

City of Miami

*City Hall
3500 Pan American Drive
Miami, FL 33133
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Meeting Minutes

Tuesday, February 5, 2013

10:00 AM

Commission Chambers

Civil Service Board

*Gerald Silverman, Chairperson
Sean Moy, Chief Examiner
Lillie Harris, Board Member
Christine Gomez, Board Member
Javier Baños, Board Member*

PLEDGE OF ALLEGIANCE

The meeting was called to order at 10:02 a.m. The roll call at the commencement of the meeting was as follows:

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

A. APPROVING THE MINUTES OF:

Regular Meeting of January 8, 2013.

The Board entered a motion to APPROVE the minutes of the January 8, 2013 meeting which resulted as follows:

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

Aye: Silverman, Moy, Baños, Gomez and Harris

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

- D.1** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Workmond Napoleon, Police Officer, of his 80-hour suspension, effective January 4, 2013 and a copy of a request to appeal from Officer Napoleon. A hearing will be scheduled in accordance with Civil Service Rules and Regulations. (NOTIFICATION)

RECEIVED AND FILED

- D.2** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Eddy Rodriguez, Police Officer, of his 10-hour suspension, effective January 3, 2013 and a copy of a request to appeal from Officer Rodriguez. A hearing 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, Director, Department of Police, notifying Omar Grass, Police Officer, of his 200-hour forfeiture, effective January 7, 2013. (NOTIFICATION)

NOTIFIED

- D.4** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Ivelisse Medel, Typist Clerk II, of her 16-hour suspension, effective January 10, 2013 and a copy of a request to appeal from Michael Braverman, Attorney on behalf of Ms. Medel. A hearing will be scheduled in accordance with Civil Service Rules and Regulations. (NOTIFICATION)

RECEIVED AND FILED

- D.5** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Carlos Aschiero, Emergency Dispatch Assistant, of his 8-hour suspension, effective January 14, 2013. (NOTIFICATION)

NOTIFIED

- D.6** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Osmar Martinez, Police Officer, of his 160-hour suspension, effective January 11, 2013 and a copy of a request to appeal from Officer Martinez. A hearing will be scheduled in accordance with Civil Service Rules and Regulations. (NOTIFICATION)

RECEIVED AND FILED

- D.7** Copy of letter from Chief Manuel Orosa, Director, Department of Police, notifying Jean Marie Jean-Philippe, Police Officer, of his 160-hour suspension, effective January 19, 2013 and a copy of a request to appeal from Officer Jean-Philippe. A hearing will be scheduled in accordance with Civil Service Rules and Regulations. (NOTIFICATION)

RECEIVED AND FILED

- D.8** Copy of letter from Chief Manuel Orosa, Director, Department of Police, notifying Reynaldo Goyos, Police Officer, of his 40-hour suspension, effective January 15, 2013 and a copy of a request to appeal from Officer Goyos. A hearing of appeal will be scheduled in accordance with Civil Service Rules and Regulations. (NOTIFICATION)

Member Baños asked that the record reflect his Abstention from any Civil Service Board hearing that Officer Goyos might request.

NOTIFIED

- D.9** Copy of letter from Chief Manuel Orosa, Director, Department of Police, notifying Jesus Valdivia, Police Sergeant, of his 200-hour suspension, effective January 23, 2013 and a copy of a request to appeal from Jon M. Kreger, Attorney on behalf of Mr. Valdivia. A hearing will be scheduled in accordance with Civil Service Rules and Regulations. (NOTIFICATION)

RECEIVED AND FILED

- D.10** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Harold Geisse, Police Officer, of his 20-hour suspension, effective February 5, 2013. (NOTIFICATION)

NOTIFIED

- D.11** Copy of a letter from Chief Maurice Kemp, Director, Department of Fire -Rescue, notifying Dwayne Linder, Communications Operator, of his 8-hour

suspension, effective January 24, 2013, and a copy of a request to appeal from Michael Braverman, Attorney on behalf of Linder. A hearing will be scheduled in accordance with Civil Service Rules and Regulations. (NOTIFICATION)

RECEIVED AND FILED

- D.12** Copy of letter from Chief Manuel Orosa, Director, Department of Police, notifying Reynaldo Goyos, Police Officer, of his termination, effective January 31, 2013. (NOTIFICATION)

NOTIFIED

E. GENERAL ITEMS

- E.1** Hearing of Appeal on behalf of Jean Marie Jean-Philippe, Police Officer, concerning his 80-hour suspension, effective March 29, 2010. (DISCUSSION)

Rescheduled pursuant to continuance policy; pending settlement since October 16, 2012.

Chairman Silverman asked for the status of the Settlement Agreement regarding this appeal hearing.

Jon M. Kreger, Attorney on behalf of Mr. Jean-Phillippe, advised that the Agreement was completed and signed by most of the parties. However, it is currently pending the signature of the Police Chief.

Chairman Silverman asked ACA Richard if she wished to add anything to what Attorney Kreger stated. ACA Richard responded in the negative.

There was no further discussion on the matter.

DISCUSSED

- E.2** Hearing of Appeal on behalf of Johnny Brutus, Police Officer, relative to his 20-hour suspension, effective September 10, 2011. (DISCUSSION)

Rescheduled pursuant to continuance policy; pending settlement since September 4, 2012.

Chairman Silverman asked for the status of the Settlement Agreement regarding this appeal hearing.

Jon M. Kreger, Attorney on behalf of Mr. Brutus, advised that the Agreement was completed and signed by most of the parties. However, it is currently pending the signature of the Police Chief.

Chairman Silverman asked ACA Richard if she wished to add anything to what Attorney Kreger stated. ACA Richard responded in the negative.

There was no further discussion on the matter.

DISCUSSED

- E.3** Hearing of Appeal on behalf of Gilberto Gomez, Police Sergeant, relative to

his 40-hour forfeiture, effective January 14, 2008.

Rescheduled pursuant to continuance policy; pending settlement since May 15, 2012. (DISCUSSION)

Chairman Silverman asked for the status of the Settlement Agreement regarding this appeal hearing.

Jon M. Kreger, Attorney on behalf of Mr. Gomez, advised that the Agreement was completed and signed by most of the parties. However, it is currently pending the signature of the Police Chief.

Chairman Silverman asked ACA Richard if she wished to add anything to what Attorney Kreger stated. ACA Richard responded in the negative.

There was no further discussion on the matter.

DISCUSSED

E.4

Notice of intent to settle the matter of Jean Barony, Police Officer, relative to his 80-hour suspension, effective July 8, 2012. (DISCUSSION)

Chairman Silverman asked if the attorneys wished to advise of a Settlement Agreement regarding this appeal hearing.

Jon M. Kreger, Attorney on behalf of Mr. Barony, advised that language is being worked out.

Chairman Silverman asked ACA Richard if she wished to add anything to what Attorney Kreger stated. ACA Richard responded in the negative. There was no further discussion on the matter.

DISCUSSED

E.5

Notice of intent to settle the matter of Jesus Infante, Police Officer, relative to his 10-hr forfeiture, effective August 15, 2012. (DISCUSSION)

Chairman Silverman asked if the attorneys wished to advise of a Settlement Agreement regarding this appeal hearing.

Jon M. Kreger, Attorney on behalf of Mr. Infante, advised that this hearing was scheduled for January 22, 2013. He went on to say that the parties have reached an agreement, and the document is awaiting signature of the parties.

Chairman Silverman asked ACA Richard if there was indeed a settlement in this matter. ACA Richard responded in the affirmative. There was no further discussion on the matter.

DISCUSSED

E.6

Notice of intent to settle the matter of Adnnan Adjum, Police Officer, concerning his 10-hour forfeiture, effective August 15, 2012. (DISCUSSION)

Chairman Silverman asked if the attorneys wished to advise of a Settlement Agreement regarding this matter.

Jon M. Kreger, Attorney on behalf of Mr. Adjum, advised that this hearing was

scheduled for January 22, 2013. He went on to say that the parties have reached an agreement, and the document is awaiting signature of the parties.

Chairman Silverman asked ACA Richard if there was indeed a settlement in this matter. ACA Richard responded in the affirmative. There was no further discussion on the matter.

DISCUSSED

E.7

Notice of intent to settle the matter of Reinaldo Tejera, Police Officer, relative to his 10-hr Suspension, effective September 13, 2012. Hearing of appeal is scheduled for today.

Jon M. Kreger, Attorney on behalf of Mr. Tejera, advised that the parties have reached a tentative agreement, and the document is being drafted for signature.

Chairman Silverman asked ACA Richard if there was indeed an intent to settle this matter. ACA Richard responded in the affirmative. There was no further discussion on the matter.

DISCUSSED

E.8

Public Hearing concerning an Amendment to the Civil Service Procedure Manual. (DISCUSSION)

The Chairman called for appearances from the public regarding the proposed Manual revision. Joseph Simmons, Union President, AFSCME, Local 871, appeared before the Board and advised that he had not seen the document. Chairman Silverman asked that Mr. Simmons be provided a copy of what was being discussed, and advised that Mr. Simmons could then render an opinion later, if he was so inclined.

Osi Rind, Attorney at Law, appeared before the Board on behalf of the Firefighters, IAFF Local 587. Ms. Rind stated that she and other union members are against these changes, primarily because it would elongate the hearing process. She went on to say that one of the reasons they come to the Board rather than arbitration is because of the relative speed and low cost of proceeding without protracted discovery, motions, protective orders, etc., and that implementing this change will slow the process down and create obligations that the Civil Service hearing procedure is designed to eliminate.

Javier Ortiz, President of the FOP, Local 20, appeared before the Board and stated that the local is also against this revision. He went on to say that the hearings are already backlogged that the last thing we should have is a "discovery hearing".

Ronald Cohen, Attorney at Law, appeared before the Board on behalf of the FOP and reiterated that they are against the proposal; especially the part allowing for orders compelling the exchange of information. He went on to say that through Public Records Law, the employee has a right to obtain documents from the City, and they do obtain requested documents. He further stated that the City also has every right to find out what the Employee's side is, by asking for it in writing. Mr. Cohen stated that implementing this major change in the way the Board operates will also increase the amount of money and time needed for this process, because of the long, protracted processes that a hearing would have to undergo.

Michael Braverman, Attorney at Law, appeared before the Board on behalf of the AFSCME Local 1907, and stated that he is thankful that the Board is allowing attorneys and others who appear before them the opportunity to provide input into this document. He went on to say that they are also against the revision, for most of the reasons

already stated, and respectively request that the Board vote "No" on the proposed changes, for two basic reasons. Attorney Braverman went on to say that under the Rules and current Manual of Procedures, the Board already has the authority to compel or obtain whatever requested information and documents. He further stated that as Member Moy stated in the January 8, 2013 meeting, the revised process would not lend itself to be an expeditious manner in which to address the indicated issues, and he is afraid that this would further delay the process.

William Scarola, Police Sergeant and FOP Local 20 Treasurer, appeared before the Board to provide input from the perspective of a former Civil Service Board Member. Mr. Scarola stated that the Board was formed in the 1920s as a venue for employees and applicants to appear before a fair and impartial entity, outside of the City administration. Mr. Scarola went on to say that Members are to consider the evidence and testimony that employees or the department present on the day of the hearing, and render judgment only on that information received during the hearing. He further stated that Members should ask for time (as in a break in the meeting) to review documents presented, if they feel that there is a great deal of exhibits provided and not enough time to review. Mr. Scarola also stated that he believes that this change would hurt the employees as well as the City, because hearings would be further delayed. He went on to say that he served 2 terms with Chairman Silverman, and he has always been able to expedite the conduct of hearings.

Assistant City Attorney Richard stated that she agreed with those who have spoken, in that the recommended changes are not practical, primarily because of the frequency of meetings and the number and types of cases that the Board hears. She further stated that she understands the purpose behind the recommendations, which is to provide a fair, open and meaningful process, and as opposing counsel stated, the way things are now, the City provides requested documents to the Appellant in accordance with State Statutes. She went on to say that the department does not receive any documents or explanations from the employee, as they are not required to submit anything other than their request for hearing, where they say they contest the facts and/or contest the penalty, and may change their mind at the time of the hearing. She went on to say that if the purpose (of the revisions) is to level the playing field, she thinks that so the attorneys and employees can determine the relevant issues, at a minimum there should be an exchange of information on the part of the employee.

Attorney Cohen reappeared before the Board and stated that in Police on the Reprimand, the employee has to indicate whether they agree or disagree with the discipline and the penalty, and the idea that the City does not know what the employee's position is frankly is a little shocking. He went on to say that the City has every right to find out and should find out the employee's side, as it is a very important part of a good disciplinary process, and if they did this, there would be no need for the employee to turn anything over to the City.

Following presentation by members of the public, the Chairman called for discussion from the Board Members.

Member Harris stated that she wanted to clarify her intent in bringing this matter forward, which was an attempt to provide the Appellants the best opportunity possible to obtain documents needed to defend themselves. She also stated that she was happy to hear from Mr. Cohen that they do receive the records requested, which was one of the things that sparked her movement in bringing this matter before the Board; since in a lot of hearings he has said that he didn't receive requested documents. She went on to say that she noted that the attorneys know that there is a court process to follow if they do not receive public records, so she hopes not to receive continuance requests in the future on that basis. Member Harris stated that her intent in bringing this to the Board

was to assist the attorneys and give more leverage to the employees, in their attempt to defend themselves. She further stated that often at a hearing, she felt like she was missing something - that she was not being given all of the information she needed; and that she takes these cases seriously as the Board makes decisions that affect people's lives and the future of the City. She went on to say that based on what she was hearing from those who spoke, that perhaps the language could be changed. She proposed revising the section to include "The City should turn over the investigative file" to the employee, because she agrees with one of the statements made, in that the City should already be prepared for a case, since they brought the charges (against the employee) and the employee should be able to know ahead of time what they need to defend themselves.

Member Baños stated that he thought that Member Harris' intent was a good idea and added that he did not desire to go through exhibits submitted during a hearing while listening to testimony. He then asked Chairman Silverman if he could provide any suggestions for the revisions so that he would not have to go through that exercise.

Chairman Silverman stated that he has been around a long time and that several improvements to the procedures have been made over the years to streamline the hearing process, such as getting the charging document in advance, and having copies of the exhibits to be submitted being available and numbered prior to the hearing. He went on to say that he thinks that the system being used works and should not be changed, and that the attorneys, unions and others who spoke are not in favor of the proposal; however, if Member Harris feels strongly, he would suggest that the Board table discussion in order to rework her suggested revisions.

Chairman Silverman went on to say that Member Harris' intention was to give the employee a "better shot" by having information in advance, [however, the Board] is not a courtroom, and the whole idea is to move [hearings] along. He went on to say that he tries to run the meetings in a fair manner and although some may not agree with the Board's decisions, he has not received any complaints or concerns with the way in which hearings are run.

