

City of Miami

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

Tuesday, June 2, 2009

10:00 AM

Commission Chambers

Civil Service Board

*Miguel M. de la O, Chairperson
William J. Scarola, Chief Examiner
Jessica Angel-Capo, Board Member
Mariano Cruz, Board Member
Michael T. Dames, Board Member*

PLEDGE OF ALLEGIANCE

The meeting was called to order at 10:16 a.m. The roll call for Board Members at the commencement of the meeting was as follows:

Present: Chief Examiner Scarola, Chairperson de la O, Member Dames and Member Cruz

Absent: Member Angel-Capo

A. APPROVING THE MINUTES OF:

Regular Meeting of May 12, 2009.

The Board entered a motion to APPROVE the minutes of the regular meeting of May 12, 2009 which resulted as follows:

**Motion by Member Cruz, seconded by Chief Examiner Scarola, to APPROVE.
PASSED by the following vote.**

Aye: Chairperson de la O, Member Dames, Chief Examiner Scarola and Member Cruz

Absent: Member Angel-Capo

B. PERSONNEL MATTERS

- B.1 09-00163** Copy of a memorandum from Hector Lima, Director, Building Department, requesting to extend the probationary period of Fred Acosta, Plumbing Inspector III, three (3) additional months beyond June 10, 2009.
(DISCUSSION)

Board previously approved an extension of probation on March 10, 2009.

Chairman de la O asked Mr. Acosta if he was aware that the department director requested to extend his probationary period for an additional three months and if so, did he have any objections to the director's request.

Fred Acosta appeared before the Board and responded that he was aware that a request was made to extend his probationary period and that he had no objections.

Member Scarola asked Mr. Acosta if he could tell the Board why the department requested a second extension of his probationary period.

Mr. Acosta stated that he was classified as a Plumbing Inspector III when he should have been classified as a Plumbing Inspector II so the department needed more time to review the situation.

Member Dames asked for clarification on the department's extension request.

Mr. Acosta stated that as a Plumbing Inspector I, he applied for the position of Plumbing Inspector II, but for whatever reason when the administrative paperwork was completed, he was classified as a Plumbing Inspector III; therefore, the department requested a three month extension to allow time to correct this personnel action.

Member Dames asked Mr. Acosta if he was saying that the department requested a three month extension to change his classification from a Plumbing Inspector III to a

Plumbing Inspector II.

Mr. Acosta responded in the affirmative.

Chairman de la O asked Mr. Acosta if he currently holds the position of Plumbing Inspector I.

Mr. Acosta responded in the affirmative.

Following discussion, the Board entered a motion to APPROVE the department's request to extend Fred Acosta's probationary period an additional three months beyond June 10, 2009, which resulted as follows:

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

Aye: Chairperson de la O, Member Dames, Chief Examiner Scarola and Member Cruz

Absent: Member Angel-Capo

C. MILITARY LEAVES OF ABSENCE

D. DISCIPLINARY MATTERS

- D.1 06-01337** Copy of Judgment from the City Manager concurring with the Board in finding James D. Thomas, Administrative Assistant II, guilty of all charges against him as set forth in the 3-day suspension disciplinary letter, effective July 10, 2006. (NOTIFICATION)
- NOTIFIED**
- D.2 07-00354** Copy of a Memorandum from Pedro G. Hernandez, City Manager, advising that due to pending litigation, no action will be taken concerning the Grievance hearing of Miguel Hervis, Police Lieutenant, pursuant to Civil Service Rule 16.2, Complaint by Employee, concerning a violation of Civil Service Rule 17.1, Practices, Penalties. (NOTIFICATION)
- NOTIFIED**
- D.3 07-01190** Copy of a Memorandum from Pedro G. Hernandez, City Manager, rejecting all of the recommendations of the Civil Service Board, concerning the Investigation Hearing on behalf of Stanley Jean-Poix and Andre Paul-Noel, Police Officers, pursuant to Civil Service Rule 16.1, Investigation by the Board. (NOTIFICATION)
- NOTIFIED**
- D.4 09-00388** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Daniel Ubeda, Police Officer, of a 40-hour suspension, effective May 12, 2009 and a request from Daniel Ubeda, requesting a hearing of appeal relative to his 40-hour suspension. A hearing will be scheduled in accordance with Civil Service Rules and Regulations. (NOTIFICATION)

RECEIVED AND FILED

- D.5 09-00522** Copy of a letter from Hector Lima, Director, Building Department, notifying Humberto Mijares, Building Inspector III, of his 14-day suspension, effective May 8, 2009 and copy of a letter from Osnat K. Rind, Attorney, on behalf of Humberto Mijares, Building Inspector III, requesting a hearing of appeal relative to his 14-day suspension. A hearing will be scheduled in accordance with Civil Service Rules and Regulations. (NOTIFICATION)

RECEIVED AND FILED

- D.6 09-00566** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Marcel Jackson, Police Officer, of his 40-hour suspension, effective May 16, 2009 and a request from Marcel Jackson, requesting a hearing of appeal relative to his 40-hour suspension. A hearing has been scheduled for January 26, 2009. (NOTIFICATION)

RECEIVED AND FILED

- D.7 09-00571** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Marc Marcelin, Police Officer, of his 20-hour suspension, effective May 16, 2009 and a request from Marc Marcelin, requesting a hearing of appeal relative to his 20-hour suspension. A hearing will be scheduled in accordance with Civil Service Rules and Regulations. (NOTIFICATION)

RECEIVED AND FILED

- D.8 09-00374** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Daniel Ubeda, Police Officer, of a 10-hour suspension, effective May 29, 2009. (NOTIFICATION)

NOTIFIED

- D.9 09-00510** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Mario Gonzalez, Police Officer, of a 120-hour suspension, effective May 29, 2009. (NOTIFICATION)

NOTIFIED

- D.10 09-00567** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Harold James, Jr., Police Officer, of his 10-hour suspension, effective May 31, 2009. (NOTIFICATION)

NOTIFIED

- D.11 09-00568** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Jerry Sutherland, Police Officer, of his 10-hour forfeiture, effective May 4, 2009. (NOTIFICATION)

NOTIFIED

- D.12 09-00569** Copy of a letter from Chief John F. Timoney, Director, Department of Police,

notifying Michael Alvarez, Police Officer, of his 10-hour suspension, effective May 5, 2009. (NOTIFICATION)

NOTIFIED

D.13 09-00570 Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Michael Alvarez, Police Officer, of his 20-hour suspension, effective May 6, 2009. (NOTIFICATION)

NOTIFIED

D.14 09-00572 Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Moriath Melendez, Public Service Aide, of her 16-hour suspension, effective May 18, 2009. (NOTIFICATION)

NOTIFIED

D.15 09-00573 Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Daniel Crocker, Police Officer, of a 10-hour suspension, effective May 19, 2009. (NOTIFICATION)

NOTIFIED

D.16 09-00574 Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Daniel Crocker, Police Officer, of a 20-hour suspension, effective May 20, 2009. (NOTIFICATION)

NOTIFIED

D.17 09-00575 Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Kevin Williams, Police Officer, of a 20-hour suspension, effective May 28, 2009. (NOTIFICATION)

NOTIFIED

D.18 09-00577 Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Cesar Villafana, Police Officer, of a 20-hour suspension, effective May 29, 2009. (NOTIFICATION)

NOTIFIED

D.19 09-00578 Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Daniel Ubeda, Police Officer, of his 10-hour suspension, effective May 29, 2009. (NOTIFICATION)

NOTIFIED

D.20 09-00580 Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Kevin Williams, Police Officer, of a 40-hour suspension, effective June 2, 2009. (NOTIFICATION)

NOTIFIED

- D.21 09-00581** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Michael Alvarez, Police Officer, of a 40-hour suspension, effective June 2, 2009. (NOTIFICATION)
NOTIFIED
- D.22 09-00582** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Carlos Dechamps, Police Officer, of a 10-hour suspension, effective May 31, 2009. (NOTIFICATION)
NOTIFIED
- D.23 09-00583** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Armando Alvarez, Police Officer, of a 10-hour forfeiture, effective May 14, 2009. (NOTIFICATION)
NOTIFIED
- D.24 09-00584** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Latrice Golden, Police Officer, of a 10-hour forfeiture, effective May 18, 2009. (NOTIFICATION)
NOTIFIED
- D.25 09-00585** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Tika Jones, Police Officer, of a 10-hour suspension, effective May 31, 2009. (NOTIFICATION)
NOTIFIED
- D.26 09-00586** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Tika Jones, Police Officer, of a 20-hour suspension, effective June 1, 2009. (NOTIFICATION)
NOTIFIED
- D.27 09-00591** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Carlos Antunez, Police Officer, of his 40-hour suspension, effective June 1, 2009. (NOTIFICATION)
NOTIFIED
- D.28 09-00596** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Raul Delgado, Police Officer, of a 10-hour forfeiture, effective May 19, 2009. (NOTIFICATION)
NOTIFIED

E. GENERAL ITEMS

- E.1 08-00896** Copy of Findings of Fact concerning the appeal hearing of Alice Dunn,

Typist Clerk II, relative to her 40-hour suspension, effective October 20, 2008. (DISCUSSION)

Chairman de la O stated that it was his understanding that Attorney Rind has requested to move this item to the Board's next meeting. He asked the department's attorney if she had an objection to this request.

Assistant City Attorney (ACA) Vizcaino responded in the negative.

Following discussion, the Chairman instructed the Acting Executive Secretary to include this item on the Board's next agenda for Board consideration.

DEFERRED TO THE MEETING OF JUNE 30, 2009.

E.2 08-01414

Hearing of appeal on behalf of Juan Herrera, Police Officer, relative to his 10-hour suspension, effective November 23, 2008. (DISCUSSION)

Board continuance required; hearing scheduled for June 16, 2009, meeting cancelled.

Chairman de la O stated that Items E.2 (Hearing on behalf of Juan Herrera) and E.3 (Hearing on behalf of Robert Byrd) are appeal cases that were scheduled to be heard at the June 16 meeting; however, due to a cancellation of this meeting, a continuance will be charged to the Board.

Following discussion, the Board entered a motion to CONTINUE the hearing of Juan Herrera and charge the continuance to the Board which resulted as follows:

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

Aye: Chairperson de la O, Member Dames, Chief Examiner Scarola and Member Cruz

Absent: Member Angel-Capo

E.3 09-00364

Hearing of appeal on behalf of Robert Byrd, Labor Crew Leader II, relative to his 3-day suspension, effective March 23, 2009. (DISCUSSION)

Board continuance required; hearing scheduled for June 16, 2009, meeting cancelled.

The Board entered a motion to CONTINUE the appeal hearing of Robert Byrd and charge the continuance to the Board which resulted as follows:

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

Aye: Chairperson de la O, Member Dames, Chief Examiner Scarola and Member Cruz

Absent: Member Angel-Capo

E.4 05-00951

Hearing of appeal on behalf of Barbara Shaffner, Police Officer, relative to her 10-hour suspension, effective August 14, 2005. (DISCUSSION)
Hearing previously scheduled for April 21, 2009; however continued pending settlement. Pursuant to Civil Service Board Manual of Procedures, hearing rescheduled-awaiting settlement.

Chairman de la O stated that this item is being continued pending receipt of the

settlement that was entered into by the City and Officer Shaffner.

ACA Vizcaino stated that she provided Civil Service Board staff with a copy of the settlement agreement which was signed by all essential City administrative parties and that it was her understanding that Attorney Rind and her client had also submitted a copy of the signed agreement; however, all signatures need to be included on one settlement agreement. She went on to say that the settlement agreement she provided to office staff will be forwarded to Attorney Rind for her client's signature since this is the original document.

DEFERRED ---AWAITING COPY OF SIGNED SETTLEMENT TO CLOSE CASE.

- E.5 06-01087** Notice of withdrawal from Osnat K. Rind, Attorney, on behalf of her client, James Billberry, Police Sergeant, concerning the 16.2 Grievance Request, concerning an alleged violation of Civil Service Rule 11.2 Assignment to Other Work. (NOTIFICATION)

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

WITHDRAWN

F. REPORTS

- F.1 09-00002** Pending Hearings as of June 2, 2009. (NOTIFICATION)

G. REQUESTS FOR HEARINGS

- G.1 09-00543** Copy of a Request for Grievance Hearing from Suzann E. Nicholson, Customer Service Representative III, pursuant to Civil Service Rule 16.2, concerning an alleged violation of Section 36(d) of the City of Miami Charter - Rules; examinations; eligible list; certification of vacancies, and Civil Service Rules 6.3 - Content of Examinations, and 6.5 - Method of Rating. (DISCUSSION)
- Chairman de la O asked Ms. Nicholson to explain to the Board why she wants to have a hearing.*

Ms. Nicholson stated that she was hired as a Customer Service Representative I in July 2004, promoted to Customer Service Representative II in October 2005 and currently holds the position of Customer Service Representative III. She went on to say that her purpose today is to make the Board Members aware of the unfair work environment that is being displayed in the Customer Service Division. Ms. Nicholson further stated that since the implementation of Oracle in October 2006, she watched her workload and responsibilities increase with no recognition. She stated that a compilation of her duties entails working with various departments and sections such as Solid Waste, Code Enforcement, Cash Receipt Section, NET Centers, Unsafe Structures and handling administrative duties such as returned checks, storm utility fees, business tax and cash receipts, certificates of use, collections and ARPS, and that the only thing she does not perform [that a Finance Revenue Inspector would] is conduct physical inspections in the field; therefore, it is her hope that the Board honors [its] Mission Statement, which is to ensure that City employees in the classified service are hired, promoted, and retained based upon merit, efficiency, character and industry and not political patronage since there are some positions that are being compensated at a higher rate of pay but require less experience. She stated that she would also ask that an audit be conducted to review the Customer Service Representative III and Finance Revenue Inspector

positions [for a comparison of the pay and requirements] and also a comparison of the Occupational License and Finance Revenue Inspector positions.

Chairman de la O asked Ms. Nicholson if she was requesting an audit to see if the positions are being fairly compensated in relation to the other positions that may have greater or lesser requirements.

Ms. Nicholson responded in the affirmative.

Chairman de la O asked for the department's position on this matter.

ACA Vizcaino stated that the department's position is that the audit that Ms. Nicholson is requesting is something that she could have done by either speaking to her department director or the director of Employee Relations; therefore, her appearance before the Board for a Rule 16.2 hearing is an inappropriate forum to request an audit. She went on to say that it is her representation that in November 2008, the director of the Finance Department made an effort to reorganize the department by requesting that some positions be reevaluated and it is her understanding that the Customer Service Representative series is one that will be reevaluated. ACA Vizcaino further stated that based upon Ms. Nicholson's allegations presented today, she had not heard any testimony about a rule violation, which is a provisional requirement] under Rule 16, therefore she does not feel a hearing under Rule 16.2 would be appropriate.

Chairman de la O asked Ms. Nicholson if she attempted to have an audit conducted by any other means.

Ms. Nicholson responded that her supervisor attempted to have an audit conducted on several occasions and she has been promised things for her staff yet those promises have gone unfulfilled; therefore, they are losing workers due to the work load.

Member Cruz asked Ms. Nicholson if she was saying that persons from the outside are being hired as opposed to promoting employees from within.

Ms. Nicholson responded that her supervisor tries to hire from within, but if City employees do not apply, she then has to hire from the outside.

Chairman de la O asked Ms. Nicholson if she could tell the Board anything about the department's representation that there is already an audit that is going to take place regarding various positions within the Finance Department.

Ms. Nicholson responded that there had been an audit going on for a long time in the Finance Department. She went on to say that her supervisor has had to fight [with Administration] in order for her staff to receive a 5% pay increase for working out of their classifications and she also had to fight [with Administration] to create the Customer Service Representative III position so that employees could be properly compensated in accordance with their job description. Ms. Nicholson further stated that her supervisor has also been fighting to get the pay rate changed from a pay range 21A to a 22A for the last 8 months to no avail while on the other hand other positions are being created, audited, and salaries increased while these responsibilities are being passed on to [her area of] Customer Service, which she finds to be very unfair.

Chairman de la O asked Ms. Nicholson if she had any reason to believe that an audit was not started.

Ms. Nicholson responded that if an audit was started, it probably was recent and probably could have stemmed from her complaint. She went on to say that the reason

she is before the Board is because her supervisor has gone to Employee Relations reference audits and was turned down.

Chairman de la O stated that his point to Ms. Nicholson is that she could win many ways in that if it was her coming to the Board that got the audit started in her department, she has already accomplished what she wanted without the Board having to hold a hearing. He went on to say that what would make more sense to him would be to put this matter off to the next meeting so that someone from Employee Relations could tell the Board whether audits are being conducted, which would let the Board know whether this is a moot issue.

ACA Vizcaino stated that she wished to address Ms. Nicholson's allegations because she seems to be the mouthpiece apparently for her supervisor. She went on to say that the position Ms. Nicholson currently holds is a Customer Service Representative III (CSR) position, which was created in 2007 for the purpose of promotional opportunities. ACA Vizcaino further stated that Ms. Nicholson's testimony that no one is interested in working for the Customer Service Department is completely contradictory because when she competed for the CSR III position, there were 112 applicants on the eligible register. She stated that when the CSR III position was created, an audit was conducted and pay rates were compared with other municipalities and the range was appropriate; therefore, Ms. Nicholson's supervisor who is not present at today's meeting, should have inquired about the pay range at that time.

Chairman de la O stated that all ACA Vizcaino mentioned might be correct but he did not want to get into the substance of how an audit should turn out because the Board is not going to get involved with this aspect of the matter. He went on to say that if the department has already started an audit, he would like this information on the record which would make Ms. Nicholson's request moot.

Member Cruz asked Ms. Nicholson if the request for an audit [made by her supervisor] was in writing and if not, it should have been so that she would have a paper trail. He went on to say that when requests are made by phone, it is only hearsay, but if something is submitted in writing a response would be required.

ACA Vizcaino stated that for clarification purposes, according to an e-mail from the Finance Director dated November 2008, she states that she is requesting an audit as part of a reorganization in the Finance Department that all positions be evaluated. She went on to say that whether or not a particular audit is being conducted for the CSR III position may be two different things, but if Ms. Nicholson wants her position to be audited, she can request it and it might take place, but as it stands now, she has not requested an audit.

Chairman de la O asked Ms. Nicholson if she requested an audit of her position.

Ms. Nicholson responded that she was not familiar with the City's chain of command. She went on to say for the record, her supervisor did not promote her action to voice her complaint before the Board because she was not aware, but it is the things that have been steadily going on during her employment with the City that has promoted her [to come before the Civil Service Board].

Chairman de la O stated that when he asked Ms. Nicholson if she requested an audit, he was not trying to assign blame or judgment, but it is a point of information that the Board needs to know. He went on to say that it would seem to be a bit of overkill if Ms. Nicholson has not requested an audit for the Board to get involved to hold a hearing. Chairman de la O further stated that there are steps Ms. Nicholson must take and the first step is to request in writing an audit of her position and if she were to get rejected

he was not passing judgment as to whether the Board has jurisdiction to hold a hearing, but it would be at that time for the Board to decide whether or not Ms. Nicholson [has reason to request a hearing]. He stated that Ms. Nicholson should give the department an opportunity to take whatever action is necessary on a voluntary basis before coming to the Board.

ACA Vizcaino stated if Ms. Nicholson needs guidance on requesting audits, there is an administrative policy with regards to the pay policy on the City's web site which explains how she goes about requesting an audit.

Chairman de la O asked who Ms. Nicholson could speak with regarding audits.

ACA Vizcaino stated that the information is on the City's web site and she could also speak to Mr. Ricardo Martinez who works in the Classification & Pay Division (of Employee Relations).

Member Dames asked Ms. Nicholson how long has she been a City employee. Ms. Nicholson responded that she has been employed for five years.

Member Dames stated that Ms. Nicholson is a frustrated employee and it is his understanding that it is difficult to maintain employees in the Finance Department. He went on to say that the department director has requested an audit of positions since November 2008 [to no avail] so he was wondering since Mr. Martinez is present and is responsible for audits, if the Board could order him to conduct an audit.

Chairman de la O stated that the Board cannot order the department to conduct an audit, but it can make a recommendation to the City Manager that an audit is conducted.

Member Dames stated that Ms. Nicholson stated that the Finance Department cannot maintain employees and that the department director requested an audit some time in November 2008 and had not received a response from the Employee Relations Department.

Both the Chairman and ACA Vizcaino responded that Member Dames' understanding was not correct.

ACA Vizcaino stated that as she mentioned before, according to the Finance Director's e-mail, she requested that positions be looked at with a view to reorganizing the department. She went on to say that as of November 2008, positions have been created in the Finance Department and the Finance Collections position that Ms. Nicholson continues to refer to is a new position that was created, so although the creation of new positions do not happen overnight, different things have been occurring in the Finance Department, but that is separate and apart from what Ms. Nicholson's allegations are here today. ACA Vizcaino further stated that Ms. Nicholson requested a hearing pursuant to Rule 16.2, but she has failed to identify which rule if any was violated by the department so she is not entitled to a hearing.

Chairman de la O stated that he thinks at a minimum Ms. Nicholson needs to request an audit because the Board does not want to be put into a position where instead of going through the chain of command to request an audit, employees are complaining to the Board. He went on to say that he thinks Ms. Nicholson needs to give the department the opportunity to do the right thing and when the department does not do the right thing, then maybe the Board needs to get involved.

Member Scarola stated that if Ms. Nicholson takes the route that the Chairman explained to her (and is not satisfied with the result), she could then become aggrieved

and return to the Board with her complaint.

Ms. Nicholson stated that she now understands there was a chain of command to be followed; however, when she sits every day in a cubicle and is handed work from individuals who are paid a higher salary, she does not see a chain of command, but a foot being pressed down on her neck [to get the work done].

Member Cruz asked Ms. Nicholson if she ever asked for a reclassification of her position, since she is complaining that she receives the work of others.

Ms. Nicholson responded that her position was reclassified to CSR III. She went on to say that she was not debating the fact that things were done [by the department] so that they were granted an opportunity for promotion, but what she is saying is that when the promotion is approved along with additional work compiled from additional departments, then it becomes overwhelming. Ms. Nicholson further stated that now that she knows she can speak with Mr. Martinez [regarding audits], she will put everything in writing from the lowest to the highest person [regarding the audit request] because she definitely is working in a stressful and burdensome work environment. She stated that until someone works in her office, they will not understand what she goes through on a daily basis. Ms. Nicholson went on to say that she was reprimanded for following the Statutes and degraded by City employees with tenures of more than 20 years of which she has provided supporting documentation to Civil Service staff. Ms. Nicholson went on to say that if the employees in Customer Service are to be treated in this manner, they should be compensated.

ACA Vizcaino asked if Ms. Nicholson's request was denied.

Chairman de la O responded that her request was denied without prejudice.

DISCUSSED BY THE BOARD, AND AS A RESULT OF THE DISCUSSION, THE BOARD DENIED MS. NICHOLSON'S REQUEST FOR A HEARING WITHOUT PREJUDICE.

G.2 09-00545

Copy of a Request for a Grievance Hearing from Ajit S. Chhabra, Budget Analyst, pursuant to Civil Service Rule 16.2 - Complaint by Employee, concerning an alleged violation of Civil Service Rule 17.1 - Practices, Penalties. (DISCUSSION)

Chairman de la O stated that he received notice that Attorney Guttman-Valdes has requested to defer this matter to the Board's next meeting and asked her if his information was correct.

Attorney Guttman-Valdes responded in the affirmative.

Chairman de la O asked the department's attorney if she had an objection to the continuance request.

ACA Vizcaino responded in the negative.

Without objection from other Board Members, the Chairman directed the Acting Executive Secretary to schedule the matter to the next meeting.

DEFERRED TO THE JUNE 30, 2009 MEETING.

H. TODAY'S HEARINGS

H.1 06-01087 Grievance Hearing on behalf of James Billberry, Police Sergeant pursuant to Rule 16.2 Complaint by Employee, concerning an alleged violation of Civil Service Rule 11.2, Assignment to Other Work.

WITHDRAWN BY THE EMPLOYEE; NO ACTION REQUIRED BY THE BOARD.

H.2 07-01477 Grievance hearing on behalf of Edward Diez, Firefighter, pursuant to Civil Service Rules 5-Application for Examinations, 6-Examinations, 7-Eligible Registers and 8-Appointments, Promotions and Advancements.
Attorney Guttman-Valdes stated that she has asked that this hearing be continued because her client is out on disability status due to an injury.

Chairman de la O asked the department's attorney if she had an objection to the continuance request.

ACA Vizcaino responded in the negative.

Member Dames stated that he understands that Mr. Diez is out on disability status but he did not understand why this would prevent the Board from hearing his case.

Attorney Guttman-Valdes stated that Fire Fighter Diez was advised by his superior officer that he could not attend his hearing while on disability status.

Member Dames asked why was Fire Fighter Diez placed on disability status. Attorney Guttman-Valdes responded that due to an injury, his doctor placed him under "no work duty status" so he is not able to attend his hearing today.

Following discussion, the Board entered a motion CONTINUE the hearing of Edwin Diez and charge the continuance to the employee, which resulted as follows:

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

Aye: Chairperson de la O, Chief Examiner Scarola and Member Cruz

No: Member Dames

Absent: Member Angel-Capo

H.3 09-00594 Investigation hearing on behalf of Victor Cornier, Materials Specialist Supervisor, pursuant to Civil Service Rule 16.1, concerning an alleged violation of 14.6, Resignation before Appeal.

The Board entered into the scheduled hearing of Victor Cornier, the Complainant, in this case.

Attorney Guttman-Valdes stated that this really is not a grievance hearing.

Chairman de la O stated that according to the Board's agenda, Item H.3 in the matter of Victor Cornier is listed as an investigation hearing pursuant to Rule 16.1.

ACA Vizcaino responded that she was unclear why this item would be listed as a Rule 16.1 investigation hearing because when this matter was discussed at the last meeting, it was her understanding that it would be an item for discussion on the issue of a retirement versus a resignation.

Attorney Guttman-Valdes stated that the only gap that needed to be filled in was how Mr. Cornier effectuated his retirement/resignation. She went on to say that she and opposing counsel are in agreement on the facts and the Board needs to make a ruling on whether Rule 14.6 applies in this case.

Chairman de la O stated that as he recalls the discussion on this matter, Attorney Guttman-Valdes made several representations and the department's attorney appropriately objected that there was no actual testimony [to prove that Mr. Cornier resigned versus retired]. He went on to say that if both attorneys agree to the facts, that is fine but if there was no agreement to the facts, the Board was going to take testimony to make a jurisdictional decision.

Attorney Guttman-Valdes stated that she thinks that Mr. Cornier's resignation to the department director was verbal and then he went to the Pension Office to file for his retirement and in doing so, the Pension Office generated Mr. Cornier's retirement letter to the department.

Chairman de la O stated that Rule 14.6 says that if the resignation is accepted by the department director, the department director has to withdraw the charges.

ACA Vizcaino stated that she and Attorney Guttman-Valdes agreed this morning that they were not going to get into the underlining issues. She went on to say that it was her representation at the last hearing and continues to be her representation that she showed Mr. Cornier's retirement letter to the Board and its Special Counsel which indicated that he signed up for the Rule of 70 retirement, effective March 13, 2009. ACA Vizcaino further stated that this was the only evidence produced, which showed that Mr. Cornier retired so she argued that this was a retirement and not a resignation and Rule 14.6 was therefore inapplicable.

Chairman de la O reiterated that this matter was set for a Rule 16.1 hearing to determine whether Mr. Cornier resigned or retired. He went on to say that according to Rule 14.6, the department director would have to affirmatively accept an employee's resignation in order for the charges to be withdrawn; however, if the employee retired, the appeal hearing would go forward if the employee chooses to do so.

Member Cruz stated that there are many employees who have received a copy of the Civil Service Rules, but have never read what their rights are as a Civil Service employee so when they do not read, they face problems.

Chairman de la O asked Attorney Guttman-Valdes what evidence she had to contradict the department's position that Mr. Cornier retired and the department did not accept his resignation.

Attorney Guttman-Valdes stated that the department did not put on any evidence that the department director did not accept her client's resignation. She went on to say that in order to retire, a person has to quit their job which is a resignation.

Chairman de la O stated that he does not think Rule 14.6 has created the exception that no matter what horrendous thing an employee may have done while employed, as long as the employee quits, it has to be removed from the employee's record. He went on to say that Rule 14.6 says that the acceptance by a department director of the resignation of an employee shall be considered a withdrawal of the charges so it requires an affirmative act otherwise, [for example] a Fire Fighter can kill another Fire Fighter while on the job and they are brought up on charges, but the charges would have to be removed from the employee's record because he/she resigned, which would not make

sense.

For clarification purposes, Attorney Guttman-Valdes asked the Chairman if he was saying that according to Rule 14.6, the charges would be withdrawn if the department director affirmatively accepted Mr. Cornier's resignation and if not, he goes forward with his hearing [if he chooses to do so].

Chairman de la O responded in the affirmative.

Attorney Guttman-Valdes asked if she could continue this matter to consult with her client to determine which way he wants to proceed.

Chairman de la O responded that the hearing could not be continued because the Board needs to make a decision today. He asked Attorney Guttman-Valdes if her client was present. Attorney Guttman-Valdes responded in the negative.

Chairman de la O asked Attorney Guttman-Valdes if she needed a 5-minute break to call her client. Attorney Guttman-Valdes responded in the negative.

Chairman de la O asked Attorney Guttman-Valdes how she planned to proceed.

Attorney Guttman-Valdes responded that she would proffer that Mr. Cornier's resignation to the department director was verbal and that there is nothing in writing [to indicate that he resigned].

Chairman de la O asked Attorney Guttman-Valdes if she had any evidence that would prove the department director accepted Mr. Cornier's resignation.

Attorney Guttman-Valdes responded that her client was not fired and he is no longer working for the City of Miami so that sounds like a de facto resignation to her.

Chairman de la O asked the department's attorney if she was putting forward the letter issued by the Pension Office notifying the department of Mr. Cornier's retirement.

ACA Vizcaino responded in the affirmative. She went on to say that the letter indicated that Mr. Cornier's retirement was effective March 13, 2009. ACA Vizcaino further stated that the language in Rule 14.11 states that a person in the classified service who desires to resign shall do so in writing to the department director which was not done by Mr. Cornier.

Attorney Guttman-Valdes stated that as a matter of a legal point, a person can separate from his/her employer by either resigning or being fired. She went on to say that a department director can reject an employee's resignation by telling the employee that he was not accepting his resignation because he was being terminated, but that did not occur in this case. Attorney Guttman-Valdes stated that the department is saying that Mr. Cornier retired, but all that means is when he resigned he had a vested benefit in the retirement system. She went on to say that the fact that Mr. Cornier retired does not mean that he did not quit because a person can get fired and ask for their retirement.

Chairman de la O asked what a department would do to reject a resignation and the reason he is asking this question is because Attorney Guttman-Valdes is saying that the department director accepted Mr. Cornier's resignation because he was not fired. He asked if there was another step the department could take other than firing an employee.

ACA Vizcaino responded that she could not speculate as to whether a department

director has ever rejected an employee's resignation, but this is not to mean that a resignation and retirement are the same. She went on to say she has distributed the August 15, 2006 minutes to the Board for which the Chairman and Special Counsel Everett agreed that the two are not the same and there is also general law that also concludes that a resignation and retirement are different. ACA Vizcaino further stated that the department's position is that Mr. Cornier did not resign; therefore, his pending appeal of his 8-hour suspension should not be withdrawn.

Attorney Guttman-Valdes stated that hypothetically speaking, if Mr. Cornier did not have a vested retirement, and he decided that he no longer wanted to work for the City and the department director did not fire him, that would be a resignation that was accepted.

Chairman de la O stated that he would agree that an employee can resign at any time and if at the time the employee had a pending suspension, demotion, or termination before the Board, the charges would be withdrawn. He went on to say that the words, "the acceptance by a department director of the resignation" that appears in Rule 14.6 has to mean something.

Attorney Guttman-Valdes stated that what she has seen done in the private sector is an employee would tell his director that he was resigning and the director would reject the resignation by saying the employee is fired.

Chairman de la O stated that according to the example provided by Attorney Guttman-Valdes, she would still be delimiting the term resignation because she is saying that every resignation is accepted by the department director. He went on to say that he could not imagine that is what this rule [14.6] would mean since it is such a beneficial rule to the employee. Chairman de la O further stated that he provided his view on the matter, but he needed a Member to make a motion to either say the employee resigned, the resignation was accepted by the department director, the charges are dismissed and he does not have to have an appeal hearing or Mr. Cornier has to have an appeal if he wants to get his hours restored to him.

Following discussion, the Board entered a motion (via Member Dames) to accept the motion made by Attorney Guttman-Valdes on behalf of her client to consider the charges withdrawn by the department according to Rule 14.6, and that Mr. Cornier be made whole by having the 8 hours restored to him. Hearing no second, the motion DIED FOR LACK OF A SECOND.

Chairman de la O passed the gavel to Member Scarola and the Board entered a motion to DENY the employee's motion and to give him the option of going forward with his appeal hearing if he wishes to have the 8 hours restored.

Under discussion, Member Dames stated there was discussion that the City defends against restoring an employee's time [if the employee retired], however, he feels that it is only 8 hours that would be given back to the employee so he did not see the need for the employee to have to fight by way of a hearing to get paid for the 8 hours he lost.

Following discussion, the motion resulted as follows:

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

Aye: Chairperson de la O, Chief Examiner Scarola and Member Cruz

No: Member Dames

Absent: Member Angel-Capo

ADJOURNMENT:

Member Scarola passed the gavel back to the Chair who called for a motion to ADJOURN which resulted as follows:

Motion by Chief Examiner Scarola, seconded by Member Cruz, to APPROVE. PASSED by the following vote.

Aye: Chairperson de la O, Member Dames, Chief Examiner Scarola and Member Cruz

Absent: Member Angel-Capo

SIGNATURE:

Miguel M. de la O, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary