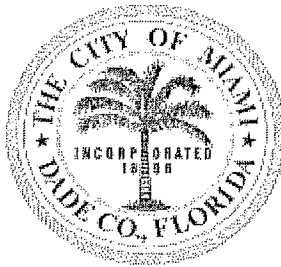


City of Miami

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Meeting Minutes

Tuesday, December 13, 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 10:05 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 November 29, 2011.

Motion by Member Silverman, seconded by Member Moy, 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 Yatha Legrand, Police Officer, of her 100-hour suspension, effective December 1, 2011. (NOTIFICATION)

NOTIFIED

E. GENERAL ITEMS

- E.1** Hearing of appeal on behalf of Javier Gonzalez, Police Officer, relative to his 20-hour suspension, effective June 1, 2006. (DISCUSSION)
Rescheduled pursuant to continuance policy; pending settlement since July 26, 2011. Deferred from the meeting of November 29, 2011.

Jon Kreger, Attorney at Law on behalf of Officer Gonzalez, stated that the language in the settlement agreement was finalized last week and he provided ACA Richard with a copy of the signed agreement; therefore, this matter is resolved.

NO ACTION TAKEN : Case will be closed and removed from the Board's docket upon receipt of written settlement agreement or rescheduled in accordance with the Board's Continuity Policy.

- E.2** Status Update concerning the 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 Glenn Marcos, stated that he received confirmation from the Florida Department of Law Enforcement that Mr. Marcos can testify regarding his termination at his hearing so he would ask that his hearing be scheduled within the first quarter of 2012.

DISCUSSED : Chairman de la O instructed the Executive Secretary to schedule Mr. Marcos' hearing according to the Board's schedule.

E.3

Copy of Findings of Fact in the Appeal Hearing of Meredith Nation, Procurement Supervisor (former), relative to her termination, effective March 23, 2011. (DISCUSSION)

Deferred from the meeting of November 1, 2011.

Chairman de la O asked that the Board be brought up to speed. Cynthia A. Everett, Special Counsel to the Board, stated the last time the Board visited this matter (approval of the Findings), Member Kaplan requested a reconsideration of the Board's vote. She went on to say that she provided her opinion as to procedures the Board should follow and the Board voted to defer the item to allow counsels for the employee and the department to present their positions on how the Board should proceed.

Chairman de la O asked the employee's attorney if she wished to present her position first. Teri Guttman-Valdes, Attorney at Law on behalf of Meredith Nation, responded in the affirmative and stated that pursuant to Chapter 36, subsection (d), of the Miami City Charter and Section 40-124 of the City Code, the Board is given authority to enforce rules and a description of the manner in which the Board conduct hearings. She went on to say that according to Civil Service Rule 14.4(g), the Board is free to make its determination of the appellant's innocence or guilt and then move to the penalty phase; however, the Board has taken it a step further with its rule making authority and generated a Manual of Procedures which do not have the full force and effect of the City Code but they are under the Board's rule making authority. Attorney Guttman-Valdes stated it is their position that the Board does not have the authority to press a rewind button and change its mind after the hearing has concluded. She went on to say there is no record of the Board having adopted Robert's Rules of Order and it is their position and understanding that unless the Board adopts these rules, it has to follow its own rules, the Civil Service Rules. Attorney Guttman-Valdes further stated according to the Board's November 1, 2011 minutes, the motion was noticed as a Motion to Reopen; however, under Robert's Rules, there is no such thing, but there is a Motion to Reconsider. She stated it is their position that to reconsider a matter under Robert's Rules the action would have had to be taken up at the same meeting (when the vote took place) and because this did not occur, they believe the Board is simply without authority, the Board would be violating its own rules if the votes are changed, and they also believe any change to the votes would be invalid, illegal, and not enforceable.

Chairman de la O asked for the department's position. Janeen Richard, Assistant City Attorney (ACA), responded it is their position that the Board does have authority to hear this matter. She went on to say that the Civil Service Rules are silent on whether or not the Board can reconsider the matter and she believes precedent has been set by this Board in the past in that it reconsidered a previous vote. ACA Richard further stated opposing counsel is right when she said a Motion for Reconsideration has to be done at the same meeting, but what has been done before this Board is a Motion to Rescind. She stated that Robert's Rules of Order is clear and she has an Attorney General's opinion that states a Motion to Rescind can be made at any subsequent meeting and does not have to be made at the meeting in which the vote actually occurred. ACA Richard read a portion of the Attorney General's opinion which states, "A Motion to Rescind can be made at any subsequent meeting as long as there is no action that cannot be undone." She went on to say that nothing has happened in this case because while a vote was taken, nothing was reduced to findings so there is nothing that cannot be undone by this Board. She reiterated that a Motion to Rescind is proper under Robert's Rules of Orders which has been the practice of the Board although she does not believe Robert's Rules of Order was adopted by the Board based upon a comment made by the Chairman at the November 1, 2011 meeting. ACA Richard reiterated that the vote can be undone and the employee will not be prejudiced.

For clarification purposes, Chairman de la O asked if it is the department's position that as long as the City Manager has not acted on the Board's recommendation or findings of fact, the Board could move to rescind anything short of that? ACA Richard responded in the affirmative and clarified that in this case, no findings have been issued by the Board and the Board is two steps before this case would go to the City Manager; therefore, it would be appropriate under Robert's Rules of Order to move to rescind the prior vote. Chairman de la O stated the reason he asked the question of ACA Richard is because he is not going to vote on the motion based upon what he thinks of Ms. Nation's case. He went on to say at the end of the day whatever decision the Board makes today is going to carry consequences in the future because the next time the roles might be reversed. Chairman de la O further stated that the Board needs to make a decision that is neutral with regards to Ms. Nation because it is not about her, rather at this level it is about the process the Board is going to adopt.

Chairman de la O asked ACA Richard if she could relate a time when the Board reconsidered its finding since she mentioned the Board took this action in the past? ACA Richard responded it occurred prior to her tenure with the Board, but it is her understanding that it has been done before based upon conversations with the Board's counsel. Chairman de la O asked Special Counsel Everett if she could relate a time when the Board reconsidered its findings? Cynthia A. Everett, Special Counsel to the Board, responded as she sits today she cannot think of an example. She went on to say concerning ACA Richard's comment that she learned about the Board's reconsideration of its finding in the past through a conversation they both had, she could only offer that perhaps ACA Richard would have to refresh her memory because if they did have this conversation, it may have been something that predated her tenure with the Board. Special Counsel Everett further stated since she could not recall any examples, she would have to defer to the Executive Secretary for a historical recitation of what this Board may or may not have done (with regards to reconsideration of findings). The Executive Secretary responded that at one time the Board had as part of a grievance hearing, a reconsideration of the findings; however, there was not a change in the vote, but in the finding. Chairman de la O responded that is something the Board does all the time with grievance hearings. For clarification purposes, the Executive Secretary responded what she is saying is that, for example, the Board found that there was no violation of a Rule, but at a subsequent meeting that finding was changed to there being a violation of the rule, but the vote was not changed.

Chairman de la O asked Attorney Guttman-Valdes if she wished to respond to the department's argument. Attorney Guttman-Valdes responded in the affirmative. She stated that a Motion to Rescind was not made so this is not an issue before the Board. Attorney Guttman-Valdes went on to say there was a Motion to Reconsider which was called a Motion to Reopen which does not exist under Robert's Rules so it is being treated as a Motion to Reconsider. Chairman de la O stated that literally today the Board can make whatever motion it wants as long as it is lawful. Attorney Guttman-Valdes stated that the motion has to also be made in accordance with the Civil Service Rules and she does not believe the rule provides for this action. She went on to say that the example provided by the Executive Secretary applied to Rule 16 whereas her client's case applies to Rule 14 hearings. Attorney Guttman-Valdes further stated that she has defended cases before the Board since 1998 and she has never seen the Board change its vote.

ACA Richard stated this is a little different because it is not the attorneys asking that the vote be changed rather the motion was made by a Board Member so their position is that under Robert's Rules of Order a Motion to Rescind can be made by a Board Member if the person is on the winning side of the vote, which in this case was Member Kaplan. She went on to say that at the November 1, 2011 meeting there was discussion about the issue of there not being any notice and under the Motion to Rescind section of

Robert's Rules of Order, the Board would have to give a certain amount of notice to the other side before it can proceed with the Motion to Rescind and everyone at that time agreed that Ms. Nation would not have been given proper due process if that motion had to be heard the day it was made, which is why it was rescheduled to today.

Chairman de la O asked Special Counsel Everett if she had anything more she wished to add. Special Counsel Everett responded that the first time the motion was made by Member Kaplan, she thought a Motion to Rescind was in order and that proper notice be given to the employee. She went on to say she does not recall the reason the matter was subsequently continued until today, but notice was provided each and every time. Special Counsel Everett further stated she saw no due process violation in that regard and therefore feels it is proper for the Board to go forward with the motion.

Chairman de la O stated according to the November 29, 2011 minutes, a 4/5th vote is required for a Motion to Rescind. ACA Richard clarified that the 4/5th vote would be needed only if the motion was going to be considered for that day; however, if the other side has been given notice, a majority vote would be required. She went on to say she thought the Motion to Rescind was already voted on. Attorney Guttman-Valdes clarified that it was not a Motion to Rescind (that the Board voted on). Chairman de la O asked if a Motion to Rescind was discussed because it appeared it had according to the minutes. Special Counsel Everett responded at that time, Member Kaplan requested to reconsider the vote and she indicated to the Board that the proper way to perform this action would be in the form of a Motion to Rescind and discussion developed as to what type of vote would be necessary to go forward with that motion.

Member Kaplan asked if the Motion to Rescind carries over or would he have to renew the motion? Chairman de la O responded that renewing the motion would be the best thing to do.

Chairman de la O stated there has been notice to counsel and her client who are present. Following discussion, the Board entered a motion to rescind the vote on all of the charges before the Board in the matter of Meredith Nation at her hearing held November 1, 2011.

Under discussion on the motion, Chairman de la O stated while he is not against the idea of reconsidering things, it troubles him obviously because the environment he operates in is courts. He went on to say in court whenever someone wants to reopen a matter there has to be something that changed. Chairman de la O further stated that he does not like the idea of the Board being able to rescind [a vote] when having second thoughts because it opens the Board up to the appearance of impropriety or the appearance that somebody got to them afterwards. Member Kaplan stated that he thought that was a terrible thing for the Chairman to say. Chairman de la O clarified that his thoughts are not about or directed towards any one Board Member, but it begs the question - "why is the Board changing the vote when there has been no new evidence?". He went on to say the Board tries to insulate itself the best it can and he just thinks it is a bad policy unless there is something the Board learned later (i.e. the witness lied, etc.), then he can see making a change, but otherwise he does like the idea of changing votes.

Member Dames stated that he agreed with the Chairman.

Member Moy stated he could honestly say he is in favor of reconsidering the matter because he felt uncomfortable with the (not guilty) vote. He went on to say that driving home after the meeting, he realized he had made a mistake because it troubled him a lot and it made him feel uncomfortable. Member Moy further stated that we are human and make mistakes; however, he want to correct the error by making the right decision

which is why he decided to change his vote.

Following discussion, the motion on the floor to rescind the vote on all of the charges made during Meredith Nation's hearing held on November 1, 2011 resulted as follows:

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

Aye: Kaplan, Silverman and Moy

No: de la O and Dames

The Board noted Attorney Guttman-Valdes' continued objection on the Board's approved motion for Reconsideration of the charges and entered a motion to find the Appellant GUILTY of Charge #1 - Civil Service Rule 14.2(b) - "Has been guilty of misuse of sick leave privilege or excessive tardiness or absenteeism without good cause." The motion resulted as follows:

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

Aye: Kaplan, Silverman, de la O and Moy

No: Dames

The Board entered a motion to find the Appellant GUILTY of Charge #2 - Disgraceful Conduct - Civil Service Rule 14.2(h) - "Has been guilty of actions which amount to insubordination or disgraceful conduct, whether committed on duty or off." The motion resulted as follows:

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

Aye: Kaplan and Silverman

No: de la O, Dames and Moy

The motion having failed, the Board entered a motion to find the Appellant NOT GUILTY of Charge #2, which resulted as follows:

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

Aye: de la O, Dames and Moy

No: Kaplan and Silverman

The Board entered a motion to find the Appellant NOT GUILTY of Charge #3 - Civil Service Rule 14.2(i) - "Has been wantonly offensive in conduct or language toward the public or City officers or employees." 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, de la O and Dames

No: Moy

The Board entered a motion to find the Appellant NOT GUILTY of Charge #4 - Civil Service Rule 14.2(k) - "Is incompetent, negligent, or inefficient in the performance of the duties of the position held." 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, de la O and Dames

No: Moy

The Board entered a motion to find the Appellant NOT GUILTY of Charge #5 - Civil Service Rule 14.2(p) - "Has intentionally falsified a time record or failed to report absence from duty to superiors; or if after employment, it is found that an employee has made a false statement in the application for employment or has give (sic) false information on his/her pre-employment medical examination." 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, 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) - "Has been absent from duty without leave, or has failed to report for work after the leave of absence has expired, or after the said leave of absence has been disapproved or revoked or cancelled." The motion DIED FOR LACK OF A SECOND. The motion having died, the Board entered a motion to find the Appellant GUILTY of Charge #6, 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, de la O and Moy

No: Dames

Having been found guilty of Charges #1 and #6, Chairman de la O asked if the Board needed to redo the notice. Member Moy responded in the affirmative. The notice having been renewed, Chairman de la O stated that the Board could now move to the penalty phase; however, if both attorneys say "no", the (penalty phase of the) hearing will be scheduled for a future date since notice was given. Both attorneys responded in the negative and Chairman de la O instructed the Executive Secretary to schedule the penalty portion of the hearing.

DEFERRED : Penalty Portion of Ms. Nation's hearing will be scheduled to the meeting of January 10, 2012.

F. REPORTS

F.1 Pending Hearings as of December 13, 2011. (NOTIFICATION)

PRESENTED

F.2 Copy of a Preliminary Investigation report from the Chief Examiner on behalf of Alejandro Pascual, Building Inspector I. (DISCUSSION)

Chairman de la O stated that according to the Chief Examiner's preliminary investigation reports, he recommended that all of the cases be heard by a full Board. He asked if there was any reason why Mr. Pascual's case should not be heard by the Board. The Executive Secretary responded that the Board may recall that it already approved the granting of Rule 16 hearings in each of these matters (Items F.2 through F.7). She went on to say that the issue before the Board now would be to either accept or reject the

Chief Examiner's preliminary investigation reports. The Executive Secretary further stated the hearings are going to proceed unless the Board (through an approved motion) rejects the Chief Examiner's recommendation by deciding not to have a hearing.

Chairman de la O asked for the employee's position on this matter. Michael A. Braverman, Attorney at Law on behalf of Alejandro Pascual (Item F.2), Joan Greene (Item F.3), Carlos Jimenez (Items F.4), Ricardo Novas (Item F.5), and Frank Rodriguez (Item F.6) stated with the ability to address the individual issues, he is sure that the City also has no objection to the Chief Examiner's reports.

ACA Richard stated that she objects to the Chief Examiner's recommendation in the matter of Alejandro Pascual, regarding the reinstatement and back pay, but she had no objection to holding Rule 16 hearings for each of Attorney Braverman's cases (Items F.2 through F.6).

Member Kaplan stated in Mr. Pascual's case, it was not just a hearing that was covered in his findings but he feels there was a reversal of the City's action, so he thinks Attorney Braverman may appeal that recommendation before scheduling a hearing. Attorney Braverman stated they felt that what the City in all of these cases was not properly documented or set forth, and that his clients never received notice of the reason or more importantly the City's basis for its decisions to either abolish, layoff, discontinue employees' rights that they have had for some time. He went on to say with that caveat, he thinks there is a distinction with Mr. Pascual's case.

Referring solely to Mr. Pascual's case, Chairman de la O stated the Board can schedule a hearing. He asked if the Board were to adopt the Chief Examiner's recommendation, would this obviate the need for a hearing? Member Silverman responded he did not think so because the Attorney and Mr. Pascual wants to have a hearing. Chairman de la O stated it would seem to him then that if there is going to be a hearing, that it should be on all of the issues included in the Chief Examiner's report.

Following discussion, the Board entered a motion to ACCEPT the Chief Examiner's report and schedule the matter for a hearing pursuant to Rule 16.2 which resulted as follows:

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

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

Following the vote, Member Kaplan asked what the Board would do regarding his recommendation to reinstate and pay Mr. Pascual (as recommended in his report). Chairman de la O responded that the Board would consider that at the hearing. Attorney Braverman stated that he was glad that Member Kaplan mentioned that portion of his report, and that he and his client would also look into other grievance options regarding that recommendation of the Chief Examiner.

F.3

Copy of a Preliminary Investigation report from the Chief Examiner on behalf of Joan Greene, Secretary II. (DISCUSSION)

Chairman de la O stated that he thinks the Board can schedule hearings for Items F.3 through F.6 since this was the recommendation cited by the Chief Examiner in his preliminary investigative report. Chairman de la O asked if there were any objections. Hearing none, the Board entered a motion to ACCEPT the Chief Examiner's report in which he recommended scheduling a hearing pursuant to Rule 16.2 in the matter of Joan Greene, 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, de la O, Dames and Moy

F.4

Copy of a Preliminary Investigation report from the Chief Examiner on behalf of Carlos Jimenez, Structural Engineer. (DISCUSSION)

The Board entered a motion to ACCEPT the Chief Examiner's report in which he recommends scheduling a Rule 16.2 hearing before the Board in the matter of Carlos Jimenez, 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, de la O, Dames and Moy

F.5

Copy of a Preliminary Investigation report from the Chief Examiner on behalf of Ricardo Novas, Broadcast Engineer. (DISCUSSION)

The Board entered a motion to ACCEPT the Chief Examiner's report in which he recommends scheduling a Rule 16.2 hearing before the Board in the matter of Ricardo Novas, 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, de la O, Dames and Moy

F.6

Copy of a Preliminary Investigation report from the Chief Examiner on behalf of Frank Rodriguez, Building Inspector I. (DISCUSSION)

The Board entered a motion to ACCEPT the Chief Examiner's report in which he recommends scheduling a Rule 16.2 hearing before the Board in the matter of Frank Rodriguez, 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, de la O, Dames and Moy

F.7

Copy of a Preliminary Investigation report from the Chief Examiner, concerning the preliminary investigation on behalf of Corina S. Esquijarosa, former Senior Project Representative. (DISCUSSION)

The Chairman noted that Ms. Esquijarosa was not present and asked if she was represented by counsel. The Executive Secretary responded in the negative. She went on to say that the Chief Examiner's recommendation in this case is to proceed with the Rule 16.2 grievance hearing which has been scheduled.

Chairman de la O asked if the department wished to be heard on the recommendation. ACA Richard responded in the affirmative and stated that she did not have an objection to the recommendation because the department was not able to present any of its witnesses during the preliminary investigation so they definitely would like to have their day in court.

Following discussion, the Board entered a motion to accept Chief Examiner Kaplan's recommendation to proceed with a Rule 16.2 hearing by the Board 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, de la O, Dames and Moy

Following the Board's approved motion, ACA Richard stated that she believed Ms. Esquijarosa was going to amend her request so in order for the City to have time to present its case, she would ask that the Board order a due date in advance of the hearing for which she has to submit her amended request.

Following discussion, the Board entered a motion to notify Ms. Esquijarosa that she has 30 days from today to submit her amended request to the Executive Secretary. The motion resulted as follows:

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

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

G. REQUESTS FOR HEARINGS

H. TODAY'S HEARINGS

H.1 Continuation of the Grievance hearing on behalf of Olga M. Zamora, Sr. Project Representative, pursuant to Rule 16.2, alleging a violation of Rules 5.1, 6.1, 6.2 and 6.3, in connection with the recruitment process for Property Manager.

The Board reconvened today to hear the conclusion of Olga Zamora's grievance hearing which began on November 1, 2011.

Kristin Figueroa-Contreras, Attorney at Law, represented the Grievant.

Janeen Richard, Assistant City Attorney, represented the Department.

The Rule of Witnesses continued to be invoked and witnesses for the Grievant continued in the following order:

3. Teresita Perez, Personnel Officer, City of Miami, Department of Human Resources. Questions were posed by Board Members de la O, Kaplan, Moy and Dames during the testimony of Teresita Perez.

4. Milagros de Villega, Personnel Assistant, City of Miami, Department of Human Resources. Questions were posed by Board Members de la O and Moy during the testimony of Milagros de Villega.

5. Ricardo Martinez, Classification & Pay Supervisor, City of Miami, Department of Human Resources. Questions were posed by Board Members de la O, Kaplan, Dames and Moy during the testimony of Ricardo Martinez.

6. Eyran Kraus, Testing & Validations Supervisor, City of Miami, Department of Human Resources.

The Grievant rested her case.

The department's attorney moved for a Motion to Dismiss and provided argument in support her position while Attorney Figueroa-Contreras made argument against the motion. Following final argument on the Motion to Dismiss, the Board entered a motion

to DENY the department's motion 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, de la O, Dames and Moy

The motion having failed, the department proceeded with the calling of witnesses. Witnesses for the Department appeared in the following order:

Beverly Pruitt, Director, City of Miami, Department of Human Resources. Questions were posed by Board Members Dames, de la O, and Kaplan during the testimony of Beverly Pruitt.

The Department rested its case and the Board proceeded to closing arguments that were presented by both attorneys. Following final argument, the testimonial portion of the hearing was concluded. Chairman de la O called for any discussion or motions from Board Members. Member Silverman stated the (recruitment) and audit process were "cooked". He went on to say that the (former) director (Madeline Valdes) wanted the incumbent to get the job after the first audit was done and she did not like it so she returned to the department to get the second audit so that she could select who she wanted to, which was not fair. Member Silverman further stated if there is going to be a Civil Service system, this would call for fairness to everyone; however, if there is a classification that does not belong to the classified service, then the director could select the person he/she wants to fill a vacancy.

Member Moy stated he feels the same as Member Silverman. He went on to say there were a lot of flaws that existed in this case and this case was difficult because it was heard in two parts. Member Moy further stated he feels some of the requirements were changed for the (incumbent) to get the job, and that he reviewed an email (that was in evidence) from the former director to the Human Resources Department specifically identifying the incumbent as the individual to get the job. He stated it was troubling to hear Ms. (Joni) Harris' testimony about her recommendation to halt the recruitment process and the department's refusal to listen so from that point, he felt the process was flawed. Member Moy went on to say that three earlier dated job announcements for the position of Property Manager were presented to the Board and none of them required four years of supervisory experience so he thinks this requirement was added for the benefit of the incumbent getting the job. Member Moy stated that the department wants to fill the position, but changed the minimum requirements which he feels is unfair to Ms. Zamora or any other applicant that applied for the Property Manager position.

Member Kaplan stated his view is simple. He went on to say that counsel for the employee stated this is not the case of a disgruntled employee complaining about the system rather it is a case of an employee or an observer making a generalized complaint about the system, but that is not what the Board is here for. Member Kaplan further stated the Board is here to hear a complaint by a particular employee that was injured or discriminated against because of the system. He stated he found there was a great deal of evidence about discretionary procedures by the City and he finds no fault in the exercise of discretionary procedures whether it has to do with promotions, audits, etc. Member Kaplan went on to say discretion is the heart of the operation of government and he finds nothing wrong with it. He further stated the problem is while discretion is okay, discretion is not good when it is complicated or there is arbitrariness or discrimination. Member Kaplan stated he finds some arbitrariness but he finds no discrimination or direct evidence from the employee that she was specifically discriminated against by the system. He went on to say for this reason, he is inclined to agree with the City that the employee is not in a position to fault the City for using discretion, doing what the City has always done in hundreds of cases, rather the employee should fault the City only if she can prove that she was discriminated

against by the City's actions otherwise the City's exercise of its power and discretion is going to be before the Board every time, which he feels is not right.

Chairman de la O stated that he did not think the Board's function is solely to protect employees who are discriminated against or treated unfairly by the City. He went on to say as the employee's attorney read at the beginning of her closing statement, it is also the Board's function to make sure the Civil Service system is being efficiently and correctly run. Chairman de la O further stated the fact that the employee may not have benefited from the discretion being exercised in a different way, it does not mean what happened here is in the best interest of the Civil Service system so he thinks Member Silverman put it more eloquently than he can when he said the entire process was cooked and it is obvious that it was cooked. He stated he thinks ACA Richard made some good arguments but when you take the different issues apart, the requirement of supervisory experience, real estate license, or the recruitment process being open versus restricted can be justified but it is not right to look at it individually. Chairman de la O went on to say it is clear that Ms. Valdes wants Mr. Bustamante to have the Property Manager position. He further stated there is nothing wrong with her trying to bypass the competitive process by making a Rule 8.10 request to fill the vacant position with the person of her choice, besides it is lawful, but it starts to color what happened afterwards (i.e. open versus restricted recruitment, etc.) Chairman de la O stated Ms. Harris indicated that the best practice is to have at least five (5) names on the Eligible Register in order to have a good selection to choose from and in this case only three were qualified and that is only because Ms. Harris expanded the definition of a real estate license to include a law license or else there would have only been two applicants that were eligible. He went on to say Mr. Martinez directed Ms. Perez to reach out to other municipalities to obtain comparisons after Ms. Zamora complained and all he looked at was the real estate license and none of the municipalities checked required supervisory experience even as a desirable quality so he just cannot ignore the reality of what was going on. Chairman de la O further stated when he looked at the real estate license, there is zero testimony in the record as to why it is required. He stated Mr. Martinez is right that the minimum job requirements have always indicated that according to the needs of the department, a license may be required. Chairman de la O went on to say if the only issue had been that six other municipalities required a real estate license, he would not have had a problem with what the City did. He further stated that Mr. Martinez said twice that the reason he had Ms. Perez to look at other municipalities was "to make our case." Chairman de la O stated this bothered him because when he asked Mr. Martinez if Classification & Pay is supposed to serve as an arm of the Department Director and/or different departments or if he is there to make an independent analysis so that the Rules are carried out correctly, he responded that they are supposed to be an independent entity. He went on to say that Mr. Martinez' actions are not in alignment with his response because when Ms. Zamora registered her complaint (about the recruitment process), he did not go and figure out if Ms. Valdes had imposed relevant requirements rather Mr. Martinez tried to find other cities that would back up the decision that had already been made since the process was cooked. Chairman de la O further stated Mr. Martinez' action is not independent and that is not following Rule 6.3 which says that the selection procedures are supposed to be practical and relate directly to those matters which would fairly determine the relative capacity of the person who is going to be discharging these duties. He stated he finds what was done in this case was a disservice to the City and whether it was a disservice to Ms. Zamora is irrelevant because the question is whether the City is best served by the way that the Classification & Pay Division and the Human Resources Department handled the selection process and he would have to answer in the negative.

Member Silverman stated Ms. Zamora was discriminated against by (the department) putting barriers in the requirements so she did not have a chance to be considered. He went on to say no one has said that Ms. Zamora is entitled to the Property Manager

position, but she is entitled to a fair process. Member Silverman further stated the barriers were solely put in place to make sure the incumbent got the job.

Following discussion, the Board entered a motion to recommend to the City Manager that the register announcement for Property Manager be re-advertised and the requirements for a real estate license and supervisory experience be eliminated.

Under discussion, Member Kaplan stated that both the Chairman and Member Silverman have convinced him of the validity of their position so he is prepared to change his mind.

ACA Richard asked if there was any motion as to whether the recruitment would be open or restricted. Chairman de la O responded in the negative. Following discussion, the motion on the floor to re-advertise the Property Manager position and eliminate the supervisory experience and real estate license requirements resulted as follows:

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

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

The Executive Secretary asked if the Board was going to make a motion on the rule violations alleged by the Grievant. Chairman de la O asked if there were any other motions. Hearing none, the Chairman stated unless a Board Member makes a motion, no other action by the Board would be taken.

ACA Richard stated that she needed clarification because according to Rule 16.2 the Board is required to make a finding as to whether a rule was violated. Chairman de la O responded that he did not believe that Rule 6.2 was violated but he believes that the spirit of Rule 6.1 was violated but not in the letter because it leaves the Director of Human Resources to make the decision as to the requirements. He went on to say that he also believes that Rule 6.3 was violated.

Following discussion, the Board entered a motion to find that there was a violation of Civil Service Rules 6.1 and 6.3 which resulted as follows:

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

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

Chairman de la O asked if there were any other motions and the Board entered a motion to recommend to the City Manager that the register announcement for Property Manager be advertised as an open recruitment. The motion resulted as follows:

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

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

H.2

Hearing of appeal on behalf of Candace Jones, Police Officer, relative to her 10-hour forfeiture and 1-month suspension of take home vehicle, effective February 12, 2011.

Chairman de la O stated that due to the number of witnesses involved in Ms. Zamora's case, he did not think there would be sufficient time to hear the other cases scheduled for today and suggested that they all be continued. He asked if there any objections to continuing the cases of Candace Jones (Item H.2), Viona Browne-Williams (Item H.3), and Carlos Jimenez (Items H.4 and H.5). Hearing none, the Chairman called for a motion to CONTINUE which resulted as follows:

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

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

H.3

Hearing of appeal on behalf of Viona Browne-Williams, Police Officer, relative to her 10-hr forfeiture, effective June 28, 2011.

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

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

H.4

Hearing of appeal on behalf of Carlos Jimenez, Structural Engineer/Plans Examiner, relative to his 3-day suspension, effective July 18, 2011.

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

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

H.5

Hearing of appeal on behalf of Carlos Jimenez, Structural Engineer/Plans Examiner, relative to his 5-day suspension, effective July 26, 2011.

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

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

The meeting ADJOURNED at 4:30 p.m. Breaks were taken at 10:46-10:56 a.m; 11:55-12:01p.m; 12:36-1:40 p.m. (LUNCH); 2:50-2:53 p.m; and 3:41-3:49 p.m.

SIGNATURE:

Miguel M. de la O, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary