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# **City of Miami**

*City Hall  
3500 Pan American Drive  
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## **Meeting Minutes**

**Tuesday, December 11, 2012**

**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 10:03 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 November 27, 2012.

*The Board entered a motion to APPROVE the minutes of the November 27, 2012 meeting which resulted as follows:*

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

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

**B. PERSONNEL MATTERS**

- B.1** Copy of a letter from Beverly Pruitt, Director, Department of Human Resources, notifying Steven Margolis, Principal Staff Auditor, of his rollback to his previous classification of Staff Auditor, effective December 3, 2012. (NOTIFICATION)

**NOTIFIED**

- B.2** Request from Sabrina Blanchard, to be placed on the re-employment list for Public Service Aide, pursuant to Civil Service Rule 12, Sec. 12.4, Resignations and a copy of the Department Director's endorsement attached. (DISCUSSION)

*Chairman Silverman asked if Ms. Blanchard was present. The Executive Secretary responded in the negative. She went on to say that the department endorsed Ms. Blanchard's request for re-employment so there seemed to be no issue of her returning to the position of Public Service Aide.*

*Chairman Silverman asked if there were any questions or discussion from Board Members on this item. Member Harris stated that Police Chief Orosa endorsed Ms. Blanchard's request for re-employment so her motion would be made based upon the Chief's endorsement. Following discussion, the Board entered a motion to APPROVE the department's request to place Ms. Sabrina Blanchard's name on the re-employment list for the position of Public Service Aide. The motion resulted as follows:*

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

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

- B.3** Copy of a memorandum from Mariano V. Fernandez, P.E., Director/Building Official, Building Department, requesting to extend the probationary period of Anthony Hatten, Electrical Inspector III, for 12 months beyond the end of his term as Union President. (DISCUSSION)

Michael Braverman, Attorney on behalf of Anthony Hatten, stated that he wished to have a moment of the Board's time to express some concerns they had (about the department's request to extend Mr. Hatten's probationary period.) He went on to say that Mr. Hatten is currently detached from his duties in the Building Department and serves as the Union President for AFSCME-Local 1907. Attorney Braverman further stated Mr. Hatten is a full-time employee who works on union issues throughout his workday, but he also performs a number of duties within the Building Department such as going to sites, performing spot checks, and doing other duties that pertain to his classification. He stated that Mr. Hatten was promoted to the position of Electrical Inspector III approximately 9 months ago; however, the issue they have is this is the first instance that they could find that at least two former Union Presidents, one of them being Charlie Cox, attained permanent status while assigned as Union President and working in the Local 1907 union office. Attorney Braverman went on to say there were two other individuals that served as president for the Police and Fire Unions during the time they were promoted and were granted permanent status at the expiration of their probationary period.

Attorney Braverman stated that Mariano Fernandez, Building Director, submitted a memorandum (to the Board) requesting to extend Mr. Hatten's probationary period because he did not perform all of the necessary duties (that his position entails) in order to be evaluated by the department. He went on to say they dispute Mr. Fernandez' claim because Mr. Hatten was productive in the performance of his duties. Attorney Braverman went on to say that Mr. Hatten's promotion (to the Electrical Inspector III position) was made in accordance with a Memorandum of Understanding (MOU). He stated that the MOU provided that an employee serving in the classification of Electrical Inspector II could be promoted to Electrical Inspector III without having to take a competitive examination. Attorney Braverman went on to say that he understands and respects the Board's rules when it says that whenever an employee is promoted, he has to serve a probationary period in order to attain permanent status so the only real issue they have is past practice. He further stated he wanted the Board to know they are concerned for whatever reason Mr. Fernandez chose to change what was past practice of the City as it relates to union presidents being made permanent while serving in a promoted position. Attorney Braverman stated there were a lot of specifics and he appreciated the Chairman for allowing him to expound on the issues. He went on to say that he brought up the issues because they are concerned there were no comments listed for many of the dimensions included in the performance evaluation that Mr. Hatten received. Attorney Braverman further stated this being the case, his client stands in limbo in that he would conceivably be in probationary status until someone decides to develop a plan to address whatever dimension that was not demonstrated or at least observed (by the department) so that he can be evaluated and attain permanent status in the Electrical Inspector III position.

Attorney Braverman stated Mr. Hatten's duties as union president consists of supervising two detached employees, operating a very large budget, administering an executive board, and representing civilian employees very zealously which is an asset to both the City and the employees to have Mr. Hatten in this position. He went on to say he is before the Board to ask if there was some direction that could be given to the department director by the Board (so that his client could be evaluated and made permanent.) Attorney Braverman further stated the Board could either table this item or if there is an objection, the department be given time to develop some type of process for the purpose of giving Mr. Hatten information on how he could become permanent in the position that he is more than qualified for.

Chairman Silverman stated it is his understanding this Board has the authority to either grant or deny the department's request. He went on to say if the Board were to deny the department's request, [Mr. Hatten] could be terminated from the position (and returned

to his former classification) because Mr. Hatten has no rights to the promoted position until he is made permanent. Chairman Silverman further stated the Board has entertained a considerable amount of extension of probationary requests and in most cases, the employees opted to have their probationary period extended rather than risk being terminated from the position (especially if they did not hold permanent status in a previous classification.) He stated ultimately if Mr. Hatten did not want his probationary period extended and the Board agreed, he might have an issue with the department depending upon the action of the Building Director in this case.

Chairman Silverman asked the department's attorney if she wished to speak on this matter. Janeen Richard, Assistant City Attorney (ACA) responded in the affirmative and stated she believed the Civil Service Rules and the AFSCME-Local 1907 contract were clear in stating that every employee, which includes union presidents, must serve a probationary period if promoted to a higher classification. She went on to say in this case Mr. Hatten was promoted so he is required to serve a 12-month probationary period. ACA Richard further stated the purpose of a probationary period is to evaluate the employee to ensure the employee is able to perform the duties and functions of the new position and that Mr. Fernandez will tell the Board what the new duties are in terms of this particular new position. She stated this (extension of probation) is not something the union president should be exempt from and that the examples opposing counsel mentioned are things that occurred in the late 1980's to the early 1990's. ACA Richard went on to say that she could not speculate as to why the different department directors of those employees did not come before this Board and request an extension but she could tell the Board that the Building Department director is before the Board because he cannot evaluate Mr. Hatten. She further stated it is neither fair nor is it in accordance with Civil Service Rules and the union contract for Mr. Hatten to attain permanent status without having performed any of the duties required of him in this new position.

ACA Richard deferred to the Building Director to expand on the reason he is before the Board and why the Board should grant his request to extend Mr. Hatten's probationary period. Mr. Fernandez stated that on January 23, 2012, Mr. Hatten was promoted from an Inspector I to an Inspector III based upon the MOU between the City of Miami and Local 1907. He went on to say that in addition to the field inspections that Mr. Hatten performed in the Electrical Inspector II position, the Inspector III position also requires that he perform in the capacity of Plans Examiner. Mr. Fernandez further stated that the function of plans examiner is important to the Building Department because they issue permits. He stated that he needs to be able to evaluate Mr. Hatten's performance in the higher position because the MOU mandates that employees receiving a promotion under this provision shall serve a 12-month probationary period and attain an overall minimum rating of 3.3 on their performance evaluation form. Mr. Fernandez went on to say that since Mr. Hatten did not perform the function of plans examiner, it was very difficult to evaluate him for the one-year period and make him permanent. He further stated he did not want to return Mr. Hatten to his former position rather he wants Mr. Hatten to provide time to perform the functions of plans examiner even if that meant devoting half-days to this function for at least 6 months. Mr. Fernandez stated that he could not morally sign off to make Mr. Hatten permanent if he has not taken a single day to perform the duties of plans examiner.

Attorney Braverman stated he believed Mr. Fernandez misspoke because Mr. Hatten was not promoted from an Inspector I position. He went on to say Mr. Hatten held the position of Electrical Inspector II and was then promoted to Inspector III. He went on to say he had the job specification which lists the duties and responsibilities of an Inspector III and the only distinction (between the duties of an Inspector II and Inspector III) was the reviewing of plans in a commercial setting versus a residential setting. Attorney Braverman further stated for this reason, the MOU was entered into by the parties to call for the progression from Inspector II to Inspector III whenever an employee possessed

certain qualities since both positions overlapped greatly. He stated 95% of the duties of an Inspector II and III are the same with the exception of the commercial plans review. Attorney Braverman went on to say that he did not know whether Mr. Fernandez agreed with him but the review of residential plans was never an issue. He further stated Mr. Fernandez indicated that he just wanted time to be able to evaluate Mr. Hatten on the dimension (of job knowledge as it relates to reviewing commercial plans), but Mr. Hatten's evaluation is absent ratings and comments in the cited dimensions of the performance evaluation. Attorney Braverman stated Mr. Fernandez made the claim that this one dimension was somehow impeding him from making an overall decision, but there are a number of dimensions listed in the evaluation form that an employee must meet (prior to becoming permanent.) Attorney Braverman further stated if the employee is able to perform 9 of the 10 dimensions listed in the evaluation form and the dimension of reviewing commercial plans was the only function that was not performed by the employee, he would ask the Board to instruct Mr. Fernandez to tell Mr. Hatten what he specifically needs to do in order to acquire permanent status. He stated he thought this would be the most fair and equitable thing to do especially when the City has recognized that employees can move to a higher classification without having to compete.

For clarification purposes, Chairman Silverman stated his understanding was that the Board could either grant or deny the department's request. He went on to say if the Board were to grant the request, the employee's probationary period would be extended, but if the Board were to deny the department's request, the employee's probationary period would not be extended, the department could then take whatever action necessary, and the Board would have no authority to do anything about whatever action the department decided to take. Chairman Silverman asked the Board's Special Counsel if his understanding was correct. Cynthia A. Everett, Special Counsel to the Board, responded in the affirmative.

Chairman Silverman asked if any Board Members had questions or comments they wished to relate on this matter. Member Harris responded in the affirmative. She went on to say that the Board has to ensure that whenever the department is requesting an extension (of an employee's probationary period) that it is being requested within the proper parameters as defined in the Civil Service Rules. Member Harris asked Mr. Fernandez if he was requesting that the probationary period be extended 12 additional months beyond the end of Mr. Hatten's term as union president. Mr. Fernandez responded in the affirmative. He went on to say that Mr. Hatten is working full-time for the union and he has no way to evaluate Mr. Hatten's performance, so in accordance with the Civil Service Rules and the MOU signed by the union, he would like to have an opportunity to evaluate Mr. Hatten's performance for a period of one year. Member Harris asked Mr. Fernandez if he knew the expiration date of Mr. Hatten's term as union president. Mr. Hatten interjected and stated his term ends March 2013. Member Harris asked Mr. Fernandez again if he was asking that Mr. Hatten's probationary period be extended 12 additional months after the end of his term as union president. Mr. Fernandez responded in the affirmative and stated he wanted it to be clear that in the meantime Mr. Hatten would continue to receive the 10% increase in pay (while serving in a probationary status) so there would be no loss of compensation or employment. Member Harris stated based upon what she heard, Mr. Fernandez is asking that Mr. Hatten be on probation for 2 years. Mr. Fernandez responded that he understood Member Harris' position, but he could only act in accordance to the specifications of the MOU. Member Harris stated she was not sure how fair it was (to ask for a 2-year extension of Mr. Hatten's probationary period) but she did want to know if the employee's attorney was correct when he stated there was only one dimension (review of commercial plans) that separated the Inspector II position from the Inspector III position. Mr. Fernandez responded in the negative. He stated in addition to the Inspector III position being a non-exempt position, the person holding this position



*supervises the functions of the Inspector I's and II's and must be able to handle complex assignments. Mr. Fernandez went on to say that Mr. Hatten was never assigned to any complex projects because he had not worked in the Building Department, and nor had he supervised the inspectors in the lower classifications, so there was no way he could evaluate Mr. Hatten's performance. He further stated that he did not want to treat Mr. Hatten unfairly and nor did he want to treat the members of the union unfairly so they all need to go through the normal probationary period. Member Harris asked how long had Mr. Hatten been on probation and did he receive an evaluation. Mr. Fernandez responded that Mr. Hatten has been on probation for 9 months and he received an evaluation, but he and the supervisor both agreed that they could not evaluate Mr. Hatten because he had not performed any work relating to his position of Electrical Inspector III. He went on to say just because Mr. Hatten is the president of the union does not mean that he is exempt from serving a probationary period especially when the MOU which was signed by the union requires that a 12-month probationary period is served by the individual occupying the Inspector III position and also that the person is working in the department to perform those duties.*

*ACA Richard stated she believed according to the Local 1907 union contract that the union president is relieved of all of his duties as an employee so Mr. Hatten is not performing any duties as an inspector. She went on to say she did not know what Mr. Hatten was doing on the site visits but according to the contract he is relieved of duties which makes it difficult for anybody to evaluate him, which is what Mr. Fernandez had been saying all along.*

*Member Harris stated there were comments made in the evaluation which indicated Mr. Hatten supervised two detached employees and oversaw a budget, so she would like to know if those comments were grounds for evaluating Mr. Hatten. Mr. Fernandez responded in the negative. He went on to say that the duties provided in the evaluation had nothing to do with the license Mr. Hatten holds as a an electrical inspector or electrical plans examiner. Mr. Fernandez further stated that Mr. Hatten is working with the administration of his union which has absolutely nothing to do with the [MOU] or functions in the Building Department. He stated Mr. Hatten might be doing an excellent job as union president but that is not a valid reason for him to evaluate Mr. Hatten or his functions as an electrical inspector or electrical plans examiner. For clarification purposes, Member Harris asked Mr. Fernandez if his position is to work with the union by identifying an action plan for the purpose of demonstrating to Mr. Hatten what he needs him to do in order to be made permanent in the Inspector III position. Mr. Fernandez responded that he was willing to work with the union in any way, shape, or form. He went on to say he was willing to create a special program so that Mr. Hatten is able to come to the office, work half days with the Chief Electrical Inspector for 6 months, and if he performs the functions, he would sign the document to make Mr. Hatten permanent in the position.*

*Member Banos stated he had a real problem (with the department) picking this particular employee (Mr. Hatten) to strictly enforce the law (MOU). He went on to say it has been the City's practice in the past to make certain concessions for union presidents so he did not understand why he was being singled out. Member Banos further stated he understood the department director wanting the employee to meet a certain provision but the job description did not seem to be all together different. He stated if the department can put Mr. Hatten in a program for approximately three months, the director could then determine if Mr. Hatten is qualified for the position for which he was already hired into (9 months ago.) Member Banos went on to say he did not see why Mr. Fernandez needed to extend Mr. Hatten's probationary period for an additional 12 months but like the Chairman said earlier, he would be concerned about denying the department's request because of the adverse affect it can have on the employee. He stated he was puzzled and wanted to know what Attorney Braverman was asking the*

Board to do. Prior to hearing Attorney Braverman's response, Chairman Silverman interjected and suggested that the Board grant a 3-month extension which would allow the department director and Mr. Hatten to work out what needs to be done and if nothing could be worked out, they could return to the Board. He went on to say it seemed to him that this was a problem that could be solved so that is why he was suggesting a 3-month extension of Mr. Hatten's probationary period.

Hearing no response to the Chairman's suggestion, Attorney Braverman provided a response to Member Banos question regarding what he wanted the Board to do concerning the request before the Board. Attorney Braverman stated the issue is why is his client being treated differently. He went on to say the reality is Mr. Hatten does perform functions in the field, he has been called in when the department was short-handed to inspect fire inspection systems, and he performs the regular jobs contained within the classification. Attorney Braverman further stated he would respectfully tweak the Chairman's suggestion and ask that this matter be tabled to the January 8 or 22 meeting and that no action be taken on the extension request since Mr. Hatten's probationary period expires in three months. He stated they would return to either of the two January 2013 meetings whenever the department director gives them specifics that dispels their concern that Mr. Hatten is being treated differently. Attorney Braverman went on to say he was comfortable representing that the Chief Electrical Inspector would sign off on Mr. Hatten's evaluation today.

Member Harris stated Mr. Fernandez has come to the Board in the past and she has always said that he is one of the better directors in the City of Miami. She went on to say she has always respected his honesty and straightforwardness but she would have to say that she was amazed that Mr. Fernandez was not able to evaluate Mr. Hatten in the areas of job knowledge, productivity, initiative, and interpersonal skills. Member Harris further stated maybe it was just her (way of thinking) but to issue an evaluation that says, "I'm unable to complete the evaluation at this time." without having an action plan or something definitive such as what the employee is asking for (so that he knows what he needs to do to become permanent in the position), she felt the department could have done better.

Member Moy stated he thought Mr. Hatten was treated differently and the mere fact the department wanted to extend his probationary period an additional 12 months puzzled him. He went on to say that Mr. Fernandez promoted Mr. Hatten into the position knowing that he was the union president, so he did not know what Mr. Fernandez was thinking (when he made this decision.) Member Moy further stated concerning past practice (of former union presidents being made permanent), he recalls there had been times when Fire lieutenants and captains did not necessarily perform the job in the field, yet they received a promotion based upon the qualifications and experience they possessed, but Mr. Fernandez wants the Board to grant his request to extend Mr. Hatten's probationary period an additional 12 months. He stated if Mr. Hatten were to become union president for another term did this mean he would be penalized again by having his probationary period extended even longer? He further stated Mr. Fernandez did not present any evidence today other than to say he needed Mr. Hatten to review electrical plans.

Chairman Silverman stated he stopped the department's attorney earlier from commenting because Member Moy gestured to speak. He asked her if she still wished to comment. ACA Richard responded in the affirmative. She went on to say the department director's request is before the Board so she thought he should be the one deciding whether or not he wants the matter to be continued or tabled. ACA Richard further stated it was her understanding Mr. Hatten's probationary period expires in January 2013, so she did not think they would have three months to settle this matter as stated by Attorney Braverman. She stated that with regards to past practice, one

exception does not constitute a past practice that the City is forever bound to and there has been no evidence presented to this Board as to what has been done with past union presidents (who were promoted to a position that required they serve a probationary period.) ACA Richard further stated in regards to the other issue mentioned about union presidents who may or may not have been promoted to sworn positions in the Police and Fire-Rescue Departments, these sworn individuals would have taken an exam which is already an inference that they were qualified to do the job. ACA Richard went on to say that in Mr. Hatten's case, no exam was given so he did not have to compete for the higher position, instead he was promoted based upon a MOU which automatically elevated him to the Inspector III position. She further stated concerning those other limited situations that were spoken of by opposing counsel were completely different from what is before the Board today. ACA Richard stated there was no evidence presented to this Board concerning past union presidents other than statements made by opposing counsel.

Chairman Silverman stated he would give Mr. Fernandez the last word since it was his request before the Board. Mr. Fernandez stated that he would like for the Board to vote on this matter because according to the Civil Service Rules, it states that he must bring his request before the Board prior to the expiration of the employee's probationary period. Chairman Silverman asked when was Mr. Hatten's probationary period set to expire. Mr. Fernandez responded that the probationary period expires on January 23, 2013. Chairman Silverman stated that being the case, the Board can either deny the request, extend it for a limited or unlimited period, or table it to the meeting in January 2013.

Member Harris asked how the employee would be affected if the Board were to table this matter? Chairman Silverman responded if the matter is tabled, there is the possibility that the matter could be worked out or the Board can extend the probationary period for an additional three months. Following discussion, the Board entered a motion to TABLE this matter, which resulted as follows:

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

**Aye:** Silverman, Baños, Gomez and Harris

**No:** Moy

**NOTE:** Item tabled to the January 8, 2013 meeting for Board consideration.

## **C. MILITARY LEAVES OF ABSENCE**

## **D. DISCIPLINARY MATTERS**

- D.1** Copy of a letter from Chief Maurice Kemp, Director, Department of Fire-Rescue, notifying Hector Barrios, Firefighter, of his 48-hr forfeiture, effective October 26, 2012. (NOTIFICATION)

**NOTIFIED**

- D.2** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Francisco Sallano, Police Officer, of his 10-hr forfeiture, effective December 6, 2012. (NOTIFICATION)

**NOTIFIED**



- D.3 Copy of a memorandum from the City Manager concerning the Whistleblower hearing on behalf of Glenn Marcos, former Director of Purchasing, pursuant to Florida Statute 112.3187, acknowledging receipt of the Board's findings and advising no further action is necessary. (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 in this case. ACA Richard responded that the parties have agreed to the settlement terms and that the settlement agreements were forwarded to the department a couple of weeks ago. She went on to say that she is currently waiting for Police Chief Orosa to sign both (Officer Jean Marie Jean-Philippe/Officer Johnny Brutus) agreements.*
- DISCUSSED : Case will be closed and removed from the Board's docket upon receipt of a written agreement or rescheduled in accordance with the Board's Continuance Policy.**
- 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.
- ACA Richard stated that the settlement agreement was forwarded to Police Chief Orosa for his signature so at this time she is awaiting the return of the signed settlement.*
- DISCUSSED : Case will be closed and removed from the Board's docket upon receipt of a written agreement or rescheduled in accordance with the Board's Continuance Policy.**
- E.3 Copy of a Report concerning the Grievance Hearing on behalf of Lewis Mahoney, Park Manager II, pursuant to Rule 16.1, Abuse of Power by his Supervisor, Donald Lutton, Superintendent, Parks and Recreation Department and 16.2, Complaint by Employee. (DISCUSSION)
- ACA Richard stated that she had not heard from Mr. Mahoney so she has not been able to get together with him to agree on the proposed findings prepared by Special Counsel Everett.*
- DISCUSSED : Chairman Silverman instructed the Executive Secretary to reschedule this item to the January 8, 2013 meeting for Board consideration.**
- E.4 Copy of a Report concerning the Grievance Hearing on behalf of Ricardo Novas, Broadcast Engineer, pursuant to Rule 16.2, concerning a violation of Rule 12, Layoff, Resignation, and Reinstatement. (DISCUSSION)
- ACA Richard stated that she did not have an opportunity to express her concerns regarding the proposed findings but she learned today that Attorney Braverman does*

*not have any objections to the findings but she does.*

*Attorney Braverman stated if the Board is going to pass over this item and come back to it sometime during the meeting, he would have no problem reviewing the document containing opposing counsel's objections. Chairman Silverman responded that the Board would pass over this item and discuss it at a future meeting.*

**DEFERRED : Item rescheduled to the meeting of January 8, 2013 for consideration by the Board.**

**E.5**

**Possible Rule or Procedure Manual Amendment (DISCUSSION)**

*Chairman Silverman stated that he did not review the document. He went on to say that because this is Member Harris' item, he wanted to know if she would object to carrying over this item to the Board's next meeting. Member Harris responded in the negative.*

**DEFERRED : Rescheduled to the Board meeting of January 8, 2013 for discussion.**

**E.6**

**Notice of a Request to Continue from Jon M. Kreger, Attorney, Ronald J. Cohen, P.A., concerning the Appeal Hearing of Yatha Legrand, Police Officer, relative to her 30-hour suspension, effective January 25, 2012. Janeen Richard, Assistant City Attorney, expressed no objection to the continuance request. (DISCUSSION)**  
**Hearing of appeal is scheduled for today.**

*Chairman Silverman asked the department's attorney if she had an objection to the employee's request for a continuance. ACA Richard responded in the negative.*

*Member Harris stated that this is the employee's second request for a continuance and no continuances were granted on behalf of the department. She asked what the reason was for the continuance today. Attorney Kreger responded that he has been pressed with a lot of other things recently and has not had an opportunity to adequately prepare his case. He went on to say that he did prepare for Officer Carpenter's case that was scheduled today but it was continued.*

*Chairman Silverman stated the next time this hearing is scheduled, the Board will go forward. Following discussion, the Board entered a motion to APPROVE the employee's request for a continuance which resulted as follows:*

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

**Aye:** Silverman, Moy and Gomez

**No:** Baños and Harris

**E.7**

**Notice of a Request to Continue from Janeen Richard, Assistant City Attorney, concerning the Appeal hearing of David Carpenter, Police Officer, relative to his 10-hour forfeiture of earned time, effective May 25, 2011. John Kreger, Attorney, on behalf of Officer Carpenter, expressed no objection to the continuance request. (DISCUSSION)**  
**Hearing of appeal is scheduled for today.**

*The Board entered a motion to grant the department's request for a CONTINUANCE 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

**E.8**

Notice of a Request to Continue from Janeen Richard, Assistant City Attorney, concerning the Appeal hearing of David Carpenter, Police Officer, relative to his 40-hour suspension, effective November 15, 2011. John Kreger, Attorney, on behalf of Officer Carpenter, expressed no objection to the continuance request. (DISCUSSION)

Hearing of appeal is scheduled for today.

*Chairman Silverman asked Attorney Kreger if he had an objection to the department's request for a continuance. Jon Kreger, Attorney on behalf of David Carpenter, responded in the negative.*

*Chairman Silverman asked if Board Members had any questions or discussion on this matter. Member Harris responded in the affirmative and asked how many times was this case continued. ACA Richard interjected that this was the first continuance requested by the department. She went on to say that she set forth her reason for the continuance in writing which was she received notice yesterday that the author of the reprimand, Lt. Jeffrey Locke, was not available today. ACA Richard further stated because the cases are substantially similar, in that they involve the same conduct, she thought it would be prudent and more efficient for both cases to be heard together.*

*Member Harris asked again for the number of times this case was continued. The Executive Secretary responded that this case was continued one time at the request of the employee.*

*Chairman Silverman stated that he remembered Lt. Locke had a case that was continued for years so he was not going to vote to continue this case another time if Lt. Locke is unavailable.*

*Member Harris stated she would admit that she is a little tougher on the department as it relates to continuances (of Appeal hearings) and that is because she feels the City should be ready even before the hearing is set since it is their case and she wants to give the employee the opportunity to defend his/her case. She went on to say that she concurred with the Chairman's comments concerning Lt. Locke's name coming up in cases for which he seems to be unavailable.*

*Member Banos asked Attorney Kreger if he works for Attorney Ronald J. Cohen. Attorney Kreger responded in the affirmative. Member Banos stated that in his prior capacity as Trustee for the City of South Miami Pension Board, Ronald Cohen was hired as the Pension Board's attorney. He went on to say he no longer serves in that capacity and owes nothing to Mr. Cohen but he felt this Board should know that he was the attorney for the City of South Miami Pension Board in the past.*

*Member Banos stated that he also shared the comments from Member Harris. He went on to say that if the department is prepared to go forward on one case, he did not see the reason to consolidate both cases even if the charges are the same and there are different facts because one case would tend to taint the other. Member Banos further stated having expressed his position, he will vote to continue Officer Carpenter's cases today, but he will not continue to vote in favor of continuances on a regular basis because there are cases scheduled through May 2013 and they need to be heard.*

*Following discussion, the Board entered a motion to APPROVE the department's request for a continuance 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

## **F. REPORTS**

- F.1** Pending Hearings as of December 11, 2012. (NOTIFICATION)  
**PRESENTED**

## **G. REQUESTS FOR HEARINGS**

## **H. TODAY'S HEARINGS**

- H.1** Hearing of Appeal on behalf of David Carpenter, Police Officer, relative to his 10-hour forfeiture of earned time, effective May 25, 2011.  
**CONTINUED : The Board took no action on this case because a continuance was granted at today's meeting.**
- H.2** Hearing of Appeal on behalf David Carpenter, Police Officer, of his 40-hour suspension, effective November 15, 2011.  
**CONTINUED : The Board took no action on this case because a continuance was granted at today's meeting.**
- H.3** Hearing of Appeal on behalf of Yatha Legrand, Police Officer, relative to her 30-hour suspension, effective January 25, 2012.  
**CONTINUED : The Board took no action on this case because a continuance was granted at today's meeting.**

## **ADJOURNMENT:**

*The meeting ADJOURNED at 10:40 a.m.*

## **SIGNATURE:**

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**Gerald Silverman, Chairperson**

## **ATTEST:**

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**Tishria L. Mindingall, Executive Secretary**