

# **City of Miami**

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

**Tuesday, March 10, 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 10:14 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

*NOTE: Member Angel-Capo arrived at approximately 10:30 a.m. and a second roll call took place. The second roll call identified all members as being present.*

**A. APPROVING THE MINUTES OF:**

Regular Meeting of February 24, 2009.

*The Board entered a motion to APPROVE the minutes of the regular meeting of February 24, 2009 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

**B. PERSONNEL MATTERS**

- B.1 09-00263** Copy of a memorandum from Mario E. Soldevilla, Director, Department of Solid Waste, requesting an extension of probation of Chadrick R. Brunson, Waste Collector, for six (6) additional months beyond March 29, 2009. (DISCUSSION)

*Chairman de la O asked Mr. Brunson if he was aware that the department requested to extend his probationary period. Mr. Brunson responded in the affirmative.*

*Chairman de la O asked Mr. Brunson if he had an objection to the extension of his probationary period. Mr. Brunson responded in the negative.*

*Member Dames asked Mr. Brunson what occurred that caused the department to extend his probationary period. Mr. Brunson responded that he had a problem with his attendance [at work].*

*Following discussion, the Board entered a motion to APPROVE the department's request to extend Mr. Chadrick Brunson's probationary period an additional 6 months beyond March 29, 2009, which resulted as follows:*

**Motion by Member Cruz, seconded by Chief Examiner Scarola, 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

- B.2 09-00264** Copy of a memorandum from Hector Mirabile, Ph.D., Director, Department of Employee Relations, notifying Doreen E. Williamson-Grace, Administrative Assistant III, Department of Public Works, of her return to former classification.

Doreen E. Williamson-Grace is being rolled back to Sr. Accountant.  
(NOTIFICATION)

**NOTIFIED**

**C. MILITARY LEAVES OF ABSENCE**

**D. DISCIPLINARY MATTERS**

**D.1 09-00222** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Jeffrey Locke, Police Lieutenant, of his 20-hour suspension, effective February 25, 2009 and a copy of the request to appeal from Lt. Jeffrey Locke. A hearing will be scheduled in accordance with the Civil Service Rules and Regulations.(NOTIFICATION)

**RECEIVED AND FILED**

**D.2 09-00241** Copy of a letter from Kelly Barkett, Jr. notifying Bernard D. Troutman, Electrical Lineman, of his 1 day suspension, effective February 27, 2009 and a copy of a request to appeal from Osnat K. Rind, Attorney on behalf of Mr. Bernard Troutman. A hearing of appeal will be scheduled in accordance with the Civil Service Rules and Regulations. (NOTIFICATION)

**RECEIVED AND FILED**

**D.3 09-00199** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Daniel Rodriguez, Police Officer, of his 40-hour suspension, effective February 24, 2009 and a copy of a request to appeal from Officer Rodriguez. A hearing will be scheduled in accordance with the Civil Service Rules and Regulations. (NOTIFICATION)

**RECEIVED AND FILED**

**D.5 09-00167** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Luis Hernandez, Police Officer, of his 40-hour suspension, effective March 6, 2009. No appeal to date. (NOTIFICATION)

**NOTIFIED ---NO APPEAL TO DATE**

**D.4 09-00223** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying John Giordano, Police Officer, of his 40-hour suspension, effective February 21, 2009. No appeal to date. (NOTIFICATION)

**NOTIFIED ---NO APPEAL TO DATE**

**D.6 09-00221** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Armando Rigau, Police Officer, of his 80-hour suspension, effective February 22, 2009. No appeal to date. (NOTIFICATION)

**NOTIFIED ---NO APPEAL TO DATE**

**D.7 09-00218** Copy of a letter from Hector Lima, Director, Building Department, notifying

Anicie Rodriguez, Typist Clerk II, of her termination, effective February 25, 2009. No appeal to date. (NOTIFICATION)

**NOTIFIED ---NO APPEAL TO DATE**

**D.8 09-00243** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Harvey Nairn, Police Officer, of his 20-hour suspension, effective March 4, 2009. No appeal to date. (NOTIFICATION)

**NOTIFIED ---NO APPEAL TO DATE**

**D.9 09-00220** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Marcel Jackson, Police Officer, of his 80-hour suspension, effective March 7, 2009. No appeal to date. (NOTIFICATION)

**NOTIFIED ---NO APPEAL TO DATE**

**D.10 09-00270** Copy of a letter from Kelly Barkett, Jr. notifying Osmel Martinez, Maintenance Mechanic Supervisor, of his 1 day suspension, effective February 27, 2009. No appeal to date. (NOTIFICATION)

**NOTIFIED ---NO APPEAL TO DATE**

**D.11 09-00269** Copy of a letter from Kelly Barkett, Jr. notifying Victor L. Cornier, Materials Specialist Supervisor, of his 1 day suspension, effective February 27, 2009 and a copy of a request to appeal from Teri Guttman-Valdes, Attorney on behalf of Mr. Cornier. A hearing will be scheduled in accordance with the Civil Service Rules and Regulations. (NOTIFICATION)

**RECEIVED AND FILED**

## **E. GENERAL ITEMS**

**E.1 05-01067** Copy of a Request for a continuance from Osnat K. Rind, Attorney, on behalf of Barbara Shaffner, Police Officer, relative to her 20-forfeiture, effective March 3, 2005. (DISCUSSION)

Hearing of appeal is scheduled for March 24, 2009.

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

*Assistant City Attorney Vizcaino responded in the negative.*

*Chairman de la O asked for the scheduling history of Officer Shaffner's case.*

*The Executive Secretary responded that there were seven continuances granted in this case. She went on to say that the Board granted five (5) continuances on behalf of the employee and two continuances were charged to the Board [due to insufficient time to hear the case].*

*Attorney Rind stated that the reason she asked for a continuance of all her cases scheduled on March 24 was because the City and the [FOP] have selected an arbitrator to hear the case of Fernando Bosch that was previously before the Chief Examiner for a ruling on his complaint regarding the sergeant exam. She went on to say that the only*

date the arbitrator could give them in the reasonably, foreseeable future was March 24, 2009 to which both sides agreed, and as a consequence the (Civil Service Board) cases need to be continued.

For clarification purposes, Chairman de la O asked Attorney Rind if it is due to her unavailability that she has asked that [her Civil Service] cases scheduled for March 24, 2009 be continued.

Attorney Rind responded that it was not just her unavailability, but it was the agreement of both the City and the Union to have Officer Bosch's case heard by the arbitrator on March 24. She went on to say that she would accept whomever the Board charges the continuance to, but the continuance request was as a result of an agreement between the Union and the City to get Officer Bosch's matter completed expeditiously.

Assistant City Attorney Vizcaino stated that she will be present for the Civil Service Board Meeting on March 24, 2009 and that she has at least three cases on that date. She went on to say that although she agrees with Attorney Rind for wanting to resolve her client's complaint as quickly as possible, she thinks it would be unfair to her (to continue the cases) since she has prepared and is available on that date.

Chairman de la O stated that his question to Attorney Rind really went to whether [the agreement between the Union and the City to hold an arbitration hearing on March 24, 2009] was the reason Attorney Rind requested a continuance of the appeal hearings of Officer Shaffer (Agenda Item E.1), Officer Kenneth McIlwain (Agenda Item E.2) and Officer Kate Abia (Agenda Item E.3).

Member Scarola stated that he'd move to charge the continuance to the Board. He went on to state that the City has put Ms. Rind in the position that she has to be [at the arbitration] on that date.

Following discussion, the Board entered a motion to CONTINUE the hearings of Officers Barbara Shaffner, Kenneth McIlwain, and Kate Abia and charge the continuances to the Board, which resulted as follows:

**Motion by Chief Examiner Scarola, 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

- E.2 05-01068** Copy of a Request for a continuance from Osnat K. Rind, Attorney, on behalf of Kenneth McIlwain, Police Officer, relative to his 20-hour forfeiture, effective March 3, 2005. (DISCUSSION)  
Hearing of appeal is scheduled for March 24, 2009.  
**APPROVED ---CONTINUANCE CHARGED TO THE BOARD (See Agenda Item E.1 for details)**
- E.3 08-00891** Copy of a Request for a continuance from Osnat K. Rind, Attorney, on behalf of Kate Abia, Police Officer, relative to her termination effective July 21, 2008. (DISCUSSION)  
Hearing of appeal is scheduled for March 24, 2009.

**APPROVED ---CONTINUANCE CHARGED TO THE BOARD (See Agenda Item E.1 for details)**

- E.4 06-02034** Copy of Findings of Fact concerning the appeal hearing of Leonel Tapanes, Police Officer, relative to his 40-hour suspension, effective June 4, 2004. (DISCUSSION)

*Chairman de la O asked the department's attorney if she had any objections to the proposed findings of fact.*

*Assistant City Attorney Vizcaino responded that the only objection she has is found in finding #3. She went on to say that she would ask that the first sentence on page 3 begin with "The Board finds" and to change the words "high rate of speed" that appear at the top of page 4 to "25-30 mph" since there was witness testimony and a document presented that contains this specific information.*

*Chairman de la O stated that the department has proposed that paragraph #3 be amended to read, "THE BOARD FINDS the Department was insufficient to establish that Appellant had other reasonable alternatives that he could have used instead of firing his weapon. The evidence submitted on behalf of the Department established that the truck was driven at a rate of 25-30 MPH toward Appellant and that Appellant's gun was fired in close proximity to the suspect." The Chairman asked Attorney Rind if she had an objection to Assistant City Attorney Vizcaino's proposed change to paragraph #3.*

*Attorney Rind responded in the negative.*

*Following discussion, Chairman de la O called for a motion to APPROVE the Findings of Fact as amended. The motion resulted as follows:*

**Motion by Chief Examiner Scarola, seconded by Member Angel-Capo, that this matter be APPROVED. PASSED by the following vote.**

**Aye:** Chairperson de la O, Member Dames, Chief Examiner Scarola, Member Angel-Capo and Member Cruz

- E.5 07-00354** Copy of Findings of Fact 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. (DISCUSSION)

Deferred from the meeting of February 24, 2009.

*The Board entered into discussion on the findings of fact of Lt. Hervis' hearing. (Wording in ALL CAPS represents proposed changes suggested by either the department or the employee).*

*Assistant City Attorney Vizcaino stated that she thought the process would run much smoother if she provided the Board with her objections to the findings. She went on to say that in paragraph #1 under the topic, Findings of Fact and Conclusion of Law, that is on page 1 of the report, her only objection would be to change the word "promotion" to "appointment" since Lt. Hervis was seeking an appointment and not a promotion to the position of NET Commander.*

*Chairman de la O asked Attorney Rind if she objected to the proposed change and she responded in the negative.*

*Assistant City Attorney Vizcaino directed the Board's attention to the Findings of Fact*

section of the report, page 1, that contains numbered paragraphs. She went on to say that she had no objections to the proposed changes to paragraphs 1 through 3, but she did have an objection to the next to last sentence in paragraph 4 which states, "EXECUTIVE ASSISTANT UTSET TOLD LIEUTENANT HERVIS THAT HE NEEDED TO ACQUIRE EXPERIENCE AS A DEPUTY NET COMMANDER AND THAT HE NEEDED TO HAVE A FEW SCANNING ANALYSIS RESPONSE ASSESSMENT (SARA) PROJECTS UNDER HIS BELT." She provided the basis for why she felt this sentence should not be included in the findings.

Following discussion, the Board called for a motion to delete the next to last sentence from paragraph #4 as proposed by the department's attorney. Hearing none, the Chairman stated that the sentence would remain in the findings.

Assistant City Attorney Vizcaino stated that she objects to adding paragraph 5 in its entirety and asks that it be deleted. She went on to say that if the Board decides not to delete this paragraph, she would ask that the sentence begin with the words, "LT. HERVIS TESTIFIED THAT" so that it reads, "LT. HERVIS TESTIFIED THAT since no one had ever informed Lt. Hervis of this unwritten "policy", and because assignments to specialized units are generally granted to the best and brightest, Lt. Hervis immediately drafted the red-line memorandum to Assistant Chief Vega describing what occurred at the meeting with Utset and requested a meeting with the Chief: Therefore, I would like to request to meet with Chief Timoney to discuss my career path in the department, and inform him of this informal policy which I believe he has no knowledge."

Following argument by both attorneys and Board discussion, the Board entered a motion to amend paragraph 5 to include at the start of the sentence the words, "Lt. Hervis testified that" which resulted as follows:

**Motion by Chief Examiner Scarola, seconded by Chairperson de la O, that this matter be APPROVED. PASSED by the following vote.**

**Aye:** Chairperson de la O, Member Dames, Chief Examiner Scarola, Member Angel-Capo and Member Cruz

Chairman de la O asked the department's attorney if she objected to the employee's proposal to add to the end of paragraph #6 the sentences, "DEPUTY CHIEF FERNANDEZ WAS EVASIVE WHEN LT. HERVIS ASKED WHY HE HAD NOT BEEN APPOINTED. LT. HERVIS HANDED THE DEPUTY CHIEF A COPY OF HIS RESUME. THE DEPUTY CHIEF TOLD LT. HERVIS THAT HIS RESUME WAS IMPRESSIVE AND THAT HE WOULD BE CONSIDERED FOR THE POSITION THE NEXT TIME THERE WAS AN OPENING."

Assistant City Attorney Vizcaino responded that she objected to paragraph 6 in its entirety and provided the basis for her opposition.

Following argument by both attorneys and Board discussion, the Board entered a motion to add the two sentences to the end of paragraph 6 as proposed by the employee, which resulted as follows:

**Motion by Chief Examiner Scarola, seconded by Member Angel-Capo, that this matter be APPROVED. PASSED by the following vote.**

**Aye:** Chairperson de la O, Member Dames, Chief Examiner Scarola, Member Angel-Capo and Member Cruz

Attorney Rind stated that paragraph 7 was originally proposed and accepted by the Board.

Chairman de la O asked the department's attorney if she had an objection to paragraph 7 which states in part, "EXECUTIVE ASSISTANT UTSET DRAFTED A MEMORANDUM

*IN RESPONSE TO LT. HERVIS' EMPL. EX. 4. IN IT, EXECUTIVE ASSISTANT UTSET SPECIFICALLY MENTIONS LT. HERVIS' CONDITION...."*

*Assistant City Attorney Vizcaino responded that she objects to paragraph 7 in its entirety and would ask that this paragraph be stricken from the findings.*

*Following argument by both attorneys and discussion by the Board, the Chairman called for a motion to strike paragraph 7 from the findings. Hearing none, the Chairman stated that paragraph 7 will remain in the findings.*

*Assistant City Attorney Vizcaino stated that she objects to paragraph 8 in its entirety and would ask that this paragraph be stricken from the findings.*

*Member Scarola stated that the word "PROMOTION" needs to be changed to "APPOINTMENT" so that finding #8 reads, "Despite the Deputy Chief's representation, Lt. Hervis was again passed over for APPOINTMENT in December 2006. Instead of APPOINTING Lt. Hervis, Chief Timoney APPOINTED individuals with less seniority in rank. None of these individuals had attended the FBI Academy, and two had been supervised by Lt. Hervis. The APPOINTMENTS were effective December 26, 2006."*

*Following argument by both attorneys and Board discussion, the Board entered a motion to amend paragraph 8 by changing the word "promote" to "appoint" which resulted as follows:*

**Motion by Chief Examiner Scarola, seconded by Member Angel-Capo, that this matter be APPROVED. PASSED by the following vote.**

**Aye:** Chairperson de la O, Member Dames, Chief Examiner Scarola, Member Angel-Capo and Member Cruz

*Chairman de la O asked Assistant City Attorney Vizcaino if she objected to the employee's request to add paragraph #9 which states, "LT. HERVIS SPOKE WITH ASSISTANT CHIEF VEGA. HE TOLD CHIEF VEGA THAT HE WAS UPSET THAT HE HAD BEEN PASSED OVER AGAIN, AND THAT HE KNEW THE DECISION WAS BASED ON HIS DISABILITY."*

*Assistant City Attorney Vizcaino responded in the affirmative and provided the basis for her objection.*

*Following argument by both attorneys and Board discussion, the Board entered a motion to add paragraph 9 into the findings which resulted as follows:*

**Motion by Member Dames, seconded by Member Angel-Capo, that this matter be APPROVED. PASSED by the following vote.**

**Aye:** Chairperson de la O, Member Dames, Chief Examiner Scarola, Member Angel-Capo and Member Cruz

*Assistant City Attorney Vizcaino stated that she objects to adding paragraph 10 and provided argument in support of her position. She went on to say that if the Board decides to include this finding, she would ask that the sentence begin with the words, "LT. HERVIS TESTIFIED THAT".*

*Following discussion, the Board entered a motion to include paragraph 10 without the wording as proposed by the department, which resulted as follows:*

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

**Aye:** Chairperson de la O, Member Dames, Chief Examiner Scarola, Member Angel-Capo and Member Cruz

*Assistant City Attorney Vizcaino stated that she objected to the sixth sentence in paragraph 11 that states, "LT. HERVIS WAS ASKED ABOUT HIS "PROGNOSIS". She went on to say that she would ask that this language be deleted and provided argument in support of her position.*

*Following discussion, the Chairman called for a motion to strike this language from the finding as proposed by the department. Hearing none, Chairman de la O stated that this sentence will remain in finding #11.*

*Chairman de la O asked the department's attorney if she objected to adding the sentence in paragraph 11 that states, "LT. HERVIS TOLD THE CHIEFS THAT HE BELIEVED HE WAS DENIED AN APPOINTMENT TO THE POSITION OF NET COMMANDER BECAUSE OF HIS CONDITION."*

*Assistant City Attorney Vizcaino responded in the affirmative. She went on to say that she also objected to adding the sentence, "SUBSEQUENT TO THIS MEETING, LT. HERVIS PASSED A "FITNESS FOR DUTY EXAM".*

*Chairman de la O asked Attorney Rind if she objects to changing the words, "SUBSEQUENT TO THIS MEETING" that appear in the last sentence in paragraph 11 to "IN 2008".*

*Attorney Rind responded in the negative.*

*Member Scarola suggested that where ever the word "promotion" appears that it be changed to "appointment".*

*Without objection from Board Members, Chairman de la O stated that paragraph 11 will be added and amended to read, "Lt. Hervis arrived as ordered. He was brought into the Chief's office. Chief Timoney and Assistant Chief Burden were there. Chief Vega did not attend. Lt. Hervis was asked about his "prognosis". Lt. Hervis told the Chiefs that he had Parkinson's disease and that he was in the process of scheduling surgery. LT. HERVIS TOLD THE CHIEFS THAT HE BELIEVED HE WAS DENIED AN APPOINTMENT TO THE POSITION OF NET COMMANDER BECAUSE OF HIS CONDITION. Lt. Hervis was informed that because of the number of meetings that would be required of a NET Commander, they were concerned with what the perception of the community would be if someone with his condition were seen with a gun. Assistant Chief Burden further opined that the position would be too stressful for someone with Lt. Hervis' condition. IN 2008, LT. HERVIS PASSED A "FITNESS FOR DUTY EXAM." To date, Lt. Hervis has not been appointed to a NET Commander position.*

*Chairman de la O asked the department's attorney if she objected to paragraph 12.*

*Assistant City Attorney Vizcaino responded that she objects to paragraph 12 in its entirety and provided the basis for her objection.*

*Following argument by both attorneys and discussion by the Board, the Chairman called for a motion to strike paragraph 12 from the findings as proposed by the department. Hearing none, the Chairman stated that paragraph 12 will not be deleted and shall read, "Lt. Hervis, through his attorneys, made multiple requests for all documents THAT THE CHIEF RELIED ON IN MAKING the decision to APPOINT three lieutenants other than Lt. Hervis to NET Commanders. No documents were produced to Lt. Hervis'*

attorneys."

Chairman de la O stated that according to paragraph 13, the employee has proposed to add and strike language from this finding. He asked the department's attorney if she objects to all or some of the changes proposed by the employee.

Before the department's attorney could respond, Attorney Rind stated that she would be willing to start the paragraph with CHIEF TIMONEY TESTIFIED IN AN ADMINISTRATIVE INVESTIGATION OF LT. HERVIS' COMPLAINT OF DISCRIMINATION ON AUGUST 2, 2007 . . ." if this would take care of the first part of the sentence since she thinks the language she underlined was a response to the original proposed language.

Assistant City Attorney Vizcaino stated that she objected to some of the proposed change. She went on to say that she wants to keep the first part of the sentence that reads, "CHIEF BURDEN DENIED THE APPOINTMENT ISSUE EVER CAME UP DURING THE JANUARY MEETING, and objects to the part of the sentence that reads, CHIEF TIMONEY TESTIFIED IN AN ADMINISTRATIVE INVESTIGATION and provided the basis for her position. Assistant City Attorney Vizcaino further stated that if the Board decides to include this language, she suggests that the sentence begins with, "A SWORN STATEMENT WAS INTRODUCED WHEREBY CHIEF TIMONEY TESTIFIED AS TO THE FOLLOWING:"

Chairman de la O asked Attorney Rind if she would object if this finding read, "Chief Timoney testified in a sworn statement" assuming the paragraph is approved by the Board to be added in the findings.

Attorney Rind responded in the negative.

Chairman de la O asked Assistant City Attorney Vizcaino if she had any other objections.

Attorney Rind responded that she objected to the sentence, "IT IS UNDISPUTED THAT THE ONLY TIME THAT LT. HERVIS EVER ASKED FOR A MEETING WITH THE CHIEF WAS IN 2006 TO DISCUSS THE PROMOTION." because she does believe that was the testimony that was heard.

Chairman de la O stated that he thought this was an accurate statement.

Assistant City Attorney Vizcaino stated that she also objected to the last sentence that states in part, "THE BOARD FINDS IT IMPOSSIBLE TO BELIEVE THAT LT. HERVIS DID NOT RAISE THE ISSUE OF...."

Following argument by both attorneys and Board discussion, the Board entered a motion to strike the portion of paragraph 13 that reads, "Assistant Chief Burden denied the promotional issue ever came up during the January meeting. But testified that Lt. Hervis lied about telling him (Burden) that he (Hervis) wanted to be promoted. Yet," The motion resulted as follows:

**Motion by Member Angel-Capo, seconded by Member Cruz, that this matter be APPROVED. PASSED by the following vote.**

**Aye:** Chairperson de la O, Member Dames, Chief Examiner Scarola, Member Angel-Capo and Member Cruz

Following the vote on paragraph 13, Assistant City Attorney Vizcaino asked if the motion approved by the Board was not to include what Chief Burden testified to.

Chairman de la O responded in the affirmative.

Attorney Rind stated that according to the motion that the Board approved with regards to paragraph 13, she proposed to have the language included in paragraph 13 and Assistant City Attorney Vizcaino was in agreement to including it in the findings.

Chairman de la O stated that he thought Attorney Rind mentioned that she wanted the language to be stricken.

Attorney Rind stated that she did ask that the sentence be stricken, but the reason she has no objection to leaving the sentence in the findings is because at the end of the paragraph, the Board is in effect saying that it finds it impossible to believe that Lt. Hervis did not raise the issue of wanting to be appointed to the position of NET Commander so it did not matter to her whether the sentence is added or deleted.

Assistant City Attorney Vizcaino stated that she would like this language concerning Chief Burden's testimony added in the finding since Attorney Rind does not have an objection.

Following discussion, the Board entered a motion to reconsider its previous motion which resulted as follows:

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

**Aye:** Chairperson de la O, Member Dames, Chief Examiner Scarola, Member Angel-Capo and Member Cruz

Following the approved motion for reconsideration, Chairman de la O called for a motion to strike the sentence from the beginning of paragraph 13 which states, "ASSISTANT CHIEF BURDEN DENIED THAT THE APPOINTMENT ISSUE EVER CAME UP DURING THE JANUARY MEETING." Hearing none, Chairman de la O stated that this language will be added at the beginning of paragraph 13.

Chairman de la O called for a motion to APPROVE paragraph 13 as amended, which resulted as follows:

**Motion by Chief Examiner Scarola, seconded by Member Angel-Capo, that this matter be APPROVED. PASSED by the following vote.**

**Aye:** Chairperson de la O, Member Dames, Chief Examiner Scarola, Member Angel-Capo and Member Cruz

Chairman de la O stated that there are two sentences that Attorney Rind proposed to add in paragraph 14, which reads, "LT. HERVIS ESTABLISHED A PRIMA FACIE CASE OF UNLAWFUL DISCRIMINATION. CHIEF TIMONEY HAD KNOWLEDGE OF THE GRIEVANT'S DISABILITY, AND KNEW OF THE GRIEVANT'S DESIRE TO BE APPOINTED." He asked Assistant City Attorney Vizcaino if she objects to adding these sentences into the findings.

Assistant City Attorney Vizcaino responded in the affirmative and provided the basis for her objection.

Following discussion, Chairman de la O called for a motion to add the two sentences at the beginning of paragraph 14 which resulted as follows:

**Motion by Member Dames, seconded by Member Angel-Capo, that this matter be APPROVED. PASSED by the following vote.**

**Aye:** Chairperson de la O, Member Dames, Chief Examiner Scarola, Member Angel-Capo and Member Cruz

*Member Angel-Capo stated that the word, "also" is stricken in paragraph 14 and asked if it is to be deleted.*

*Assistant City Attorney Vizcaino directed the Board to the third sentence in paragraph 14 that reads, "POLICE CHIEF JOHN TIMONEY ALSO TESTIFIED THAT HE FIRST BECAME AWARE OF LT. HERVIS' DISABILITY IN EITHER NOVEMBER OR DECEMBER 2003 WHEN LT. HERVIS GAVE BRIEFINGS. She asked that this sentence be amended to read "POLICE CHIEF TIMONEY ALSO TESTIFIED IN HIS SWORN STATEMENT that he first became aware of Lt. Hervis' disability in either November or December 2003 when Lt. Hervis gave his briefings."*

*Chairman de la O asked Attorney Rind if she had an objection to the department's proposed change to paragraph 14.*

*Attorney Rind responded in the negative.*

*Without objection from Board Members, Chairman de la O stated that the language will be added to paragraph 14 as proposed by the department and that the word "also" will be deleted so that paragraph #14 reads, "LT. HERVIS ESTABLISHED A PRIMA FACIE CASE OF UNLAWFUL DISCRIMINATION. CHIEF TIMONEY HAD KNOWLEDGE OF THE GRIEVANT'S DISABILITY, AND KNEW OF THE GRIEVANT'S DESIRE TO BE APPOINTED. POLICE CHIEF TIMONEY TESTIFIED IN HIS SWORN STATEMENT that he first became aware of Lt. Hervis' disability in either November or December 2003 when Lt. Hervis gave briefings. Chief Timoney noticed that Lt. Hervis' health problems continued and increased for the next two years, and ultimately he had a meeting with Lt. Hervis, and Assistant Chief Adam Burden to discuss Lt. Hervis' health issues. (Timoney's testimony, p. 4).*

*Assistant City Attorney Vizcaino stated that she also objects to the last sentence in paragraph 14 which states, "ALTHOUGH LT. HERVIS WAS QUALIFIED FOR THE POSITION, CHIEF TIMONEY SELECTED INDIVIDUALS WITH NO KNOWN DISABILITIES." and provided the basis for her objection.*

*Following discussion, the Board entered a motion to add the last sentence in paragraph 14 to the findings which resulted as follows:*

**Motion by Member Angel-Capo, seconded by Chief Examiner Scarola, that this matter be APPROVED. PASSED by the following vote.**

**Aye:** Chairperson de la O, Member Dames, Chief Examiner Scarola, Member Angel-Capo and Member Cruz

*Chairman de la O stated that Attorney Rind has proposed to add a paragraph that reads, "DURING THE MEETING, LT. HERVIS INFORMED CHIEF TIMONEY THAT HE WAS SEEING A MEDICAL DOCTOR AND THAT HE WOULD BE UNDERGOING AN OPERATION THAT MIGHT RELIEVE HIS SYMPTOMS. (TIMONEY'S TESTIMONY, P.5)". He went on to say that since this finding is not included in Special Counsel Everett's version of the findings, this paragraph would be added at the end of paragraph 14 if approved by the Board.*

*Assistant City Attorney Vizcaino stated that she would ask that this language be added since it was included in Special Counsel Everett's original version and that she would also ask that this paragraph specify which meeting is being referenced.*

*Chairman de la O stated that the meeting has been referred to in the findings as the*

"Chief's meeting".

Assistant City Attorney Vizcaino stated that she would propose that it states, "THE JANUARY 2007 MEETING".

Chairman de la O asked Attorney Rind if she had an objection to opposing counsel's suggestion.

Attorney Rind responded in the negative.

Following discussion, Chairman de la O stated that since both attorneys are in agreement, the paragraph will be amended to read, "DURING THE JANUARY 2007 MEETING, LT. HERVIS INFORMED CHIEF TIMONEY THAT HE WAS SEEING A MEDICAL DOCTOR AND THAT HE WOULD BE UNDERGOING AN OPERATION THAT MIGHT RELIEVE HIS SYMPTOMS. (TIMONEY'S TESTIMONY, P.5)"

Chairman de la O stated that Attorney Rind proposed that the following language be stricken from paragraph 15 that reads, "CHIEF TIMONEY TESTIFIED THAT HE TAKES INTO CONSIDERATION A VARIETY OF FACTORS SUCH AS HIS INTERACTION WITH THE INDIVIDUAL AND THE INDIVIDUAL'S PERFORMANCE AND LEADERSHIP. CHIEF TIMONEY ALSO STATED THAT HE GIVES "HEAVY CONSIDERATION" TO THE INDIVIDUAL'S ASSIGNMENT. HE STATED THAT ALMOST ALL OF THE APPOINTMENTS THAT HE HAS MADE HAVE COME FROM WITHIN THE PATROL DIVISION. (TIMONEY'S TESTIMONY, P. 6). He went on to say that paragraph #15 in Special Counsel's report is the same as paragraph #16 in the report prepared by Attorney Rind. Chairman de la O asked Assistant City Attorney Vizcaino if she had an objection to this change.

Assistant City Attorney Vizcaino stated that her position is to keep Special Counsel Everett's original proposed finding #15 and amend it by adding at the beginning of the sentence, the language, "PER THE SWORN STATEMENT,".

Following argument by both attorneys and discussion by the Board, Member Angel-Capo made a motion to strike the language from paragraph 15 as proposed by the employee. The motion DIED FOR LACK OF A SECOND. Chairman de la O stated that the language will remain in the findings as written.

Chairman de la O stated that according to Special Counsel Everett's report, the employee has proposed to add a sentence at the end of the paragraph 16 to read, "AND IT IS CLEAR FROM THE CHIEF'S SWORN STATEMENT THAT LT. HERVIS' CONDITION WAS AT THE FOREFRONT OF HIS MIND WHEN HE MADE THE DECEMBER DECISIONS FOR APPOINTMENTS." He went on to say that he thinks the wording, "And it is clear" should be replaced with "It appears" because no one can testify to what was in the Chief's mind.

Following discussion, the Board entered a motion to amend paragraph 16 to read, "IT APPEARS FROM THE CHIEF'S SWORN STATEMENT THAT LT. HERVIS' CONDITION WAS AT THE FOREFRONT OF HIS MIND WHEN HE MADE THE DECEMBER DECISIONS FOR APPOINTMENTS." The motion resulted as follows:

**Motion by Member Angel-Capo, seconded by Member Cruz, that this matter be APPROVED. PASSED by the following vote.**

**Aye:** Chairperson de la O, Member Dames, Chief Examiner Scarola, Member Angel-Capo and Member Cruz

Assistant City Attorney Vizcaino asked that the word "OBVIOUS" be removed from the first sentence in paragraph 17 of Special Counsel Everett's version and provided the

basis for her request.

Following discussion, the Chairman called for a motion to delete the word "obvious" from paragraph 17. Hearing none, Chairman de la O stated that it will remain in the findings.

Chairman de la O asked Assistant City Attorney Vizcaino if she objected to the last two sentences in paragraph 18 of Attorney Rind's version which states, "IN ADDITION, THERE WAS DIRECT EVIDENCE OF DISCRIMINATION. THE BOARD CREDITS LT. HERVIS' TESTIMONY THAT HE WAS TOLD BY THE CHIEF THAT HE WAS NOT APPOINTED ON ACCOUNT OF HIS DISABILITY."

Attorney Vizcaino responded in the affirmative and provided the basis for her opposition.

Following argument by both attorneys and Board discussion, the Board entered a motion to add the language in paragraph 17 as proposed by the employee, which resulted as follows:

**Motion by Member Angel-Capo, seconded by Member Cruz, that this matter be APPROVED. PASSED by the following vote.**

**Aye:** Chairperson de la O, Member Dames, Chief Examiner Scarola, Member Angel-Capo and Member Cruz

The Chairman called for a motion to APPROVE the findings of fact as amended, which resulted as follows:

**Motion by Member Angel-Capo, seconded by Member Dames, that this matter be APPROVED. PASSED by the following vote.**

**Aye:** Chairperson de la O, Member Dames, Chief Examiner Scarola, Member Angel-Capo and Member Cruz

E.6 07-01190

Copy of a Report relative to 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 concerning the Abuse of Power complaint against Sergeant Juan Casiano, Department of Police.  
(DISCUSSION)

Deferred from the meeting of February 24, 2009.

Chairman de la O stated that he did not hear all of the testimony in this case; therefore, it would not be fair for him to participate in either discussion or votes on the findings of fact.

Prior to considering the findings, Cynthia A. Everett, Special Counsel to the Board, stated that the proposed findings of fact report is in a different format based upon input she received from both the department and employee attorneys. She went on to say that she attempted to combine the attorneys' proposed changes into her report, which are designated by the underlines and strike-throughs that she feels may somewhat help the Board to follow along as it considers the findings. Special Counsel Everett further stated that while her report does not indicate what each attorney proposed, she will try to indicate this information when preparing findings in the future.

Chairman de la O stated that how he propose to handle the findings is that he will skip to wherever there are changes, he will find out which attorney has an objection to the change, and if there are no objections the change would be adopted.

Attorney Rind stated that she made certain changes to the findings that she did not see in the report prepared by Special Counsel Everett.

Special Counsel Everett responded that everything Attorney Rind requested to be included in the findings is not included because it is her (Everett) version based upon input from both attorneys; however, the attorneys could now make additional recommendations to the Board if necessary. She went on to say that the findings were prepared in this fashion to avoid having multiple copies of documents.

Chairman de la O asked if there were any proposed changes to the first paragraph on page 1 of the findings.

Attorney Rind responded in the affirmative. She went on to say that she proposed to add the words, "Among other things" as an introductory clause to the beginning of the fourth sentence so that it reads, "AMONG OTHER THINGS, the Grievants alleged that Sgt. Casiano solicited complaints from people that had been arrested by the Grievants and that he was trying to build a case against them in order to get them fired."

Following argument by both counsels and discussion by the Board, the Chairman called for a motion to add the words, "Among other things". Hearing none, Chairman de la O stated that the language would not be added as requested by the employees. [NOTE: Wording in ALL CAPS represent proposed language either side wants added to or stricken from the findings.]

Chairman de la O referred both attorneys to the Findings of Fact section of the report on page 2 that contains enumerated findings. He went on to say that since there were no proposed changes to findings #1 and #2, he would ask that the attorneys provide their reasons for either objecting to or requesting that language be added in finding #3.

Both attorneys responded that they had no objection to adding the proposed language to the first sentence which reads, "The arrests were made after Sgt. Casiano informed the Grievants that he witnessed three males ACTING SUSPICIOUSLY ON N.W. 13TH AVENUE AND 63RD STREET, ONE OF THE MALES FLED THE SCENE."

Attorney Rind stated that if Member Angel-Capo is on her way to the meeting, she thinks that it would only be fair that she also hear these issues since she took part in hearing this case.

Chairman de la O stated that his original inclination was if the Board had a close call on something, the matter would be put off until Member Angel-Capo's arrival to the meeting.

Attorney Rind stated that she had an objection to deleting the wording, "SGT. CASIANO REFUSED TO SIGN THE ARREST FORMS" from the third sentence as proposed by Assistant City Attorney Forte.

Following argument by both attorneys and Board discussion, the Board entered a motion to change the word "refused" to "declined" so that the sentence reads, "After the arrests were made, Sgt. Casiano DECLINED to sign the arrest forms." The motion resulted as follows:

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

**Aye:** Member Dames, Chief Examiner Scarola and Member Cruz

**Abstain:** Chairperson de la O

**Absent:** Member Angel-Capo

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**Following Member Angel-Capo's arrival, a second roll call took place, which resulted as follows:**

**Present:** Chief Examiner Scarola, Chairperson de la O, Member Dames, Member Angel-Capo and Member Cruz

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*The Board continued with discussion of the findings of fact pertaining to the case of Police Officers Stanley Jean-Poix and Andre Paul-Noel.*

*Attorney Rind stated that she would prefer that at least the Chairman have a copy of what she submitted as changes to the findings of fact because she thinks this would make it easier for the Board to follow. She went on to say that there are a number of changes to paragraph 3 that she proposed that are not included in the findings prepared by Special Counsel Everett.*

*Special Counsel Everett responded that what has been submitted to the Board is the findings that she prepared and that both counsels can make their recommendations to the Board. She went on to say that in order to make this a decision of the Board, it would not be proper to only give the Chairman a copy of a document and not the other Board Members.*

*Attorney Rind stated that she understood what Special Counsel Everett was saying and that is why she has proposed to give a copy of her version of the findings to every Board Member to review because she thinks it would be easier for the Board to follow along.*

*Chairman de la O stated that he also thinks it would be easier for the Board to follow along if they had a copy of Attorney Rind's findings.*

*Special Counsel Everett stated that she would have no problem if the Chairman feels that it would be easier to have a copy of the attorneys' proposed findings, but there have been comments made that having multiple sets of findings is difficult to follow.*

*Member Scarola stated that he was talking to Special Counsel Everett before hand concerning the findings. He went on to say that he thought the attorneys' proposed changes were all inclusive into one report so he may have misunderstood part of what Special Counsel Everett said to him earlier. Member Scarola further stated that he feels if all of the changes could be included in one report, this could make the difference in making it easier for the Board to follow as changes are being discussed.*

*Special Counsel Everett responded that this situation could be resolved if counsel would at least once a month submit her proposed findings in advance, but she has declined to do so.*

*Attorney Rind stated that she was the first to submit her proposed findings to Special Counsel Everett.*

*Special Counsel Everett stated that she has requested proposed findings before counsel does her argument.*

*Attorney Rind asked Special Counsel Everett if she was asking that she prepare proposed findings before the Board deliberates its decision on findings.*

*Special Counsel Everett stated that she believes counsel would know the case she is*

*presenting and what she thinks is important based upon witness testimony in evidence since this is how it is done in other proceedings; however, if Attorney Rind feels this cannot be done, it would not be done, but this is reason why the Board proceeds in this fashion when considering the findings.*

*Chairman de la O stated that he thinks what Special Counsel Everett is saying is that if the Board has the proposed findings ahead of time, and they are required in federal cases when doing bench trials, then when the Board makes its findings, it might make it easier to adopt the findings.*

*Attorney Rind stated that she never understood that to be the procedure [for submitting proposed findings]; however, if the procedure is to prepare findings before the commencement of the hearing, she has no problem in complying with the process.*

*Special Counsel Everett stated that the request has never been to have the findings prepared before the hearing commences, but before argument takes place, which has been requested multiple times.*

*Chairman de la O stated that there is no doubt that the proposed findings would have to be prepared before the hearing, but at the same time, he thinks if it is done in this manner, it would make it easier for the Board to adopt the findings. He went on to say that the Board does the same thing as the attorneys, which is the attorneys give their closing argument on the fly and the Board gives its proposed findings, so if the Board has a structure, it would make it easier for the Board to agree with one side or the other in making all of the right findings of fact and having a more complete set of findings.*

*Attorney Rind stated that if the Board wants her to follow the procedures for submitting findings of fact that were just explained to her, she would have no problem doing so.*

*Chairman de la O stated that the procedures are not a requirement that attorneys must follow when submitting proposed findings of fact, but it certainly would help the process if they did.*

*Following discussion on this matter, Chairman de la O directed the attorneys' attention back to finding #3 on page 2 of Special Counsel Everett's report and asked if there was an objection to the language the department's attorney has asked to be included in the last sentence which states, "The Internal Affairs investigation concluded that the Grievants had not acted maliciously, nor in bad faith, in making the arrests, BUT IT UNEQUIVOCALLY FOUND THAT THE GRIEVANTS HAD NO AUTHORITY TO ARREST THE TWO SUBJECTS FOR TRESPASS AFTER WARNING AND DID SO CONTRARY TO ESTABLISHED RULES AND GUIDELINES."*

*Following argument by both attorneys and Board discussion, the Chairman called for a motion to add this language as proposed by the department's attorney. Hearing none, the Chairman stated that the language would not be added in the findings.*

*Chairman de la O advised Board Members that they would now be using the proposed findings of fact submitted by Attorney Rind and referred them to the Findings of Fact section of the report that appears on page 2, finding #3, first sentence which states, "The arrests were made after Sgt. Casiano informed the Grievants that he witnessed ONE OF three males fleeing from a housing object.*

*Attorney Rind stated that she would ask that this change be withdrawn since it is included in the findings prepared by Special Counsel Everett, but she would like to have the second sentence added which states, "THE GRIEVANTS TOLD SGT. CASIANO THAT THEY HAD SEEN THE INDIVIDUAL FLEE AS WELL."*

Following argument by both attorneys and Board discussion, the Board entered a motion to amend the sentence to read, "OFFICER PAUL-NOEL TESTIFIED THAT HE HAD SEEN THE INDIVIDUAL FLEE AS WELL." which resulted as follows:

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

**Aye:** Member Dames, Chief Examiner Scarola and Member Angel-Capo

**No:** Member Cruz

**Abstain:** Chairperson de la O

Assistant City Attorney Forte stated that with the passing of the Board's last motion, she proposes to add the wording, "TO WHICH SGT. CASIANO DENIES" at the end of the sentence so that it reads, "The Grievants told Sgt. Casiano that they had seen the individual flee as well, TO WHICH SGT. CASIANO DENIES."

Chairman de la O called for a motion to add the language proposed by Assistant City Attorney Forte. Hearing none, Chairman de la O stated that the proposed language would not be added.

Attorney Rind stated that she was withdrawing the next two changes that appear in the third and fourth sentences in finding #3 because they were already included in Special Counsel Everett's version of the findings.

Chairman de la O stated that Attorney Rind has asked to add the sentence, "THE BOARD FINDS SGT. CASIANO'S TESTIMONY NOT CREDIBLE." in finding #3.

Following argument by both attorneys and Board discussion, Member Angel-Capo made a motion to add this language. The motion DIED FOR LACK OF A SECOND. The Chairman stated that this language as proposed by the grievants would not be added in finding #3.

Chairman de la O stated that the employee's attorney has requested to add language to the 7th sentence in finding #3 so that it reads, "Sgt. Casiano had specifically requested that the grievants be the units that responded to the scene, SAW THE GRIEVANTS MAKE THE ARRESTS AT THE SCENE, AND NEVER TOLD THE GRIEVANTS NOT TO ARREST THE TWO MALES."

Following argument by both attorneys and Board discussion, the Board entered a motion to include this language, which resulted as follows:

**Motion by Member Angel-Capo, seconded by Chief Examiner Scarola, that this matter be APPROVED. PASSED by the following vote.**

**Aye:** Member Dames, Chief Examiner Scarola and Member Angel-Capo

**No:** Member Cruz

**Abstain:** Chairperson de la O

Chairman de la O stated that the employees have requested to add an 8th sentence which states, "SGT. CASIANO FALSELY ACCUSED THE GRIEVANTS OF MAKING FALSE STATEMENTS ON THE ARREST FORMS."

Following argument by both attorneys and Board discussion, the Board entered a motion to include the proposed language in finding #3 which resulted as follows:

**Motion by Member Angel-Capo, seconded by Member Dames, that this matter be APPROVED. PASSED by the following vote.**

**Aye:** Member Dames, Chief Examiner Scarola and Member Angel-Capo

**No:** Member Cruz

**Abstain:** Chairperson de la O

*Chairman de la O stated that according to the findings prepared by Special Counsel Everett, Assistant City Attorney Forte has expressed her objection to finding #4, which states, "SGT. CASIANO ACCUSED THE GRIEVANTS OF OTHER "BAD ARRESTS." and requested that this finding be deleted. He went on to say that Attorney Rind expressed no objection to finding #4, but asked that the words, "WITHOUT JUSTIFICATION" be added at the end of the sentence.*

*Following argument by both attorneys and Board discussion, the Board entered a motion to amend finding #4 to read, "SGT. CASIANO ACCUSED THE GRIEVANTS OF OTHER "BAD ARRESTS WITHOUT JUSTIFICATION." The motion resulted as follows:*

**Motion by Member Angel-Capo, seconded by Chief Examiner Scarola, that this matter be APPROVED. PASSED by the following vote.**

**Aye:** Member Dames, Chief Examiner Scarola and Member Angel-Capo

**No:** Member Cruz

**Abstain:** Chairperson de la O

*Chairman de la O stated that the department has requested that the following language be added to the second sentence in finding #5 of the findings prepared by Special Counsel Everett which would read, "Craig McQueen, a Police Major in the Department testified that he would not conduct a CALEA inspection under those circumstances, HOWEVER, WHEN HE ARRIVED AT THE SCENE HE NOTICED THAT THE AREA WAS SECURE AND THAT SGT. CASIANO COULD HAVE CONDUCTED A CALEA INSPECTION AT THAT TIME WITHOUT BEING OUTSIDE ESTABLISHED RULES OR GUIDELINES."*

*Following argument by both attorneys and Board discussion, the Chairman called for a motion to include this language. Hearing none, the Chairman stated that the language would not be added to finding #5.*

*Chairman de la O stated that the employees would like to add a sentence at the end of finding #4 that would read, "SGT. CASIANO VIOLATED DEPARTMENTAL ORDER 1, CHAPTER 11.6.28.1 BY INTERFERING IN AN INVESTIGATION ASSIGNED TO LT. TAPANES WITHOUT THE CONSENT OF THE ASSIGNED OFFICER."*

*Following argument by both attorneys and Board discussion, the Board entered a motion to add the proposed language at the end of finding #4 which resulted as follows:*

**Motion by Chief Examiner Scarola, seconded by Member Angel-Capo, that this matter be APPROVED. PASSED by the following vote.**

**Aye:** Member Dames, Chief Examiner Scarola and Member Angel-Capo

**No:** Member Cruz

**Abstain:** Chairperson de la O

*Chairman de la O stated that the department's attorney has requested to add a third*

sentence to finding #6 to read, "LT. TAPANES TESTIFIED THAT THE GRIEVANTS MADE COMPLAINTS TO HIM AS THEIR LIEUTENANT THAT SGT. CASIANO WAS CREATING A HOSTILE WORK ENVIRONMENT, HOWEVER THE GRIEVANTS WERE NEVER ABLE TO ARTICULATE HOW CASIANO WAS CREATING A HOSTILE WORK ENVIRONMENT WHICH WOULD PROMPT ANY INVESTIGATION OR FURTHER ACTION ON HIS PART."

Following argument by both attorneys and Board discussion on this matter, the Board entered a motion to delete finding #6 which resulted as follows:

**Motion by Member Dames, seconded by Member Angel-Capo, that this matter be APPROVED. PASSED by the following vote.**

**Aye:** Member Dames, Chief Examiner Scarola and Member Angel-Capo

**No:** Member Cruz

**Abstain:** Chairperson de la O

Attorney Rind stated that on finding #7, she proposed to say that SGT. CASIANO HAD SOLICITED COMPLAINTS AGAINST THE GRIEVANTS, but she is willing to delete finding #7 in its entirety.

Chairman de la O asked Assistant City Attorney Forte if she objected to deleting finding #7 as proposed by the employees and she responded in the affirmative.

Following argument by both attorneys, Member Dames made a motion to adopt the department's version of finding #7. The motion DIED FOR LACK OF A SECOND and as a result, the Board entered a new motion to delete finding #7 in its entirety which resulted as follows:

**Motion by Member Angel-Capo, seconded by Member Cruz, that this matter be APPROVED. PASSED by the following vote.**

**Aye:** Chief Examiner Scarola, Member Angel-Capo and Member Cruz

**No:** Member Dames

**Abstain:** Chairperson de la O

Chairman de la O referred the Board to page 4, RECOMMENDATIONS Section of the report and read into the record recommendations proposed by both the employees and the department.

Following argument by both attorneys on the proposed recommendations, Member Dames stated that as far as he was concerned, the first recommendation (That Sgt. Casiano be demoted to the rank of police officer) as proposed by the Grievants was out.

Member Cruz made a motion that the Board make no recommendation to the City Manager in this case and the motion DIED FOR LACK OF A SECOND.

Member Angel-Capo stated that under recommendation #2, the Grievants recommended that Internal Affairs cases 07-150S, 07-132S, and 07-149S be deemed unsubstantiated and that any reference to those cases be removed from their Internal Affairs profiles; however, she did not know if the documents could be removed from their [personnel/Internal Affairs] files once the officers were written up.

Member Scarola stated that his first suggestion would be to amend the recommendations submitted by the Grievants by making recommendation #2 as the first

*recommendation.*

*Following discussion, the Board entered a motion to recommend to the City Manager that Internal Affairs cases 07-150S, 07-132S, and 07-149S be deemed unsubstantiated and that any reference to those cases be removed from the Grievants' Internal Affairs profiles.*

*Under discussion, Member Angel-Capo stated that legally she did not think the IA cases could be removed from the officers' files; therefore she was thinking if some sort of stamp could be affixed to the front of the three IA cases so that if anyone were to review the officers' files, that the IA cases would not be used against Officers Jean-Poix and Paul-Noel for purposes of promotions, etc.*

*Chairman de la O asked Member Scarola if he felt that the word unsubstantiated would be enough to let a reviewer know that the said three cases are not to be considered (as a disqualifier for promotions, transfers, biddings, etc.)*

*Member Scarola responded that a lot of employees who come in front of the Board [to plead their cases] and are found not guilty, it doesn't mean much (within the Police Department's records) because if that person was found guilty by Internal Affairs (IA), the guilty finding remains on the employee's IA record. He went on to say that he would imagine that at a later date, Internal Affairs could change the finding or make a notation to the file that the employee was found not guilty by the Civil Service Board, but he was not sure if that is what is being practiced.*

*Chairman de la O asked Member Scarola if he accepted the amendment to his motion that was made by Member Angel-Capo.*

*Member Scarola responded in the affirmative.*

*Member Cruz stated that he thinks it would be a waste of time to make this recommendation because whenever an employee has an incident where IA gets involved, it will always be on the employee's record because that is the way the department is set up.*

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

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

**Aye:** Member Dames, Chief Examiner Scarola and Member Angel-Capo

**No:** Member Cruz

**Abstain:** Chairperson de la O

*Chairman de la O asked if there were any other recommendations to be made in this case.*

*Member Cruz stated that he thinks this case should have been handled by the Civilian Investigative Panel.*

*Member Scarola stated that he thinks that a modification should be made to the second recommendation listed in the findings, which he thinks should read that Sgt. Casiano attend an updated supervisory class that includes the Officer's Bill of Rights.*

*Following discussion, the Board entered a motion to add a recommendation that Sgt. Casiano attend an updated supervisory class that includes the Officer's Bill of Rights.*

*Under discussion, Member Cruz stated that all of this discussion boils down to union politics because he knows how unions function. He went on to say that if an employee pays dues to the union, the main purpose of the union is to collect union dues.*

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

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

**Aye:** Member Dames, Chief Examiner Scarola and Member Angel-Capo

**No:** Member Cruz

**Abstain:** Chairperson de la O

*Member Scarola stated that his third recommendation would be to add that the Police Department look at guidelines as to how CALEA inspections are conducted. He went on to say that this is something that can be done internally by the Police Chief simply saying something to the effect that CALEA inspections are to be conducted before or after roll call, during a lunch break, etc.*

*Following discussion, the Board entered a motion to include a third recommendation that the Police Department look at guidelines for establishing how CALEA inspections are conducted. The motion resulted as follows:*

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

**Aye:** Member Dames, Chief Examiner Scarola, Member Angel-Capo and Member Cruz

**Abstain:** Chairperson de la O

*Chairman de la O asked if there were any further recommendations. Hearing none, the Chairman called for a motion to APPROVE the findings of fact as amended which resulted as follows:*

**Motion by Member Angel-Capo, seconded by Member Dames, that this matter be APPROVED. PASSED by the following vote.**

**Aye:** Member Dames, Chief Examiner Scarola and Member Angel-Capo

**No:** Member Cruz

**Abstain:** Chairperson de la O

**E.7 08-00686**

Grievance hearing on behalf of Devell King, Waste Collector, pursuant to Civil Service Rule 16.2-Complaint by Employee, concerning an alleged violation of Civil Service Rule 14.2 (h), (i), and (r). (DISCUSSION)

Board continuance required. Hearing scheduled for April 7, 2009; however meeting cancelled and hearing rescheduled for April 14, 2009.

*The Board entered a motion to CONTINUE Mr. Devell King's grievance hearing and charge the continuance to the Board, which resulted as follows:*

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

**Aye:** Chairperson de la O, Member Dames, Chief Examiner Scarola, Member Angel-Capo and Member Cruz

- E.8**      **08-01324**      Hearing of appeal on behalf of Terry Pagan, Stable Attendant Supervisor, relative to her 8-hour suspension, effective November 10, 2008.  
(DISCUSSION)  
Board continuance required. Hearing scheduled for April 7, 2009; however meeting cancelled and hearing rescheduled for April 14, 2009.  
*The Board entered a motion to CONTINUE the appeal hearing of Terry Pagan and charge the continuance to the Board, which resulted as follows:*
- Motion by Chief Examiner Scarola, seconded by Member Angel-Capo, that this matter be APPROVED. PASSED by the following vote.**
- Aye:**            Chairperson de la O, Member Dames, Chief Examiner Scarola, Member Angel-Capo and Member Cruz

## **F.        REPORTS**

- F.1**      **09-00002**      Pending Hearings as of March 10, 2009. (NOTIFICATION)

## **G.        REQUESTS FOR HEARINGS**

- G.1**      **09-00217**      Copy of a Request to Appear from Raul Cabrera, Police Officer, concerning his resignation from employment. (DISCUSSION)
- Chairman de la O stated that it is his understanding that Officer Cabrera wishes to defer discussion of his request for a hearing in order to attain legal counsel and asked Officer Cabrera was this correct. Officer Cabrera appeared before the Board and responded in the affirmative.*
- Chairman de la O asked the department's attorney if she objected to Officer Cabrera's request. Assistant City Attorney Vizcaino responded in the negative.*
- Chairman de la O asked Officer Cabrera how much time was needed to attain legal counsel.*
- Attorney Rind stated that the next union meeting is scheduled on Wednesday, (March 18, 2009); therefore a decision (on Officer Cabrera's request for legal representation) should be made at that time.*
- Without objection from other Board Members, Chairman de la O instructed the Executive Secretary to schedule Officer Cabrera's request for a meeting in April 2009.*
- This matter was DEFERRED. PASSED.**

## **H.        TODAY'S HEARINGS**

- H.1**      **06-01337**      Hearing of appeal on behalf of James D. Thomas, Administrative Assistant II, relative to his 3-day suspension, effective July 10, 2006.
- Chairman de la O asked if Mr. Thomas was present for his hearing today.*
- The Executive Secretary stated that Mr. Thomas was sent a certified letter again and he did not respond.*
- Chairman de la O asked the department's attorney if she was prepared to go forward*

with her case.

Assistant City Attorney Vizcaino responded that she is prepared if necessary; however, she wanted to discuss an issue pertaining to this case before getting into the hearing itself. She went on to say that the last time this matter was addressed, some Board Members asked whether this case could be withdrawn on the basis that Mr. Thomas is retired. She went on to say that in 1998, the Board adopted its Special Counsel's opinion that a retirement is equivalent to a resignation and therefore withdrew the charges brought against retired employee Richard Badali who had a case before the Board at that time. Assistant City Attorney Vizcaino read into the record the 1998 minutes pertaining to discussion that took place reference Mr. Badali's case in support of her argument. She went on to say that she would ask that the Board adopt the previous Board's opinion and ruling by withdrawing the charges in this case.

Chairman de la O stated that the problem is the Board does not have a "default rule". He went on to say that Civil Service Rules require that the Board hear a case even if the employee does not appear for his/her hearing. Chairman de la O further stated that if the Board were to say that a retirement and resignation are the same for the purpose of applying Rule 14.6, in the future there might be someone who has retired, but wants to have his/her case heard, but the department would have a precedent to say that the retiree could not appeal because the charges were withdrawn. He stated that he does not think that a retirement and a resignation is the same.

Assistant City Attorney Vizcaino stated that is the reason she said it with the caveat that every case is different due to the particular set of circumstances that are present before the Board today. She went on to say that she thinks it would make reasonable sense to adopt the decision held by the Board in 1998. Assistant City Attorney Vizcaino further stated that the Chairman might be thinking of a 2006 case involving an employee by the name of Bernardo Perez, wherein this Board took up discussion as to whether retirement and resignation are the same. She went on to say that the two cases are different because Mr. Perez' case dealt with a forfeiture of earned overtime whereas in Mr. Thomas' case, he is retired, appealed a suspension, and failed to appear several times for his scheduled hearing.

Chairman de la O stated that from a policy perspective, Assistant City Attorney Vizcaino is correct, but the Rules do not allow for the Board to withdraw the charges. He asked the Board's Special Counsel for her position on this matter.

Special Counsel Everett stated that she disagrees with former Counsel Valentine's position because she thinks that retirement and resignation are different. She went on to say that if a person has put his/her retirement in motion and something detrimental happens just before the person is fully retired, she thinks that person should have a right to challenge the matter. Special Counsel Everett further stated that she does not think that the Board could go forward by changing the Rules based upon an interpretation made on a case especially when [Rule 14.7] is available on how the Board is to proceed in cases when a person fails to appear. She stated that if there is a need to change this rule, a request can be made to [the Executive Secretary].

Chairman de la O stated that the best way to change the Rule is to have a "default rule" so that if persons do not appear for their hearing, [the appeal] could be withdrawn.

Assistant City Attorney Vizcaino stated that her witnesses for the Angela Glass case have been waiting for this case to be heard since this morning; therefore, she would ask that the case of Angela Glass be heard first. She went on to say that she asked her only witness in this case, Mario Soldevilla, to arrive at 3:00 p.m. for the hearing.

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At 3:16 p.m., Mr. Soldevilla arrived. The Chairman noted that Mr. Thomas still was not present; therefore, the Board proceeded to hear Mr. Thomas' hearing pursuant to Civil Service Rule 14.7, "Failure of Parties to Appear", which states in part, "If the employee notified shall fail to appear at the time fixed for the hearing, the Board shall hear the evidence and render judgment thereon."

Diana Vizcaino, Assistant City Attorney, represented the department.

James Thomas, Administrative Assistant II, Department of Solid Wasted failed to appear for his hearing.

Assistant City Attorney Vizcaino waived opening statements.

Mario Soldevilla, Director, City of Miami, Department of Solid Waste, testified on behalf of the department.

Questions were posed by Board Members Dames and Cruz during the testimony of witness Mario Soldevilla.

The Department rested its case.

Following closing argument by Assistant City Attorney Vizcaino, the Board entered a motion to find the Appellant GUILTY of all of the charges brought against him, which resulted as follows:

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

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

**No:** Member Angel-Capo

The Board entered in the Penalty Phase of Mr. Thomas' hearing and his official personnel file was reviewed by the Board.

Following final argument by Assistant City Attorney Vizcaino on the penalty portion of Mr. Thomas' hearing, the Board entered a motion to recommend to the City Manager that the penalty imposed by the department [3-day suspension] be upheld. The motion resulted as follows:

**Motion by Chief Examiner Scarola, seconded by Chairperson de la O, that this matter be APPROVED. PASSED by the following vote.**

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

**No:** Member Angel-Capo

**H.2 06-01713**

Hearing of appeal on behalf of Angela Glass, Communications Operator, relative to her 40-hour suspension, effective September 11, 2006.

The Board entered into the scheduled hearing of Angela Glass.

Diana Vizcaino, Assistant City Attorney, represented the Department.

Osnat K. Rind, Attorney at Law, represented the Appellant.

Assistant City Attorney Vizcaino asked that Member Angel-Capo consider recusing herself from these proceedings and provided the basis for her request.

Member Angel-Capo, after consulting with Special Counsel Everett, advised that she would not be recusing herself because she feels that she could be fair and impartial.

Opening statements were made by Attorney Rind; Assistant City Attorney Vizcaino waived opening statements.

The Rule of Witnesses was invoked and all witnesses were sworn in individually. Witnesses for the Department appeared in the following order:

1. Juan Casiano, Police Sergeant, City of Miami, Department of Police.

Questions were posed by Board Members Cruz, Scarola, Dames, and Angel-Capo during the testimony of witness Juan Casiano.

2. Sandra Gayle McArthur, Police Sergeant, City of Miami, Department of Police.

Questions were posed by Board Members de la O, Scarola, and Cruz during the testimony of witness Sandra McArthur.

The Department rested its case.

Witnesses for the Appellant appeared in the following order:

1. Maria Bao, Private Citizen (Retired City of Miami Communications Operator).

2. Angela Glass, Communications Operator, City of Miami, Department of Police, testified on her own behalf.

The Appellant rested her case.

Following final argument by both attorneys on the fact-finding phase of Ms. Glass' hearing, Chairman de la O stated that there was very little that Assistant City Attorney Vizcaino said that he would disagree with and went on to say that dispatchers should not be rude, nasty, or unprofessional, but for him this case began and ended with that taped call that [Ms. Vizcaino played for the Board to hear]. He went on to say that when he first read the reprimand, he stated to himself that what Ms. Glass said, sounded rude, but when he heard the tape, it did not sound like she was rude. Chairman de la O further stated that he would agree that the fact that Ms. Glass worked 14 hours still would not justify bad, unprofessional, discourteous behavior, but it certainly would affect the penalty. He stated that police officers are asked to make instantaneous decisions about life and death and the Board cuts them some slack when they do not always get it right and on the other hand, there is Ms. Glass who testified that she was moving about taking care of a lot of things at the same time and when he listened to the tape at least three times, it just did not seem that Ms. Glass was rude. Chairman de la O went on to say that if the audiotape had sounded like [the impression he received when] he read the reprimand, he would have agreed with the department 100%.

Member Scarola stated Ms. Bao related a few instances [of communications that go on between the dispatcher and officers over the air] and that he has heard and seen a lot worse (than what Ms. Glass said to the officer, that was the subject of the reprimand). He went on to say that he has heard major battles going back and forth on calls and while it can become frustrating, the frustration level does not justify an employee's

actions. Member Scarola further stated that when he read the reprimand, his thought was, the employee is being charged for making two comments.

Member Scarola stated that he thinks that the Board is looking at the two comments made by Ms. Glass, but regardless, the officers did not complain and if they did, they would have complained to Sgt. Casiano. He went on to say that he thinks this matter was blown out of portion to a degree and that he is ready to vote.

Following discussion, the Board entered a motion to find the Appellant, Angela Glass, NOT GUILTY of all of the charges. The motion resulted as follows:

**Motion by Member Cruz, seconded by Member Angel-Capo, that this matter be APPROVED. PASSED by the following vote.**

**Aye:** Chairperson de la O, Member Dames, Chief Examiner Scarola, Member Angel-Capo and Member Cruz

H.3 08-00896

Hearing of appeal on behalf of Alice Dunn, Typist Clerk II, relative to her 40-hour suspension, effective August 11, 2008.

Attorney Rind stated that she would be asking for a continuance of this case, but she was hoping that the continuance would be charged to the Board because she does not think there would be sufficient time to hear the case today.

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

**Motion by Member Angel-Capo, seconded by Member Cruz, that this matter be CONTINUED. PASSED by the following vote.**

**Aye:** Chairperson de la O, Member Dames, Chief Examiner Scarola, Member Angel-Capo and Member Cruz

**ADJOURNMENT:**

The Chairman called for a motion to ADJOURN which resulted as follows:

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

**Aye:** Chairperson de la O, Member Dames, Chief Examiner Scarola, Member Angel-Capo and Member Cruz

The meeting adjourned at 5:02 p.m. Breaks were taken at 11:48-12:02 p.m., 12:31-12:39 p.m., 1:17-2:12 p.m. (LUNCH) and 3:27-3:35 p.m.

**SIGNATURE:**

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**Miguel M. de la O, Chairperson**

**ATTEST:**

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**Tishria L. Mindingall, Executive Secretary**

