

City of Miami

*City Hall
3500 Pan American Drive
Miami, FL 33133
www.miamigov.com*



Meeting Minutes

Tuesday, April 14, 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 10:10 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, Member Angel-Capo and Member Cruz

A. APPROVING THE MINUTES OF:

Regular Meeting of March 24, 2009.

The Board entered a motion to APPROVE the minutes of the regular meeting of March 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, Dames, Angel-Capo, Scarola and Cruz

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

- D.1** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Guillermo Suarez, Police Officer, of his 20-hour suspension, effective March 31, 2009. No appeal to date.(NOTIFICATION)

NOTIFIED

- D.2** Copy of a letter from Stephanie Grindell, Director, Department of Public Works, notifying Robert Byrd, Labor Crew Leader II, of his 3-day suspension, effective March 23, 2009 and a copy of a request to appeal from Osnat K. Rind, Attorney, on behalf Mr. Bryd. A hearing will be scheduled in accordance with the Civil Service Rules and Regulations. (NOTIFICATION)

RECEIVED AND FILED

- D.3** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Miguel Leon, Police Officer, of his 20-hour suspension, effective April 3, 2009. No appeal to date. (NOTIFICATION)

NOTIFIED

- D.4** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Reginald Kinchen, Police Sergeant, of his 80-hour suspension, effective April 6, 2009. No appeal to date. (NOTIFICATION)

NOTIFIED

- D.5** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Daniel Ubeda, Police Officer, of his 20-hour suspension, effective April

9, 2009. No appeal to date. (NOTIFICATION)

NOTIFIED

- D.6 Copy of a letter from Stephanie N. Grindell, Director, Department of Public Works, notifying Sonja Thomas, AEO I, of her 1-day suspension, effective March 23, 2009. No appeal to date. (NOTIFICATION)

NOTIFIED

- D.7 Copy of a letter from Kelly Barkett, Jr., Director, notifying Joel Vasquez, Heavy Equipment Mechanic, of his 1-day suspension, effective March 25, 2009 and a copy of a request to appeal from Osnat K. Rind, Attorney on behalf of Mr. Vasquez. A hearing will be scheduled in accordance with with the Civil Service Rules and Regulations. (NOTIFICATION)

RECEIVED AND FILED

E. GENERAL ITEMS

- E.1 Copy of Findings of Fact concerning the appeal hearing of Reginald Kinchen, Police Sergeant, relative to his 20-hour forfeiture, effective July 27, 2005. (DISCUSSION)

Chairman de la O asked if the department had any proposed changes to the findings of fact.

Assistant City Attorney (ACA) Vizcaino responded that she submitted her proposed changes to Special Counsel Everett and that she has no objections to the revised findings of fact.

Chairman de la O asked Sgt. Kinchen if he had any objections to the proposed findings of fact.

Sgt. Reginald Kinchen responded that he had an objection to the Board's (guilty) finding on the insubordination charge.

Chairman de la O asked Sgt. Kinchen to tell the Board what he felt should be changed in the proposed findings regarding the insubordination charge.

Sgt. Kinchen responded that he was not insubordinate during the meeting (that consisted of himself, Lt. Bezark, and Commander Meeks). He went on to say that at the time of the meeting, he asked Commander Meeks if he could speak freely and the Commander allowed him to do so; therefore, he expressed his opinions [about the matter at hand] to Commander Meeks since it was an open meeting, but he never spoke directly to Lt. Bezark. Sgt. Kinchen further stated that [although he was issued a reprimand that was prepared by Lt. Bezark regarding his demeanor during the meeting], Commander Meeks did not sign the reprimand because he was away when it was issued to him.

Chairman de la O asked if this is the hearing where the employee (Sgt. Kinchen) failed to appear for his hearing.

Sgt. Kinchen responded in the affirmative. He went on to say that the reason he did not appear for his hearing was because he works the midnight shift and happened to

oversleep.

Chairman de la O stated that the problem is the Board has heard Sgt. Kinchen's hearing (at the meeting of March 24, 2009) and ruled on it so the only real question is unless one of the Board Members who voted in favor of the guilty charge wishes to make a motion to change their vote, all the Board has left is to consider proposed changes to and vote on the findings of fact and conclusion of law. He went on to say that based upon Sgt. Kinchen's comments, it sounded as though he wants to revisit the findings [on the charges] themselves; however [the current matter's discussion] was not for that purpose. Chairman de la O asked Sgt. Kinchen if there was anything else he wished to change with regards to the findings.

Sgt. Kinchen responded the negative.

Member Scarola asked Special Counsel Everett was there a notation in the findings that indicates that Sgt. Kinchen was not present for his hearing.

Chairman de la O responded that this information is included in the second paragraph on the first page of the findings.

Member Dames asked Sgt. Kinchen to tell the Board the reason he did not appear for his hearing.

Sgt. Kinchen responded that he works the midnight shift so he overslept.

Member Dames stated that the odds are if Sgt. Kinchen was present, he would have won his case. He went on to say that he asked Lt. Bezark a lot of questions during the hearing and she was the only one who seemed to be offended as to what occurred in the meeting [that consisted of Commander Meeks, Lt. Bezark, and Sgt. Kinchen]. Member Dames further stated that Commander Meeks did not sign the reprimand that was [written by Lt. Bezark and] issued to Sgt. Kinchen; therefore, he was sort of leaning towards Sgt. Kinchen who mentioned that it was an "off the cuff" thing when he spoke during the meeting because neither Sgt. Kinchen nor Commander Meeks were offended. He stated that he did become peeved that Sgt. Kinchen failed to appear for his hearing and that he apologizes for getting upset. Member Dames went on to say that (earlier) he could not recall seeing Sgt. Kinchen, but now that he has appeared at today's meeting he can say that he does recall seeing Sgt. Kinchen around and that he seems to be a mild-mannered person. He further stated that Sgt. Kinchen's witness provided very good testimony in support of Sgt. Kinchen so in saying all of this, he would be changing his vote.

Chairman de la O asked Special Counsel Everett if the only thing the Board could do at this time was make a motion to reconsider.

Cynthia A. Everett, Special Counsel to the Board, responded that she would counsel the Board that to make a motion to reconsider would be out of order because normally [a Motion to Reconsider] would be done at the same meeting the vote was taken unless there was some extraordinary reason to do otherwise. She went on to say that the Board did not hear any objections from Sgt. Kinchen on the findings which is what the Board is considering at this time, but it appeared that Sgt. Kinchen is asking that the Board's overall decision be overturned, which would be inappropriate.

Chairman de la O stated that Special Counsel Everett provided advice to the Board which Member Dames could accept or reject. He went on to say that he thinks there was one time that the Board did have a vote change at a meeting where the findings of fact was being approved so there is some precedent for changing votes on a day other

than when a hearing was conducted. Chairman de la O asked what would happen if Member Dames rejects Special Counsel Everett's advice.

Special Counsel Everett stated that if Member Dames was on the prevailing side, he could make a motion for reconsideration; therefore, she would defer to the Executive Secretary to provide this information.

Member Angel-Capo asked if a motion could be made to reconsider.

Chairman de la O stated that any Board Member that voted to find Sgt. Kinchen guilty of the insubordination charge would be able to make the motion; therefore, he thinks it is important that the Executive Secretary provide the Board with this information. The Executive Secretary responded that Member Dames was on the prevailing side of the guilty vote.

Following discussion, the Board entered a Motion for Reconsideration.

Prior to taking a vote on the motion, Chairman de la O asked the department's attorney if she wished to speak regarding the motion.

ACA Vizcaino responded in the affirmative. She went on to say that she objects to the motion because Sgt. Kinchen had been present time and again when his hearing was scheduled, but his excuse that he overslept sends the message that his hearing was not important to him. ACA Vizcaino further stated that for Sgt. Kinchen to present himself today when this matter is set for review and discussion of the findings of fact to give his side of the story is inappropriate and sends the wrong message. She stated before voting on the motion for reconsideration, she would ask that this Board think carefully about what it is doing, the message it is sending, and the precedent it is setting.

Member Cruz stated that it was said that Sgt. Kinchen had been before the Board many times; however, this was the first time he saw Sgt. Kinchen before the Board.

Chairman de la O stated that ACA Vizcaino was referring to [the fact that the hearing had been set previously and Sgt. Kinchen had been present those times] when she said Sgt. Kinchen appeared many times.

Sgt. Kinchen responded that he was present for four times that the department requested a continuance of his hearing.

Chairman de la O asked the secretary to state for the record the continuance history of Sgt. Kinchen's case.

The Executive Secretary stated Sgt. Kinchen's initial hearing date was scheduled on December 20, 2005 and was continued a total of eight (8) times. She went on to say that one continuance was granted at the request of the department, two continuances at the request of the employee, and five (5) continuances at the request of the Board.

ACA Vizcaino stated that the representations made by Sgt. Kinchen today were not done under oath and she has not had an opportunity to cross-examine him; therefore, if this Board is going to reopen this case by affording Sgt. Kinchen a hearing, she would need an opportunity to properly prosecute this matter.

Chairman de la O stated that if the Motion for Reconsideration is passed, he would assume this matter would be set for a hearing. He went on to say that he could not imagine the Board reversing itself without giving the department a chance to prosecute its case.

Special Counsel Everett stated that the purpose for the reconsideration was not clear so she wants to know if the purpose is for the reconsideration of the Board's decision.

Chairman de la O stated that the purpose of the reconsideration seems to mean the vacating of the Board's findings and he thinks this is what Member Dames is asking when he made the motion. He asked Member Dames if he was proposing that the Board "flip" the vote and find Sgt. Kinchen not guilty without a further hearing despite the department's attorney argument that Sgt. Kinchen is not under oath and she has not had an opportunity to prepare to cross-examine him.

Member Dames stated that the department's attorney is correct that Sgt. Kinchen is not under oath and for the Board to "flip" its vote without a further hearing would mean that the Board took Sgt. Kinchen's word without hearing testimony from him or cross-examination by the department. He asked if he could make a motion to rehear Sgt. Kinchen's hearing.

Chairman de la O responded that this is what the Board is trying to figure out since there is no such thing as a Motion to Vacate under Roberts' Rules of Order.

Member Dames stated that as it stands now, the Board could not reach a consensus on the penalty, which would mean that the City Manager would decide the penalty.

ACA Vizcaino referred the Board to the Conclusions of Law section of the report on page 4, which listed what each Board Member proposed the penalty should be.

Chairman de la O stated that he took Member Dames' motion to be about guilt [on the insubordination charge] and not so much about the penalty. He went on to say that he thinks the fact is that there does not seem to be a remedy under [the Board's Rules & Regulations or Roberts' Rules of Order] to have a retrial, which is essentially what would be required in this case, then some other motion would have to be made. Chairman de la O further stated that the Motion for Reconsideration has to be based on the evidence the Board had at the conclusion of the hearing; however, in this case Member Dames, wishes to change his vote, which means the Board would be looking at new evidence that has not been properly presented. He stated that since the case was already closed, the question is can Member Dames accomplish what he wants, which is essentially to have another trial so that new evidence could be presented.

Special Counsel Everett stated that she would advise against the motion to rehear this case, but the Board has to make this decision. She went on to say that she thinks the Chairman has properly framed [the reason why this case cannot be reheard] and perhaps it needs to be reiterated. Special Counsel Everett further stated that the case was scheduled, everyone was properly noticed and had an opportunity to appear, and the case was heard (in accordance with Civil Service Rule 14.7). She stated that Sgt. Kinchen's witness (Teresa Borkowski) was present and the Board graciously allowed her to testify although he was not present and reached a decision. Special Counsel Everett went on to say that there is no procedure to have a new hearing and that she thinks under a general argument of fundamental fairness and due process if there was an extraordinary reason, i.e. emergency situation that prevented Sgt. Kinchen from appearing, maybe it would be appropriate to rehear the case which would allow the department to prosecute the case appropriately, but this was not the situation. She further stated that the case was heard and to now try to change the vote without giving the department an opportunity to participate would be fundamentally unfair to the department.

Chairman de la O stated that he fundamentally agrees with Special Counsel Everett that

Sgt. Kinchen's reason that he failed to appear for his hearing because he works the midnight shift and overslept is not a good enough reason to rehear this case. He went on to say that he sympathizes with Sgt. Kinchen, but the Board heard the case and heard from the witnesses so he did not see any reason to have a retrial; nevertheless if the Board wants to have a retrial, he is trying to figure out how can Member Dames accomplish what he wants the Board to vote on. Chairman de la O further stated that the vote will be what it will be, but he will not vote for a retrial and he certainly will not change his vote [on the penalty] so the question remains is there a way to do [what Member Dames wants to accomplish.]

Special Counsel Everett stated that if this Board makes a decision through its voting process to do something, then the Board has made a decision.

Chairman de la O stated that the motion would be for a new hearing, but not a motion for reconsideration.

Member Angel-Capo asked the Chairman if he could repeat the precedent that the Board set in a prior case with regards to a Board Member changing his/her vote.

Chairman de la O responded that he recalls there was a vote of (3-2) on a motion and one of the Board Members changed their vote from not guilty to guilty or vice-versa; however, the change was made on a case that was already heard.

Member Angel-Capo asked if it would be fair to place Sgt. Kinchen under oath and allow the department's attorney and the Board to ask whatever questions of him at this time and then take a vote.

Chairman de la O stated that the department has already stated that it would want to get prepared for the hearing so essentially what Member Angel-Capo is doing based upon her question is if there is not a full new trial, the Board would be reopening the trial. He went on to say that the Board could do this through a vote, but the question is does any Board Member want to vote for this motion based on the excuse that Sgt. Kinchen overslept. Chairman de la O further stated that he agrees with Special Counsel Everett that if Sgt. Kinchen had appeared and said the reason he did not show up for his hearing was because there was an emergency that morning and he could not leave his post, he would absolutely agree that the hearing should be reopened, but on this record he could not agree to reopen the hearing.

Member Dames stated this case had been lingering on for five years and had been continued eight (8) times.

Member Scarola stated that he wished to address the issue of the five Board continuances. He went on to say that normally more than one hearing is scheduled for a meeting date; however, if the Board does not have sufficient time to hear all the cases scheduled; those cases are continued and charged to the Board.

Member Dames stated that of those times that the cases were continued, Sgt. Kinchen was present. He went on to say that he believes he questioned the department's witness (Lt. Bezark) more than any of the Board Members and the reason he continues to bring this matter up is because the only person in the room who was offended wrote the reprimand. Member Dames further stated that he thought the purpose of the meeting was to air things out between Lt. Bezark and Sgt. Kinchen but it resulted in a reprimand.

ACA Vizcaino stated that if the Board is going to rehash the testimony concerning the incident involving Lt. Bezark and Sgt. Kinchen, she would remind Member Dames that

the testimony he also heard in response to his questions were that Sgt. Kinchen turned to Lt. Bezark, put his hand in her face and said, "Listen to me and listen to me good!" She went on to say that if these comments were directed towards Lt. Bezark, she did not see how Commander Meeks would be offended since a finger was not placed in his face. ACA Vizcaino further stated that she would remind the Board that Lt. Bezark is retired, she does not get paid for her attendance at these meetings, and that she has come from Broward County on more than one occasion to present her testimony before this Board; therefore, if Member Dames is going to consider each time Sgt. Kinchen was present when his hearing was continued, she would also ask that Lt. Bezark's attendance be considered.

Member Dames stated that he cannot believe that a sergeant would put his hand in a lieutenant's face and the commander who was present in the meeting did not say anything. He went on to say that could not happen and that he has been employed as a firefighter for 27 years and he had never experienced anything like this ever happening.

Member Angel-Capo stated that Sgt. Kinchen was issued a reprimand three months after the incident and at the time it was issued, Commander Meeks did not sign the reprimand because he was out of town.

ACA Vizcaino reiterated that she has a problem with the Board entertaining comments that are not under oath. She went on to say that Chairman de la O made mention of a Board Member who changed his vote for another hearing that the Board conducted and she recalls it was Member Dames who had a change of heart and changed his vote in the grievance hearing of Khalil Mangabadi.

Chairman de la O asked if there were any motions because the motion to reconsider that was made by Member Dames is not what he wants to accomplish. He went on to say that the motion has to be either to reopen the hearing or approve the findings of fact.

Member Angel-Capo asked the Executive Secretary to repeat the motion that is on the floor.

Chairman de la O stated that the motion is to reconsider, but the Board cannot reconsider because there is no new evidence to consider unless a Board Member is saying based on the other evidence, he/she wants to change their vote.

Member Dames asked if he could change his recommendation on the penalty .

Chairman de la O responded that this could be changed without a vote since the findings of fact is individualized as to the penalty.

Member Dames stated that he wished to change his recommended penalty of a 20-hour forfeiture to a reprimand only.

Member Cruz stated that the Board may recall that he voted in favor of Sgt. Kinchen because the Board only heard one side of the case. He went on to say that the only witness available was Lt. Bezark and Sgt. Kinchen was not present so he cannot make a fair judgment with hearing only one side of the case.

Following discussion, the Board entered a motion to amend the findings as proposed by Member Dames 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, Dames, Angel-Capo and Scarola

No: Cruz

- E.2 Copy of Findings of Fact concerning the appeal hearing of James D. Thomas, Administrative Assistant II, relative to his 3-day suspension, effective July 10, 2006. (DISCUSSION)
ACA Vizcaino stated that she had no objections to the findings of fact.
Chairman de la O asked if Mr. Thomas was present.
The Executive Secretary responded in the negative.
Following discussion, the Board entered a motion to APPROVE the findings of fact 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, Dames, Angel-Capo, Scarola and Cruz
- E.3 Copy of Findings of Fact concerning the appeal hearing of Angela Glass, Communications Operator, relative to her 40-hour suspension, effective September 11, 2006. (DISCUSSION)
The Executive Secretary stated that she had been asked to defer discussion of this item until the next meeting because Attorney Rind is not available.
ACA Vizcaino stated that she had no objection to the employee's request.
DEFERRED TO THE CIVIL SERVICE BOARD MEETING OF APRIL 21, 2009.
- E.4 Notice of withdrawal from Osnat K. Rind, Attorney, on behalf of her client, Fernando Bosch, Police Officer, concerning the grievance request relative to the Police Sergeant promotional examination. (NOTIFICATION)
WITHDRAWN -- WILL BE REMOVED FROM THE BOARD'S DOCKET
- E.5 Copy of a letter from Teri Guttman-Valdes, Attorney, on behalf of her client, Victor L. Cornier, Materials Specialist Supervisor, concerning a 1-day suspension, effective February 27, 2009, advising the Board of his resignation in accordance with Civil Service Rule 14.6 and a request for withdrawal of the charges and her client be made whole for the suspension. (DISCUSSION)
The Executive Secretary informed the Board that Attorney Guttman-Valdes asked her to defer this matter to a future meeting because she was not available for today's meeting nor would she be available for the Board's next meeting.
DEFERRED TO THE CIVIL SERVICE BOARD MEETING OF MAY 5, 2009.
- E.6 Copy of a Report by William Scarola, Chief Examiner, relative to the Review on behalf of Neal A. Muhammad, Fire Lieutenant, pursuant to Civil Service Rule 4.2, concerning the 2008 Fire Captain's Oral Board Exam. (NOTIFICATION)
Chairman de la O stated that Lt. Neal wished to address the Board on this matter.

ACA Vizcaino stated that this item is listed on the agenda for notification purposes and not discussion.

Chairman de la O responded that he was aware and proceeded to advise Lt. Neal that the Board would not be voting on the report prepared by its Chief Examiner or making any recommendations to the City Manager. He went on to say that the report is in and that Lt. Neal could say anything he liked, but his doing so would not change anything [in the report.] Chairman de la O further stated that if Lt. Neal wished to rebut, amend, or give his side of the story, he could write to the Director of Employee Relations for furtherance on this matter.

Lt Neal Muhammad appeared before the Board and stated that he read the Chief Examiner's report, but it was very vague and he did not understand what was written in the report. He went on to say that he provided the Chief Examiner with a lot of information to investigate, but he did not see any of it reflected in the report.

Chairman de la O suggested that Lt. Muhammad put those comments in writing and forward them to the Employee Relations Director for a response since the Board would not be doing anything with the Chief Examiner's report.

Member Dames asked the Chairman if he could explain the process of what is to happen with Lt. Muhammad's case since he did not understand.

Chairman de la O responded that Member Scarola prepared a report concerning the matter of Lt. Muhammad's complaint that will be forwarded to the Department Director of Employee Relations.

Member Scarola (the Chief Examiner) stated that Lt. Muhammad requested a review or hearing and the Board instructed him [in the form of a motion] to review Lt. Muhammad's complaint. He went on to say that the problems were explored and at the end of the day there was nothing that stood out to justify his claim; therefore, he completed his report for forwarding to Dr. Hector Mirabile, Employee Relations Director, for his review.

Member Dames asked what happens after the report is reviewed because he wants to know if Lt. Muhammad would have a hearing.

The Executive Secretary responded that Lt. Muhammad would not have a hearing because the Board voted to have his complaint reviewed by the Chief Examiner.

Member Dames asked if Lt. Muhammad wanted a grievance hearing would the Board vote on this matter or does the Board have to accept the Chief Examiner's report.

The Executive Secretary responded that the Board voted to accept what the Chief Examiner prescribed in his report.

Member Dames stated that he voted so that the Chief Examiner could prepare a report to bring back to the Board to review his findings.

The Executive Secretary responded that when this matter was before the Board (at the February 10th meeting), there was the option of allowing (as requested by Lt. Muhammad) the Chief Examiner to conduct an investigation pursuant to Rule 4.2 or in the alternative a hearing pursuant to Rule 16.2 and the Board voted in favor of the Chief Examiner conducting the investigation.

Member Dames stated that he was totally confused because when he voted for the Chief Examiner to investigate the matter, he thought the Board would have an

opportunity to vote whether to accept the Chief Examiner's report. He went on to say that he had a real problem with the responses to questions he asked about the testing procedures when this matter was initially before the Board, so he feels the Board should hear what went on [at the test site] and that Lt. Muhammad should have his day in court. Member Dames asked how the Board could get to the point of offering Lt. Muhammad an opportunity to have his case heard by the Board.

Member Cruz asked if the test was given only to establish a register or to actually fill positions.

Member Scarola responded that the test was given in two parts. He went on to say that the first part was a written test and the latter part was the Assessment Center and that both scores were added together so that a register could be established to fill vacant positions.

Chairman de la O stated that Rule 4.2 indicates that the Chief Examiner may review any complaint of an applicant for employment or promotion and makes recommendations to the City Manager or the Department Director of Employee Relations for resolution of the complaint. He asked if there was a provision in the rules that speaks about the way the test was administered that could be brought to the full Board. He went on to say that he asked this question because it is essentially Lt. Muhammad's complaint that his exam sheet was incomplete and he is trying to find out if Lt. Muhammad has a way of coming to the Board or is the Board limited to Rule 4.2.

The Executive Secretary stated that [what the Chairman is asking] would be akin to asking if a person could have two Rule 16.1 or 16.2 hearings; because the request was made initially to have an investigation pursuant to Rule 4.2 or a hearing under 16.2 and the Board agreed to grant an investigation pursuant to Rule 4.2, and for the Board to now decide that it wants to change what it originally voted on as to how it would proceed is something the Board has never had.

Member Dames stated that he recalls the Chief Examiner returning to the Board with his report [in a previous case] and the Board voted not to accept his report and proceeded with a hearing before a full Board.

The Executive Secretary responded that the Board's action (at that time) was pursuant to Rule 16.2.

ACA Vizcaino stated that if matters are going to be discussed regarding this issue, she would ask that [the item] be reset so that the attorney who handled this request has an opportunity to be present and address any possible issues the Board may have.

Chairman de la O stated that the Board is not going to make any substantive decisions; however, the question is how the Board is going to proceed. He went on to say that he was not present when this matter was discussed, but as he reads Rule 16.2, the Board could have asked the Chief Examiner to conduct a preliminary investigation and afterwards conduct a hearing by the full Board. Chairman de la O asked if Lt. Muhammad requested a hearing pursuant to Rule 4.2 or was it that the Board specifically voted to hold a hearing pursuant to Rule 4.2.

The Executive Secretary responded that Lt. Muhammad requested an investigation pursuant to Rule 4.2, or in the alternative a Rule 16.2 hearing and the Board voted to hold an investigation pursuant to Rule 4.2. She went on to say that she was not saying that Lt. Muhammad could not have a Rule 16.2 hearing, but the Board voted to have a Rule 4.2 investigation, so it now seems that the Board does not agree with the Chief Examiner's report and will therefore do something else.

Member Angel-Capo stated that when she voted on this matter, she thought the Board was going to hear what Lt. Muhammad had to say and have the option of granting him a hearing [if the Board believed there had been a violation of the rules].

Chairman de la O stated that he was not sure if [not giving Lt. Muhammad the opportunity of having a hearing before the full Board] accomplishes the goals of the Civil Service Rules which is to give everyone due process, so if it is the Board's pleasure to hold a hearing, then he does not think Board Members should let the fact that they originally voted to hold an investigation pursuant to Rule 4.2 instead of Rule 16.2 stand in the way. He went on to say that he does not know enough to make a decision since he did not hear the first presentation and he is not sure of what the conflicting testimony is so he does not feel he is in a position to make an educated vote on whether the Board should rehear Lt. Muhammad's complaint or not; therefore, he would benefit from ACA Forte's presence and hear from the lieutenant to figure out whether there should be a hearing or not.

Member Dames stated that Lt. Muhammad is not a union member, but he decided to come before the Board to have his case heard and he thinks the Board should hear the case due to the many discrepancies that came about from the testimony presented when this matter was originally discussed.

Chairman de la O stated that the immediate question is does the Board vote to hear the case now or should it be reset so that both Lt. Muhammad and ACA Forte could present their positions as to whether there should be a hearing granted and the Board could make a decision. He went on to say that he would prefer to reset the matter because he did not hear any of the first presentation.

Following discussion, the Board entered a motion to GRANT Lt. Muhammad's request for a grievance hearing pursuant to Rule 16.2 which resulted as follows:

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

Aye: Dames, Angel-Capo and Cruz

No: Chairperson de la O and Scarola

Following the motion, Member Scarola stated that this was the third time the Board has asked him to review a complaint of an employee and he has issued a report, and as a result, the Board ended up having a full hearing. He went on to say that instead of saving the Board time (by conducting investigations pursuant to Rule 4.2), it appears that his time as well as the other attendees who participated in the investigation was wasted so from now on, he would suggest that the Board go forward with proceeding pursuant to Rule 16.2 whenever there is a complaint from an employee that requires an investigation by the Chief Examiner especially since he has other things to do outside of Civil Service Board matters.

Chairman de la O stated that Member Scarola's comments are well taken and should be taken into consideration by each Board Member before voting on how the Board will proceed with an investigation. He went on to say that Member Scarola spends a lot of time outside of his regular duties to investigate a matter and prepare his report so he thinks Member Scarola made a valid point that the Board needs to decide whether it would be practical for the Chief Examiner to issue a report if the Board is going to have a hearing anyway.

NO OTHER DISCUSSION TOOK PLACE ON THIS MATTER.

F. REPORTS

F.1 Pending Hearings as of April 14, 2009. (NOTIFICATION)

G. REQUESTS FOR HEARINGS**H. TODAY'S HEARINGS**

H.1 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).

ACA Vizcaino stated that she had not seen Mr. King at today's meeting; however, there is a settlement of this case pending final approval from the Employee Relations department director and the department director of Solid Waste who is currently out of the country. She went on to say that she would ask that this item be placed back on the agenda once the settlement is signed and executed.

Chairman de la O stated that due to the pending settlement, a joint continuance needs to be charged in this case.

The Executive Secretary stated that in accordance with the Board's Manual of Procedures whenever a settlement is announced, the parties have 30 days to present the settlement to the Board, and if it she does not receive it within the 30-day time frame, she will place this item on a future agenda.

Chairman de la O asked if any type of action needed to be taken by the Board on this matter. The Executive Secretary responded in the negative.

NO ACTION TAKEN --- AWAITING COPY OF SETTLEMENT TO CLOSE THIS CASE.

H.2 Hearing of appeal on behalf of Terry Pagan, Stable Attendant Supervisor, relative to her 8-hour suspension, effective November 10, 2008.

ACA Vizcaino stated that she was not ready to proceed with this hearing today, that this is the first time this hearing is scheduled, and that she would ask that it be continued.

Chairman de la O asked Ms. Pagan if she was ready to proceed with her hearing today.

Terry Pagan responded that she has been a City employee for 29 years and this is her first time ever before the Board on a matter, and that she will be retiring in August 2009. She went on to say that she appreciates the fact that she could be heard by the Board so she is ready to proceed with her case today. Ms. Pagan asked if her case would be heard today or was it going to go through some other process since she did not understand the request made by the department's attorney.

Chairman de la O stated that it would be the same process. He went on to say that the department's attorney is asking that the hearing be rescheduled.

Ms. Pagan stated that this would be the second time that her hearing is being rescheduled; therefore she would like to know the department's reason for requesting a continuance.

The Executive Secretary responded that if Ms. Pagan is referring to the April 7, 2009 date for which her hearing was originally scheduled, that meeting was cancelled; therefore, her hearing was moved to today for consideration by the Board.

Chairman de la O asked the department's attorney to provide the reason for her continuance request.

ACA Vizcaino stated that an essential witness had a scheduling conflict involving a personal matter and that she is investigating other areas of this case so that she can be prepared.

Member Scarola asked Ms. Pagan when she would be retiring.

Ms. Pagan responded that she would be separated from the City effective August 7, 2009.

Member Scarola instructed the Executive Secretary to reschedule Ms. Pagan's hearing for some time before August since she will be retiring and then asked both sides how many witnesses did they have for this case.

Ms. Pagan stated that she had no witnesses and ACA Vizcaino stated that she would have 3 to 4 witnesses for this case.

Member Scarola stated that he asked these questions for scheduling purposes so that whenever the Executive Secretary reschedules Ms. Pagan's hearing, she would know the best date to set the hearing.

Chairman de la O stated that the Board does not lose jurisdiction of this case after Ms. Pagan retires.

Member Scarola stated that he was aware, but he also asked the questions to ensure that Ms. Pagan's pension would not be affected.

Following discussion, the Board entered a motion to grant the department's request for a CONTINUANCE which resulted as follows:

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

Aye: Chairperson de la O, Dames, Angel-Capo, Scarola and Cruz

ADJOURNMENT:

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

Motion by Member Dames, seconded by Member Cruz, to APPROVE. PASSED by the following vote.

Aye: Chairperson de la O, Dames, Angel-Capo, Scarola and Cruz

The meeting adjourned at 10:57 a.m.

SIGNATURE:

Miguel M. de la O, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary