney Braverman has the burden of proof so he can put on his case and then continue the hearing because the Board will not have sufficient time to finish the case. ACA Richard further stated she understood the Board does not want to start Mr. Novas' case unless it can finish today but she would say that her witnesses' testimony would be short but crucial and that the witnesses she is referring to are Daniel Fernandez, Budget Director and Ricardo Martinez who is Supervisor of the Classification & Pay Division. She went on to say she thinks a fair compromise would be to start Attorney Braverman's case in chief if the Board has time, Attorney Braverman could then rest his case, and she could then call her witnesses at the next meeting since her witnesses will be available at that time. ACA Richard further stated if this was not workable for the Board, she would have to agree to a continuance.*

*Chairman Silverman asked Attorney Braverman for his position. Attorney Braverman responded that he had no problem with the proposition ACA Richard presented to the Board with regards to breaking up the case but he would not rest today because he would like to keep his case in chief opened until the case is rescheduled so that he has the ability to complete the hearing and there is some continuity.*

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*Following the lunch break, Chairman Silverman stated that Attorney Braverman had information he wished to relate concerning Ricardo Novas' case. Attorney Braverman stated that given the length of Mr. Novas' case and some of the constraints they have with witnesses, at this point he would respectfully ask for a joint continuance and reschedule his client's case to a date certain of November 27, 2012 which he believed could be heard on that date.*

*Following discussion, the Board entered a motion to approve a JOINT CONTINUANCE of Ricardo Novas' hearing which resulted as follows:*

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

**Aye:** Silverman, Moy, Gomez, Lago and Harris

**ADJOURNMENT:**

*The meeting ADJOURNED at 3:46 p.m. Breaks were taken at 10:31 - 10:42 a.m., 11:51-12:02 p.m.; 12:39 - 1:32 p.m. (LUNCH) and 3:13 - 3:22 p.m.*

**SIGNATURE:**

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**Gerald Silverman, Chairperson**

**ATTEST:**

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**Tishria L. Mindingall, Executive Secretary**