Member Harris stated that the part she feels strongly about more than anything, again is giving the employee a fair shot in defending themselves and that there be transparency on the City's part, so she has a simple solution. She went on to suggest that the Manual of Procedures be revised to state that "the City produce the investigative file to the employee's side in a timely manner". She further stated that she gets frustrated with continuances being requested based on the employee's side stating that they do not get documents that they have asked for, and her recommendation she hopes, would curtail that.

Chairman Silverman stated that now the proposal appears one-sided to him, in that it says that the City has to do something period, and he asked for Assistant City Attorney Richard's response.

Assistant City Attorney Richard stated that she agreed with the Chairman and added that there seems to be a suggestion that the City is not being transparent. She went on to say with regards to Police Department reprimands, the employee has the opportunity to review a Reprimand line by line, indicate whether or not he/she agrees with the facts stated and the penalty assessed; may request a hearing before the DDRB if there are other issues regarding the reprimand that he/she wishes to raise, all before it even gets to the Board (or a grievance through the Office of Labor Relations). She went on say that tons of information is made available to officers prior to requesting a hearing, and if they do, they are currently not required to say what or why they are appealing. She further stated that she does not believe that the suggested changes constitute an

exchange of information, but a one-sided proposal for the City to turn over everything and not receive anything in kind from the employee; and again there is an undercurrent that the City is hiding information, which is absolutely not true. Assistant City Attorney Richard stated that many times when continuances are requested based on the employee stating that documents requested were not received, the City has in fact complied with the public records request, but the employee is under the impression that there must be more information than what was turned over. She went on to say that in these cases the Board generally takes what the employee says as "gospel" because it has been constantly used by attorneys to obtain continuances at the City's expense.

Member Harris stated that this proposal does not only apply to the Police department, but to the City at large; and she can cite one case in particular where the employee was terminated without a stated reason, who therefore would be at a disadvantage when preparing to defend herself.

Assistant City Attorney Richard responded that in the case that Member Harris mentioned, the hearing is upcoming, but she thinks that the evidence will show that the employee was apprised of all of the reasons why she was being terminated.

Member Harris asked if the Manual could state at the very least, that the Board get copies of whatever information is submitted to the Office of the Civil Service Board. Member Baños recommended that all of the parties involved work together on a revision that would accomplish Member Harris' goals, without being detrimental to the City.

Member Harris stated that the matter should be kept simple and limited to the Board. She went on to suggest that whatever either side decided to turn over be given to the Members so that they would be aware of any and all documents submitted.

Chairman Silverman stated that he was not in agreement with that. He went on to say while he agrees with having the charging document in advance, that a lot of the documents brought to a hearing are not admitted into evidence and he does not want to be the investigator in every case, nor does he want to bring pages and pages of documents that he has received from the Office to the hearings. He went on to say that he would rather have each side submit whatever they wished at the hearing and have the members review and consider the exhibits and testimony then. He further stated that he would suggest that the Board take no action on this matter today.

Chairman Silverman asked if anyone else had something to say on this matter. Former Member Scarola reappeared before the Board and asked to follow up on two matters. He went on to say that Members should not have those documents in advance because if they are reviewed prior to a hearing, it may sway the Member's opinion of a case before the attorney has had the opportunity to question witnesses about the exhibit, or to even introduce the exhibit. He further stated that with regards to public records, if an employee requests documents that are not turned over, then the department submits the requested document during the hearing, the Board can consider this action in its deliberations, as it concerns whether or not the department is being forthright in its investigations.

Attorney Cohen reappeared before the Board and stated that he wanted Member Harris to understand that those who spoke were not questioning her motivations in bringing this matter up, and everyone knows the importance of the issues that face the Board. He went on to say that he is very sincere whenever he has requested a continuance because of not receiving documents from a public records request, and that he would not use that reason if it were not true. He went on to say that at no time has the department corrected him when he advised the Board that his public records request

had not been complied with.

Attorney Braverman reappeared before the Board and stated that he would like the Board to consider that while most of those who spoke today about this matter were attorneys who were able to articulate a position, the Manual of Procedures would apply to all persons who have business before the Board.

Chairman Silverman asked if any Board Members wished to make statements. Member Harris stated that having heard very articulate and respected statements from members of the public, the Assistant City Attorney and the Board, she would withdraw this matter from the Board's agenda.

Chairman Silverman stated that based on Member Harris' statement, the matter would be withdrawn and no action would be taken by the Board. There was no further discussion on the matter.

DISCUSSED : No further action was taken.

- E.9** Copy of Findings of Fact in the appeal hearing of Stanley Mike, Police Officer, relative to his 80-hour suspension, effective September 1, 2012. (DISCUSSION)

Following discussion, the Board entered a motion to APPROVE the Findings as amended, which resulted as follows:

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

Aye: Silverman, Moy, Baños, Gomez and Harris

- E.10** Notice of Withdrawal from Samaly Rodriguez, Personnel Services Representative, concerning her two-week suspension, effective November 7, 2011. (NOTIFICATION)

File will be withdrawn and removed from the Board's docket.

NOTIFIED

F. REPORTS

- F.1** Pending Hearings as of January 22, 2013. (NOTIFICATION)

PRESENTED

G. REQUESTS FOR HEARINGS

- G.1** Copy of a Request for Hearing from Ismaelia Castillo, Public Service Aide, pursuant to Civil Service Rule 16.2 - Complaint by Employee, alleging a violation of Civil Service Rule 5 - Application for Examination, as it relates to her selection process for Police Officer. (DISCUSSION)

Ismaelia Castillo, candidate for Certified Police Officer, appeared before the Board and requested that the Board take consideration and allow her to re-take the test because the City failed to follow the posted announcement for Certified Police Officer. She went

on to say that the announcement states that opportunities to take the Physical Agility Test (PAT) will be given three times, three weeks apart from each attempt. She went on to say that in her case, the tests were given back to back, one week apart.

Chairman Silverman asked for the department's position.

Assistant City Attorney Richard advised that representatives from the departments of Police and Human Resources are present to respond to the Board's questions; however, she wanted to state that Ms. Castillo is mistaken regarding the PAT process in place at the time that she took her examination in March 2012. She went on to say that Ms. Castillo is presenting to the Board today, a document outlining the hiring process for Police Officer (Recruit) from September 2012, which had a different PAT process. She went on to say that Ms. Castillo, along with everyone else on that Register for Certified Police Officer took the PAT under the standards set forth in March 2012 for that position, and the fact that she did not pass the PAT that everyone else had to take, does not mean that the process for that position, at that time was not legitimate.

Chairman Silverman asked Ms. Castillo for her response, and asked when she took the test. Ms. Castillo stated that she took the test in March 2012. Chairman Silverman asked why she took so long to come before the Board. Ms. Castillo responded that she was following the procedures, in that she first went to the Department of Human Resources, who responded that she was wrong. She went on to say that she also wanted to explain to the Board that climbing a six-foot wall has been declared by the Department of Justice to be biased against women.

Chairman Silverman asked the department when the process was changed. Assistant City Attorney Richard responded that Ms. Castillo was advised of her disqualification in April 2012, and she did not appeal to the Department of Human Resources until December 2012. She went on to say that the process changed in September 2012, and that the PAT that Ms. Castillo took was the same for everyone on the Eligible Register for Certified Police Officer. She further stated that Ms. Castillo actually passed the six-foot wall climb twice, so for her to claim now that it's discriminatory is disingenuous.

Chairman Silverman reiterated to Ms. Castillo that the department's view is that Ms. Castillo was late in her appeal request, and that the PAT process changed for the recruitment of the Police Officer position, not the Certified Police Officer, and that the change occurred after she took the test; and further that if she wanted to reapply during the next recruitment, that she was free to do so.

Ms. Castillo asked if the department would add her name back to the Eligible Register to be processed for the next class that is selected. Assistant City Attorney Richard responded that it would not be fair to others who failed the PAT, and that Ms. Castillo has already been encouraged to apply during the next recruitment when she received the letter from the Department of Human Resources in April 2012.

Member Harris asked Ms. Castillo to confirm why she waited so long to come before the Board. Ms. Castillo stated that she was doing research. Member Harris asked when she contacted the Department of Human Resources. Ms. Castillo responded that she contacted them in December 2012.

Member Baños asked for an overview of the hiring process.

Antonio Diaz, Police Lieutenant, Recruitment and Selection Section, Department of Police, appeared before the Board and provided a brief history of the process in general, as well as the significant dates of action in Ms. Castillo's case. He went on to state that what Ms. Castillo is presenting to the Board as the process for the position she applied

for is not correct. He went to say that the PAT for Certified Police Officer is different than that for non-Certified Police Officer (Police Recruit).

Member Harris asked when Ms. Castillo was notified that she was disqualified. Lt. Diaz responded that Ms. Castillo was sent a letter from Ms. Beverly Pruitt, Department of Human Resources Director, on April 24, 2012, which indicated that Ms. Castillo was no longer being considered for the process. Member Harris stated that the date of the letter is very important and for the Board's edification read into the record a portion of "The Application Process", which was attached to Ms. Castillo's request, and indicated that requests for appeals must be made no later than two weeks of notice of a determination of application ineligibility.

Chairman Silverman asked if there was any further discussion. Member Gomez advised that she would have to recuse herself from consideration of this matter, as she had a conflict of interest.

Chairman Silverman called for a motion on the matter. Member Harris asked if prior to entertaining a motion, for Ms. Castillo to address another matter written in her request for hearing, which referred to some form of unfairness regarding a wall.

Ms. Castillo stated that she failed her third attempt at climbing the six-foot wall because she was not given an opportunity to rest and recuperate, and that now candidates are given three weeks to rest between attempts. Member Harris asked why Ms. Castillo waited from April to December to file an appeal with the Department of Human Resources. Ms. Castillo responded that she did not know how to go about filing the appeal, and that she went to the Civil Service Board Office, where she was told to write a letter to the Department of Human Resources director. Member Harris stated that Ms. Castillo referred several times to the Announcement, and asked whether Ms. Castillo read in the announcement the portion about the two-week time limit in filing an appeal. Ms. Castillo responded that yes, she had, but she asked Department of Human Resources for consideration.

Member Moy asked Ms. Castillo when it was that she contacted Labor Relations regarding her disqualification. Ms. Castillo responded that it was probably two weeks after she received her letter, but she was told that she would have to go first to the Department of Human Resources. Member Moy asked Ms. Castillo who she spoke to in Labor Relations. Ms. Castillo responded that she did not remember, but it was a secretary who was there. Member Moy asked if Ms. Castillo sent a letter to Ms. Pruitt in December, did she send an email or anything in writing to anyone two weeks after her April 2012 disqualification as she stated. Ms. Castillo responded that she went to the Civil Service Board Office where she was given the paperwork to request a hearing, after she spoke to the Department of Human Resources and received a response from them.

Member Baños asked Special Counsel Everett to confirm that what Ms. Castillo was requesting at this point was a hearing, and that the hearing the Board would receive basically the same information that they are hearing now. Special Counsel Everett responded in the affirmative regarding the request, and added that she could not speculate as to what exhibits or testimony the Board would receive at an actual hearing. Member Baños responded that he was inclined to grant a hearing if that is all Ms. Castillo is requesting.

Member Harris stated that there may be some signs of some unfairness; however that was the importance of timeliness in appealing, and her decision in this matter would be based on the untimeliness. She went on to say that she wishes Ms. Castillo the best of luck in her future endeavors.

Chairman Silverman stated that he is opposed to granting a hearing because he did not think the request is timely and that Ms. Castillo has to look at the process in place at the time she applied, not those in place after they were changed.

Following discussion, the Board entered a motion to APPROVE Ismaelia Castillo's request for a hearing, pursuant to Civil Service Rule 16.2, alleging a violation of Civil Service Rule 5 - Application for Examination. The motion resulted as follows:

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

Aye: Silverman, Moy and Baños

No: Harris

Abstain: Gomez

Following the vote, Assistant City Attorney Richard asked if the Chief Examiner could conduct a preliminary investigation of this matter, because the Board's calendar is booked through May. Chairman Silverman asked Member Moy if he was in favor of the request, to which he responded in the affirmative. Chairman Silverman stated that the Chief Examiner would conduct a preliminary investigation and report back to the Board, at which time a decision would be made.

No further discussion took place on the matter.

G.2

Copy of a Request for Hearing from Ronald J. Cohen, Attorney, on behalf of F.O.P Miami Lodge #20, pursuant to Civil Service Rule 16.1 - Investigation by the Board and 16.2 - Complaint by Employee, alleging a violation of Civil Service Rule 7.3- Duration of Registers, as it relates to the Eligible Register for Police Sergeant. (DISCUSSION)

Ronald J. Cohen, Attorney on behalf of the FOP appeared before the Board and advised that he is requesting a hearing before the Board on a matter regarding Police Sergeant promotions. He then read into the record a portion of Rule 7.3 - Duration of Registers. He went on to say that a Hiring Freeze was instituted by memorandum from the City Manager in 2009, and an Eligible Register for the classification of Police Sergeant was established during the freeze, in 2010. He went on to say that although the City was operating under a Hiring Freeze, several times in 2010, the Police Chief filled Sergeant vacancies, thereby effectively removing the Freeze, and now that the Register is two years old, it should have terminated in November 2012. Attorney Cohen stated that the Department of Human Resources' position on this matter is that the department asked for and was granted special exceptions to the Hiring Freeze, which did not "unfreeze" the register. He further stated that using this theory, a register could stay in effect for 80 years and this would deny the opportunity for promotion for many individuals and effectively steal the future of people who wish to compete.

Assistant City Attorney Richard stated that she had several issues with this request. She went on to say that her first issue is procedural, in that according to Rule 16.2 - Complaint by Employee, an employee who is aggrieved may come before the Board, and seek redress. She went on to say that no employee has indicated that he or she is aggrieved and that if anything, the candidates who are on the Sergeant's register are not aggrieved, because they wish to keep this register viable in order to be promoted. She went on to say that an organization such as the FOP has no standing under this Rule. Assistant City Attorney Richard stated that her second point is that Rule 7.3 was created

by amendment in 1986 for the express purpose of extending promotional opportunities for employees, specifically police officers who were on a police sergeant register. She went on to say that the 3rd District Court of Appeals ruled in *City of Miami vs. Perkins*, that when the City Manager institutes a hiring freeze, it was unfair to continue to let the life of a promotional register run, since no promotions were being made; and that lead to the Civil Service Board adding the "extension of registers" rule for promotional positions. Assistant City Attorney Richard further stated that the City Manager instituted the hiring freeze in 2009, and she lead the Board through the reading and discussion of memos written on this matter between 2009 and 2011. She went on to say that the Freeze was officially lifted for police sworn positions via a memo specifically referencing the police sergeant register and including the date of termination.

Attorney Cohen reappeared before the Board and asked that if the Board needed it, to accept the name of Armando Alvarez as the employee requesting the hearing pursuant to Rule 16.2. He went on to say that the Board may conduct an investigation under Rule 16.1 whenever the Board believes that the spirit and intent of the Rules has been violated and no employee need make the request. Attorney Cohen stated that promotions were made during the Freeze and the Chief's memorandum does not get to control the life of the register. He went on to say that the Rules control the life of a register, and that the Rules state that the maximum life of a register is two years, unless there is a freeze for a period of time.

Member Baños asked Attorney Cohen if the selective opening request from the Chief to make promotions has the effect of crowding out future promotions later on when the Register is opened. Attorney Cohen stated that there would be fewer openings when the Register is opened. Member Baños stated that on that basis, he would be inclined to grant a hearing.

Chairman Silverman asked if the practical effect of holding that the register is terminated result in no promotions being made until a new Register is established. Attorney Cohen responded in the affirmative.

Chairman Silverman asked if an exam would be required before a new Register is established. Attorney Cohen responded in the affirmative.

Chairman Silverman asked how long it would take to have promotions. Assistant City Attorney Richard responded that it would be approximately 18 months to have a new register.

Chairman Silverman asked Attorney Cohen if he was in agreement with Assistant City Attorney Richard's assessment. Javier Ortiz, President, Fraternal Order of Police, Local 20 appeared before the Board and responded in the affirmative, and added that all they were asking for was a hearing.

Chairman Silverman stated that it appears to him that President Ortiz and the Union had a conflict of interest in that those members who are on the Register would want it to stay and those who are not on it want to get rid of it so they have a shot at a promotion. President Ortiz responded that he did not agree with the Chairman and wants the Board to rule on this matter so that things are fair. He went on to say that he respects that the City Manager instituted a freeze and that it is his right to do so, and it is within the Civil Service Rules.

Chairman Silverman asked President Ortiz why he felt he did not have a conflict. President Ortiz responded that he represents all members. Chairman Silverman stated that some of the FOP members want the register to stand.

Attorney Cohen stated that what the Chairman asked was true of every decision that a union makes, in that they represent a group of people who have a community of interests and they make decisions for the organization as a whole. He went on to ask for a hearing so that the Board could clarify this matter.

Chairman Silverman asked President Ortiz if he thought that those who were promoted from the Register were promoted improperly or illegally. President Ortiz responded in the negative, and added that he is just saying that it appears that the list is expired as of October 2012. He went on to say that he was told by the City Manager that we were not under a Freeze, but a "Hiring Watch". He went on to state that part of the City's defense is that requests for exceptions to the Hiring Freeze were granted by the Manager, and that every time persons are promoted, requests have to be granted by the Manager; that this was not an exception or a waiver, but was like any other promotion. He further stated that he understands that it could be 18 months until the next examination, but that is not the fault of the men and women of the police department. He went on to say that they were only asking for a hearing so that the Board could confirm [its opinion on the effect of Rule 7.3].

Member Moy asked for the Department of Human Resources' position on the matter. Terrella Johnson, Records Supervisor, Department of Human Resources appeared before the Board and advised that the Manager lifted the Freeze for police sworn positions on October 20, 2011, following a request from Chief Orosa. She went on to say that the Hiring Freeze for all other registers was lifted on October 2, 2012.

Member Gomez asked President Ortiz if the Register expired in October 2012, would there be a Register available for Sergeant. President Ortiz responded in the negative. Member Gomez asked if there was an Eligible Register for Police Lieutenant. President Ortiz responded in the negative, and added that there has not been one since 2006, so he did not understand what the big deal was about waiting 18 months for a Sergeant Register, when we have been waiting six years for a Lieutenant Register. Chairman Silverman stated that the big deal was that if you are on the Register, you have more time during the 18 months in which to be promoted. President Ortiz responded that it was all about competition, and the whole reason that we have the Civil Service Rules is to make sure that its fair and there is no cronyism. He went on to say that if the administration wanted to, they could keep the Register alive forever.

Assistant City Attorney Richard stated that the Register would not be in effect forever, that it will expire in October 2013, and there will still be at least six months before there would be a new Register. She went on to say that several of the candidates on the Register in question wanted to be at the meeting and speak before the Board, but they were misled into not coming and were under the impression that the FOP would withdraw this matter.

Following discussion, the Board entertained a motion to GRANT the request for a hearing pursuant to Rules 16.1 and 16.2. Prior to voting, Member Harris asked that this hearing, if granted, be held soon, and asked if it could be scheduled for the next meeting (February 19, 2013).

Chairman Silverman stated that he is inclined to grant a hearing, and although he had not heard all of the evidence, felt there was a real quandary because in one way there will not be promotions for 18 months, but on the other hand, it looks like the City may not have done everything they were supposed to. Chairman Silverman then called for a vote on the motion.

The vote on the motion on the floor resulted as follows:

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

Aye: Silverman, Moy, Baños, Gomez and Harris

Member Harris made a motion to schedule the matter for February 19, 2013, which was seconded by Member Moy. During discussion, Member Baños stated that with all due respect to Member Harris, and the importance of this matter, he did not think it was fair to all other cases currently on the Board's docket, to expedite this matter over some who have been waiting six months to be heard. He went on to say that sometimes it is better to give the parties some time to consider the issue and prior to the hearing date they may talk and work out a settlement or resolution.

Chairman Silverman asked Attorney Cohen if he needed to have the matter heard at the next meeting. Attorney Cohen responded that March would be soon enough, to allow all parties to gather their documents.

Member Harris stated that she was concerned with those who are on the Register and not prolonging the decision. Assistant City Attorney Richard stated that Attorney Cohen, in his request for a hearing asked for an emergency hearing, to be held even before today's meeting, so she would like to go forward at the next meeting.

Member Harris stated that it would be good if the hearing could be held at the next meeting, and would like to tentatively schedule it for February 19th, since many times the cases listed on the docket do not go and we then waste a day in the chambers. Member Baños asked Member Harris if she would agree to hold the hearing on March 5th.

The Executive Secretary advised the Board that there are three hearings already scheduled for March 5th and that it would be a "short day", in that the chambers would only be available until 2:30pm. Chairman Silverman stated that it would be okay and that he had every confidence that this matter would be worked out prior to that date.

Member Moy stated that he was not in favor of scheduling this hearing on March 5th because one of the hearings already scheduled was a termination case for an AFSCME employee and the docket is loaded with police issues as it is. Member Harris stated that she concurred with Member Moy, and asked that the date be changed to March 19th. Assistant City Attorney Richard asked if the Board could reconsider the February 19th date, as four of the five hearings scheduled for that date would likely be settled, so there would likely be more time on that date.

Member Harris stated that in keeping with swiftness, she would go back to her final date of February 19th. Attorney Cohen stated that he did not think this matter should linger, but neither he nor President Ortiz were available on February 19th.

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

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

Aye: Moy and Harris

No: Silverman, Baños and Gomez

Following further discussion, the Board entertained a motion to schedule the matter for the Board's March 19, 2013 meeting, which resulted as follows:

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

Aye: Silverman, Moy, Baños and Gomez

No: Harris

H. TODAY'S HEARINGS

H.1 Hearing of Appeal on behalf of Stephon McGill, Police Officer, relative to his 10hr forfeiture, effective July 3, 2012.

The Board entered into the Appeal Hearing on behalf of Officer Stephon McGill, the Appellant.

Janeen Richard, Assistant City Attorney, represented the Department.

Officer McGill represented himself.

Prior to opening statements, Officer McGill advised the Board that his penalty in this case was a 10-hour Forfeiture and a 30-day ban from overtime assignments. He went on to say that at this point, he is agreeing with the charges, and disagreeing only with the penalty assessed.

Chairman Silverman stated that Appeal hearings are done in two parts, the determination of guilt, and if found guilty, the penalty phase. He went on to say that the first part is complete, and that now the Board will hear testimony and review exhibits in order to make a recommendation of the penalty to the City Manager, who will [in accordance with Civil Service Rule 14, make a final determination sustaining, reversing or modifying the actions of the department director]. He went on to say that the department has the burden of proof and asked Assistant City Attorney what she would like to put forth regarding the penalty recommendation.

Special Counsel Everett asked if the Board would confirm the finding of guilty of the charges for the record. Following discussion the Board entered a motion to find the Appellant GUILTY of each of the charges against him, which resulted as follows:

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

Aye: Silverman, Moy, Baños, Gomez and Harris

The Board entered into the Penalty portion of the of the Appellant's hearing. During the penalty portion, witnesses were sworn in individually. Witnesses for the Department appeared in the following order:

1. Norberto Blanco, Police Lieutenant, City of Miami, Department of Police.

Following consideration of submitted testimony and exhibits, and review of the employee's disciplinary profile, the Board entered a motion to recommend that the City Manager reduce Officer McGill's penalty to a Reprimand only, along with the 30-day ban from working overtime jobs, which resulted as follows:

Motion by Member Gomez, seconded by Member Harris, to APPROVE. PASSED by the following vote.

Aye: Moy, Gomez and Harris

No: Silverman and Baños

H.2

Hearing of Appeal on behalf of Reinaldo Tejera, Police Officer, relative to his 10-hour suspension, effective September 13, 2012.

Jon Kreger, Attorney on behalf of Officer Tejera, appeared before the Board and advised that last week, the parties agreed on terms of a settlement. Chairman Silverman asked if what Attorney Kreger stated was the understanding of the department. ACA Richard responded in the affirmative.

NO ACTION TAKEN : Case will be closed and removed from the Board's docket, following documentation of the Settlement Agreement.

ADJOURNMENT:

The meeting ADJOURNED at 12:01 p.m. A break was taken from 11:08-11:14 a.m.

SIGNATURE:

Gerald Silverman, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary