

City of Miami

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Meeting Minutes

Tuesday, May 12, 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 10:17 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 May 5, 2009.

The Board entered a motion to APPROVE the minutes of the regular meeting of May 5, 2009 which resulted as follows:

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

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

B. PERSONNEL MATTERS**B.1**

Copy of a memorandum from Stephanie N. Grindell, P.E., Director, Department of Public Works, requesting an extension of the probationary period of Donaldson Pierre, Auto Equipment Operator I, for an additional six months beyond June 3, 2009. (DISCUSSION)

Chairman de la O asked Mr. Pierre if he was aware that the Department was attempting to extend his probationary period and if so, did he have an objection to his probationary period being extended.

Donaldson Pierre, Auto Equipment Operator I, appeared before the Board and responded that he was aware that the Department requested to extend his probationary period and that he had no objections.

Member Dames asked Mr. Pierre to tell the Board the reason his probationary period was being extended.

Mr. Pierre responded that he missed a couple of days from work.

Following discussion, the Board entered a motion to APPROVE the Department's request to extend Donaldson Pierre's probationary period an additional six (6) months beyond June 3, 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, Dames, Angel-Capo, Scarola and Cruz

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

- D.1 Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Nadia Jerry, Communications Assistant, of her 8-hour suspension, effective May 3, 2009. (NOTIFICATION)

NOTIFIED

E. GENERAL ITEMS

- E.1 Copy of a Settlement Agreement between the City of Miami and Devell King, Waste Collector, relative to his grievance hearing pursuant to Civil Service Rule 16.2-Complaint by Employee, concerning an alleged violation of Civil Service Rule 14.2(h), (i), and (r). (NOTIFICATION)

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

NOTIFIED

- E.2 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 a withdrawal of the charges and her client be made whole for the suspension. (DISCUSSION)

Deferred from the meeting of May 5, 2009.

Attorney Guttman-Valdes stated that Mr. Cornier's resignation was accepted by the department director; therefore her client is requesting that he be made whole in accordance with Civil Service Rule 14.6.

Chairman de la O asked for the department's position on Mr. Cornier's request.

Assistant City Attorney (ACA) Vizcaino stated that the department's position is that Mr. Cornier did not resign, but retired effective March 13, 2009; therefore Rule 14.6 would not be applicable in this case since this rule pertains to resignations.

Attorney Guttman-Valdes stated that a retirement is the same as a resignation with the exception that a [service] retirement allows an employee to be eligible to receive pension benefits. She went on to say that if a department director accepts an employee's resignation, and the employee has pending [disciplinary] charges filed with the Civil Service Board, [Rule 14.6] is clear when it states that the acceptance of [the resignation] is considered a withdrawal of the charges and the proceedings are supposed to be dismissed without judgment.

ACA Vizcaino stated that the Board has discussed the matter [of resignation versus retirement] before and referred the Board to the minutes of August 15, 2006 whereby Chairman de la O stated that a resignation and retirement are not the same and the Board's Special Counsel, Cynthia A. Everett, agreed by stating there is a distinction between a retirement and a resignation, and therefore withdrawal of the charges would not be appropriate when an employee retires.

Chairman de la O asked the Board's Counsel for her position on this matter.

Special Counsel Everett asked what type of distinction was the Board trying to make.

Chairman de la O responded that he was trying to determine why it would make a difference whether an employee retired or resigned with regards to the provision in Civil Service Rule 14.6; however, because of the discussion taking place, he was unable to complete the reading of the August 15, 2006 minutes so as to get the full understanding of what was discussed at that time. He went on to say that according to Rule 14.6, if an employee resigns, the proceedings are dismissed without judgment and a copy of the charging document would remain in the employee's file [and as he understands the request], the employee is trying to take advantage of this rule.

Special Counsel Everett stated that as a practical matter, there is a distinction between a resignation and retirement so she is trying to figure out the ultimate goal the Board is trying to accomplish because [the matter of resignation versus retirement] might not be the issue.

Attorney Guttman-Valdes stated that she thinks a resignation and a retirement are the same. She went on to say that with regards to a resignation, if an employee wants to quit his/her job and if the department director allows the employee to quit [or resign his job], this would be the acceptance by the director [of the employee's resignation.] Attorney Guttman-Valdes further stated that whenever an employee happens to be eligible [for retirement], this would mean that the employee has been vested and can begin taking a pension and although resignation and retirement are the same, the term, retirement would be use in this instance because it sounds nicer.

Special Counsel Everett stated that [what Attorney Guttman-Valdes just explained] shows that a resignation and retirement are different. She asked Attorney Guttman-Valdes if her client retired or resigned his employment with the City of Miami.

Attorney Guttman-Valdes responded that a retirement is a resignation plus the benefits. She went on to say that her client quit his position and accepted his pension, which meant that he resigned.

Chairman de la O stated that when this matter [of resignation versus retirement] came up in the past, the department has tried to say that an employee could not maintain his/her pending [Civil Service] appeal.

ACA Vizcaino stated that the argument [of retirement versus resignation] has been raised and there have always been different factual distinctions. She went on to say that in Mr. Cornier's case, he received a one-day suspension, he appealed to the Board and his case is currently pending. ACA Vizcaino further stated that subsequent to filing his appeal, Mr. Cornier retired and she has a copy of a letter from the Pension Trust Board indicating that the effective date of his retirement was March 13, 2009.

Special Counsel Everett asked Attorney Guttman-Valdes what [remedy] was her client seeking.

Attorney Guttman-Valdes responded that she wants a notation to be stamped on her client's disciplinary letter that the charges were withdrawn.

ACA Vizcaino stated that the department objects to the charges being withdrawn because in essence the employee's attorney is asking the City to forget about the one-day suspension and pay her client for the one-day suspension, but this not what Rule 14.6 is designed to do.

Chairman de la O stated that normally when an employee resigns or retires without prejudice, the department has tried to say that the employee waived his appeal and the

employee has tried to continue the appeal in order to get back the money that was lost. He went on to say that he does not understand why the City has not done in the past what Attorney Guttman-Valdes is trying to do, which is to have the money given back to her client [for the 1-day suspension that he served without pay] and withdraw the charges because the employee either resigned or retired.

ACA Vizcaino responded that Rule 14.6 is not interpreted in that way. She went on to say that Rule 14.6 states that if a person resigns, there would be a withdrawal of the charges and in the recent case of James Thomas, whereby he appealed his suspension and subsequently retired prior to final action by the Board, she asked the Board to withdraw the charges, but her request was denied and as a result, she had the burden of proving the charges even though Mr. Thomas was not present for his hearing. She stated that in this particular case, Mr. Cornier retired and he is asking that the department director withdraw or take away the one-day suspension that is pending before the Civil Service Board and give him back his money, but that is not the intent of Rule 14.6. ACA Vizcaino went on to say that the Board has explored this issue and in 2006 the distinction was made that a retirement and resignation are two different things in the context of labor law. She further stated that [she has past minutes which would show that] Attorney Ronald J. Cohen, Special Counsel Everett, and Chairman de la O all agreed that a retirement and resignation are two different things and she would ask that the Board be consistent with its previous application and interpretation of Rule 14.6.

Attorney Guttman-Valdes stated that Rule 14.6 clearly says that the acceptance by the department director of the resignation of an employee suspended, reduced in rank, or dismissed before final action on the part of the Board shall be considered a withdrawal of the charges and the separation shall be recorded as a resignation and the proceedings dismissed without judgment.

Chairman de la O asked how a department director could refuse an employee's resignation or what would happen if the department director refused an employee's resignation.

Attorney Guttman-Valdes responded that the department director could then fire the employee if he does not accept the resignation.

Chairman de la O stated that Attorney Guttman-Valdes' response did not sound equitable to him.

ACA Vizcaino stated that as far as the retirement is concerned, there is a notice that was received from the General Employees' Retirement Trust, which is the document that was submitted to the department director. She went on to say that Mr. Cornier did not approach the department director to announce the effective date of his resignation, but he went to the Pension Office and in turn the Pension Office notified the City and the department director of Mr. Cornier's retirement effective, March 13, 2009.

Attorney Guttman-Valdes stated that Mr. Cornier quit his job and the fact that he received retirement benefits is a secondary issue.

Member Scarola asked if Mr. Cornier had entered the Deferred Retirement Option Plan (DROP) at the time of his retirement.

Attorney Guttman-Valdes responded that she did not know if Mr. Cornier had entered the DROP, but obviously he was eligible to retire. She went on to say that whether an employee takes advantage of the DROP or not, an employee can walk away from the job at any time and that is what her client did.

ACA Vizcaino stated that this Board has said that employees who have resigned or retired can still seek their appellate rights on the underlying charges which means that would also apply to Mr. Cornier.

Attorney Guttman-Valdes stated that her client does not want to appeal his one-day suspension, but he wants the department to follow Rule 14.6.

Chairman de la O asked how an employee retires without resigning.

Special Counsel Everett responded that what the Chairman is asking is what is the difference between a voluntary resignation and the department director or the City Manager terminating an individual's employment. She went on to say that both actions would result in the employee leaving their service of employment, but she would assume most people would agree there is a difference in the way a person separates from their employment. Special Counsel Everett further stated that the same would apply with a resignation versus a retirement because when a person retires, they leave their place of employment but they receive some type of benefit, which is the whole point of having a retirement.

Chairman de la O asked if he was an employee of 20 years and was fired would he receive his benefits.

Special Counsel Everett responded that it would depend on the particular employer as to whether that employee would receive benefits. She went on to say that when persons are terminated, at a certain point they lose their benefits which is why terminations are challenged.

Chairman de la O stated that there are certainly situations where a person is fired, but does not lose his/her benefits.

Special Counsel Everett reiterated that she thinks it would depend on the employer.

Attorney Guttman-Valdes stated that an employee cannot lose his/her pension unless there is a forfeiture proceeding.

Chairman de la O stated that if a person can still receive benefits even if they have been fired suggests to him that there is no connection in the way a person separates from their employment or retires.

Special Counsel Everett stated that this would be a different issue if the Chairman was asking if there is a distinction between termination, voluntary resignations, and retirement, but she thinks there is a difference.

Chairman de la O stated that he agrees with the first two terms [termination and voluntary resignations] but with an unemployment compensation, the employee either quits or is fired from his job.

Member Scarola stated that he did not think the Pension Board would give an employee a benefit unless that person applied for it.

Attorney Guttman-Valdes stated that resignation is like a lesser included retirement.

Chairman de la O asked if a person could retire in the sense that a person does not begin receiving his benefits.

Member Scarola responded that there are many options a person can choose from

upon retirement; however, the retired person would not receive a benefit if the Pension Office did not receive anything as to how the person wishes to receive his/her benefit. He went on to say that a person actually has to apply for retirement because the City has had some police officers who were terminated, but did not have the time and did not take their pension at that point.

Special Counsel Everett stated that if an employee had been working for the City for two years and decided to separate, that person would not retire, but resign or be fired because a person has to have a certain number of years to be eligible for retirement.

Attorney Guttman-Valdes stated that a person is not to be penalized because he/she decided to resign in accordance with Rule 14.6.

Special Counsel Everett stated that it would not be a penalty because a person retired, but it has something to do with whether the person had some type of disciplinary action which would be the issue.

Attorney Guttman-Valdes stated that it would not make sense to interpret the rule in the sense explained by Special Counsel Everett because then that would mean a 2-year employee would be treated favorably by having the charges dismissed as opposed to a 25-year employee.

Chairman de la O stated that he needed time to read the document and suggested that this discussion be revisited after the scheduled hearing today since both attorneys would be available.

Following the conclusion of the grievance hearing on behalf of Amelia Pritchard (Item H.2), the Board continued discussion of Mr. Cornier's request.

Chairman de la O stated that he read through the minutes of the prior hearing conducted by the Board in the (2006) case of Officer Bernardo Perez and he found that the Board did not make a ruling in Officer Perez' case.

Attorney Guttman-Valdes stated that since there was no ruling made by the Board in the Bernardo Perez case, it would not be precedent setting but the case of Richard Badali (1998) would be precedent setting because a ruling was made in that case.

Chairman de la O stated that as he was about to say before Attorney Guttman-Valdes interjected her thoughts was that the key seemed to be whether the City accepts the resignation, which he thinks put power in the City's hands because the first line of Rule 14.6 says that when the City accepts the resignation, the charges have to be withdrawn, so it is in the department's discretion to accept the resignation or not. Chairman de la O further stated that he thinks he answered his own question when he asked what would happen if the director does not accept an employee's resignation so his thinking now is that the employee can still retire but the City would not be bound by Rule 14.6 to take back the discipline. He stated that in the Bernardo Perez case, ACA Jones was trying to have his cake and eat it too because he wanted to apply Rule 14.6 only to take away the appeal, but not to give the employee his money back. Chairman de la O went on to say that his interpretation of Rule 14.6 is that if the City accepts the resignation, it is making the affirmative decision to remove the punishment so the question is what was done in this case. He asked the department's attorney if she knew whether the department director accepted Mr. Cornier's resignation.

ACA Vizcaino responded that there was no resignation because Mr. Cornier went to the

Pension Board and filed for his retirement. She went on to say that the Pension Board notified the department of Mr. Cornier's retirement so the department did not have an opportunity to accept his resignation.

Chairman de la O stated that ACA Vizcaino's response answered his question which would mean that although Mr. Cornier did not give the department director an opportunity to accept his resignation, he still could challenge the charges brought against him which is the same thing the Board was saying in the Bernardo Perez case which was that he should not lose his right to challenge any loss of money because he retired.

Attorney Guttman-Valdes stated that her client was offered the opportunity to resign and he resigned.

Chairman de la O stated that Rule 14.6 says that the employee has to offer his resignation, the City has to accept it, which makes sense to him because if the power is put in the department's hands and it knows the ramification which is by accepting the resignation, the City now has to withdraw the charges that would be fair otherwise if the City issues a discipline of termination, would that mean that all the person has to do is resign and the termination goes away. He stated that would not sound equitable to the City but there has to be an affirmative act by the City knowing the consequences, which is the charge gets removed.

Attorney Guttman-Valdes stated that there may have to be an evidentiary hearing surrounding the circumstances of Mr. Cornier's separation from the City.

Chairman de la O stated that the evidentiary hearing if considered would be to determine if Mr. Cornier resigned and his resignation was accepted by the City.

ACA Vizcaino stated that the Board is now going into allegations as to whether Mr. Cornier's separation was a resignation or retirement and what were the underlying conditions, but she thinks perhaps this is discussion for another day if Mr. Cornier chooses to appeal the suspension, but that is not what they are before the Board today to discuss. She went on to say that Attorney Guttman-Valdes wants the department to take away a 1-day suspension from an employee who after serving the suspension retired a month later.

Chairman de la O asked if Mr. Cornier appealed his 1-day suspension.

ACA Vizcaino responded in the affirmative. She went on to say that Mr. Cornier's appeal is pending before this Board.

Attorney Guttman-Valdes stated that she did not know until today that the department is taking the position that Mr. Cornier did not resign so if that is an issue of fact, she would bring her client in so that an evidentiary hearing could take place.

Chairman de la O stated that he did not see why [the matter of resignation] would not get resolved within the appeal. He went on to say that it is almost like Attorney Guttman-Valdes is making a motion for a directed verdict.

Attorney Guttman-Valdes stated that she does not want to have an appeal hearing because her client resigned.

Chairman de la O stated that by having an appeal hearing everything could be resolved all at once and that she would have two opportunities of winning her client's case if the City accepted Mr. Cornier's resignation or she could win substantively because he

should have never been suspended to begin with.

Attorney Guttman-Valdes asked if this matter could be continued to the meeting of June 2, 2009.

ACA Vizcaino stated that she would object to opposing counsel's request because regarding the case of James Thomas, he retired and the Board forced her to go forward with his hearing even though he was not present. She went on to say that a retirement and a resignation are two different things.

Chairman de la O stated that the Board was not disagreeing with ACA Vizcaino's position, but if Mr. Cornier resigned and the City accepted his resignation, then Rule 14.6 says that the charges have to be withdrawn.

ACA Vizcaino stated that she understands what Rule 14.6 says, but that is not the situation before the Board today. She went on to say that the Board has a retirement case which is the same as the Board had in the James Thomas case.

Chairman de la O stated that the Board has nothing at this point, but attorneys arguing their positions. He went on to say that the only question the Board has is does the Board go forward with the appeal, hash out the [resignation] issue factually within the appeal or does the Board have a separate hearing; however, he did not want to put this matter off until June 2 because it has taken a while to get to this point where the Board understands what is going on and in terms of the procedures the Board will follow, he wants to make that decision today since everything is fresh in everyone's mind. Chairman de la O asked Attorney Guttman-Valdes how she thought the Board should proceed.

Attorney Guttman-Valdes responded that she thinks the issue of whether Mr. Cornier's separation was a resignation is a very quick issue that should be dealt with separately and bifurcated from the actual hearing because once this matter has been resolved, the Board would know whether there was going to be a hearing. She went on to say that she does not think either attorney should have the burden of having to prepare for a hearing when the matter could be resolved in a shorter period of time.

Chairman de la O asked for the department's position on how it wished to proceed on June 2.

ACA Vizcaino stated that her position is if she is now being asked to discuss the difference between whether Mr. Cornier resigned or not, she would need to speak to representatives of the Pension Board to find out what Mr. Cornier's communication was with them and what documents he may or may not have submitted.

Chairman de la O stated that the question is whether this matter of resignation is to be wrapped up in the appeal hearing that would be heard in one day and Attorney Guttman-Valdes is asking that issues be bifurcated and a separate evidentiary hearing be set on the question of whether her client resigned or not.

ACA Vizcaino stated that she would opine that a bifurcation would be appropriate because there are two issues.

Special Counsel Everett stated that unless the Board is going to be making a finding that a resignation and a retirement are the same, there is no reason to go forward because everything that has been presented to the Board by the employee says he retired. She went on to say that she has already said that in her opinion a resignation and a retirement are two different things, but it is obvious the Board will reach its own

conclusion. Special Counsel Everett further stated that if they are two different things and what has been presented states that Mr. Cornier retired, she does not understand why the Board would go any further. She stated if the Board thinks a resignation and a retirement are the same thing, then she could understand the Board going forward.

Chairman de la O stated that the Board would be going forward because Attorney Guttman-Valdes stated that her client resigned [and the department is saying that Mr. Cornier retired.]

Special Counsel Everett stated that she understands what Attorney Guttman-Valdes has said on the matter, but the question is what has she presented [to prove that her client resigned.]

Chairman de la O stated that the Board decides hearings which are based on proffers.

Special Counsel Everett stated that she thinks each counsel has an obligation to come forward with sufficient and correct information and she thinks there has been time to do so in this particular case. She asked if Attorney Guttman-Valdes is now going to come back with something [in writing] that says Mr. Cornier resigned when the Board is presented with something that says retirement.

Attorney Guttman-Valdes stated that she is going to come back with her client so that he can tell the Board that he resigned.

Chairman de la O stated that there is at least an agreement on the procedure should the Board wish to hear the issue of whether the employee resigned or retired and whether Rule 14.6 require that the department withdraw the charges.

Member Angel-Capo asked if anyone had spoken with the department director on whether a deal was struck with the employee with regards to him resigning.

Chairman de la O responded that ACA Vizcaino responded that this did not happen because the employee went directly to the Pension Board regarding his retirement.

Member Scarola stated that what he is hearing is that Mr. Cornier was told to either resign or retire or he would be terminated, [but it does not make sense] because he received a 1-day suspension. He went on to say that if [Mr. Cornier was issued] a 1-day suspension, he does not understand why he would be forced to resign.

Attorney Guttman-Valdes responded that she was not at liberty to discuss the matter.

ACA Vizcaino stated that she would proffer to the Board that the 1-day suspension that is on appeal has nothing to do with Mr. Cornier retiring. She went on to say that the circumstances surrounding this issue are separate and apart from the 1-day suspension and she thinks opposing counsel will agree with her that these are two totally separate issues. ACA Vizcaino further stated that she would not like to combine the issues because one does not have anything to do with the other.

Member Scarola stated that at the end of the day, if Mr. Cornier resigned he has one day affecting his pension, but if he is given back the time for the 1-day suspension he would have a very small adjustment in his pension.

Special Counsel Everett stated that in order to make a finding of whether Mr. Cornier resigned or retired, she would like to know how the Board would proceed under its rules.

Chairman de la O responded that there is a motion by an employee to apply Rule 14.6,

so he thinks the employee is saying that Rule 14.6 has been violated by the department by its failure to withdraw the charge.

Following discussion, the Board entered a motion to GRANT a hearing pursuant to Rule 16.1 concerning a violation of Rule 14.6.

Under discussion, Special Counsel Everett stated that even if there had been a resignation, theoretically the Board still has no vehicle to look at the evidence. She went on to say that the Board has to have some type of mechanism for proving that the employee did resign because if it was the other way around, would the Board be having a hearing. Special Counsel Everett further stated that if the parties agreed on the facts, then it could be done, but if there is any dispute [i.e. If the attorney were to produce a letter indicating the employee resigned], she asked if the would Board just accept that letter and say that the charges should be withdrawn.

Chairman de la O responded that [the Board would not just accept the letter] if the City was making rebuttal.

Special Counsel Everett stated that there has to be a piece of paper in and of itself or there has to be some mechanism to investigate or make a determination on an issue or claim.

Following discussion, the motion on the floor to grant a hearing pursuant to Rule 16.1 to determine whether Mr. Cornier resigned or retired, and whether the department is in violation of Rule 14.6 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, Dames, Angel-Capo, Scarola and Cruz

F. REPORTS

F.1 Pending Hearings as of May 12, 2009. (NOTIFICATION)

G. REQUESTS FOR HEARINGS

H. TODAY'S HEARINGS

H.1 Grievance hearing on behalf of Edward Diez, Firefighter, pursuant to Civil Service Rules 5-Application for Examinations, 6-Examinations, 7-Eligible Registers and 8-Appointments, Promotions and Advancements.

ACA Vizcaino stated that she and Attorney Guttman-Valdes both agree that the Board probably will not get to this hearing today due to scheduling conflicts, but she thinks they will be able to finish Ms. Pritchard's hearing (Item H.2) today.

Chairman de la O stated that the Board would come back to this item since Attorney Guttman-Valdes stepped out of the room.

Following the Board's consideration of other matters on its agenda, Attorney Guttman-Valdes reminded the Board that it needed to revisit the matter of Edward Diez since it was never continued. She went on to say that she would ask that Mr. Diez' hearing be rolled over to the June 2, 2009 meeting, and that she was aware that one of the two hearings scheduled on June 2 will not go forward, and that the department is

prepared to go forward with Mr. Diez' case on June 2.

Chairman de la O asked for a motion to the charge the continuance to the Board.

The Executive Secretary stated that in response to Attorney Guttman-Valdes' request, the first issue is she did not understand why the continuance was being charged to the Board and the second issue is that there are two hearings already scheduled on June 2 and she has not heard from either attorney that either hearing would be withdrawn or continued.

Chairman de la O stated that the continuance should be charged to both attorneys because the Board is available and ready to hear the next case.

Attorney Guttman-Valdes stated that she is leaving for Tampa [today] and it is her understanding after speaking with opposing counsel was that she also has to leave at a certain time today.

Chairman de la O stated that is the very reason he is charging the continuance to both attorneys,

Following discussion, the Board entered a motion for a JOINT CONTINUANCE of the hearing of Edwin Diez which resulted as follows:

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

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

The Board revisited this item at the request of Attorney Guttman-Valdes who asked if Edwin Diez' case could be moved to the June 2 meeting and if so, she would be subserviant to the other two cases [scheduled on this date.]

ACA Vizcaino stated that she spoke to Attorney Rind and she proffered to her that she had no objection and she did not care if her client, Alice Dunn's, case was moved to another date.

Chairman de la O suggested that both attorneys talk to Attorney Rind to make sure there is no problem on June 2.

APPROVED : HEARING RESCHEDULED TO JUNE 2 MEETING.

H.2

Investigation hearing on behalf of Amelia Pritchard, Administrative Assistant I, Department of Fire Rescue, pursuant to Civil Service Rule 16.1, Investigation by the Board.

The Board entered into the scheduled hearing of Amelia Pritchard (Complainant).

Teri Guttman-Valdes, Attorney at Law, represented the Complainant.

Diana Vizcaino, Assistant City Attorney, represented the Department.

Opening statements were made by Attorney Guttman-Valdes and ACA Vizcaino deferred opening statements until after the Complainant rested her case.

All witnesses were sworn in individually. Witnesses for the Complainant appeared in the following order:

Amelia Pritchard, Administrative Assistant I, testified on her own behalf.

Questions were posed by Board Members Cruz and Dames during the testimony of witness Amelia Pritchard.

The Complainant rested her case.

ACA Vizcaino waived opening statements. Witnesses for the Department appeared in the following order:

1. Joni Harris, Employee Relations Manager, City of Miami, Department of Employee Relations.

Questions were posed by Board Members de la O, Angel-Capo, Cruz, Dames and Scarola during the testimony of witness Joni Harris.

During redirect examination of Witness Joni Harris, ACA Vizcaino asked Ms. Harris if there was anything she wished to say to the Board.

Ms. Harris stated that she would like to pose a question to the Board. She went on to say that given the feedback she heard today, she would like to know if it is the direction of this Board that when requirements for recruitments are drafted and there is only one person that can be identified who would meet the time-in-grade for promotional requirements, that the promotional requirements be excluded from the register announcement and recruit only on an open basis.

Chairman de la O responded that he did not know if the Board had reached any conclusions, but he thinks Ms. Harris' question is fair in what the Board should address in its report and he thinks the Board will, but he did not think the Board should do so until after the hearing is concluded and all testimony has been presented.

2. Angela Marinas, Director, City of Miami, Enterprise Resource Project (ERP).

Questions were posed by Chairman de la O during the testimony of witness Angela Marinas.

The Department rested its case and closing argument by both attorneys followed.

Following final argument, Chairman de la O stated that he thinks the figure of "2,000" is arbitrary and capricious. He went on to say that he heard Ms. Marinas talk about this figure and then she pointed to the Payscale.com website, but with this website, he thinks Ms. Marinas was working backwards because that is what persons (who work with that number of employees) should be paid which is understood. Chairman de la O further stated that when Ms. Marinas established what the pay scale should be for an Assistant Payroll Supervisor, she looked at the website which made sense and it gave her a number, but nowhere has there been any testimony today that you must have 2,000 employees under your supervision or must do payroll for 2,000 employees in order to do payroll for the City of Miami as an Assistant Payroll Supervisor. He stated that the ultimate proof of this came from Ms. Harris when she said if Ms. Pritchard's department was tripled, she still would not have the experience the department was looking for and if she had the experience the department was looking for as prescribed in the job announcement, the fact that Ms. Pritchard only has 700 employees in her department would still mean that should would not be someone the department should look at.

Chairman de la O stated that was the end of the 2,000 employee requirement for him, but did this mean there was an abuse of power, he would have to answer in the negative. He went on to say that he thinks the Board needs to make a recommendation

to the City Manager and the Employee Relations Director that if the department is going to err, it should set the numbers lower because if the requirement is that you only have to work for a company that has 100 employees, a bigger pool would be established and in turn, the department can exclude (from interviews) everyone who worked for a company with less than [a certain number of] employees and interview only those with [a certain number of] employees, but when the number is set too high, the potential pool of employees is excluded as was the applicant from the City of Coral Gables mentioned by Ms. Harris, who stated that she would have liked to interview this person, but could not, [due to the requirements.] Chairman de la O further stated that the City shot itself in the foot by setting the number too high and there is zero testimony as to why the number had to be 2,000, and if anything, it cuts against the logic of it. He stated that he did not think enough attention was paid to this artificial number that flies in the face of the audit where all of the requirements and the salary are being lowered and for the first time there is a minimum requirement that applicants work for a company with 2,000 employees.

Chairman de la O went on to say that it would be great to have someone [fill the Assistant Supervisor of Payroll position] who has done payroll for at least 2,000 employees, but the department could ask: "Is there a company that could be slightly smaller than what was required and still end up with a quality employee?", but the City did not give itself a chance to find out. He further stated that if he was going to make a recommendation to the City, it would be that when the City sets the requirements for numbers, err on the side of a lower number and then use the interview process to pull out the employees who do not have the experience the department is looking for. Chairman de la O stated that with regards to the issue of the bachelors degree as to whether Ms. Pritchard submitted it or not, it was not the point of this hearing but he would say that according to the register announcement she has to get a certification that tells her how to translate the degree she received in the Philippines to an equivalent degree in the United States because that is what the register announcement is calling for.

Member Cruz stated that he thinks the department is in violation of Rule 5.1. He went on to say that the department should have done things in the right way by opening up the [Assistant Payroll Supervisor] recruitment to everyone and not just one specific person.

Member Scarola stated that with regards to the Chairman's question reference obtaining an U.S. equivalency for foreign degrees, during his investigation of Ms. Pritchard's complaint pursuant to Rule 4.2, this matter was discussed and Ms. Harris explained the process to him and the Executive Secretary so there is an evaluation process [for screening] foreign degrees.

Chairman de la O responded that he got the impression from the register announcement that it is something that applicants have to get done on their own and that is the reason he mentioned that Ms. Pritchard needs to get her degree evaluated so that when there is another opening, her papers will be straight.

Member Scarola stated that there is an evaluation process available to attain U.S. equivalencies for foreign degrees and the Employee Relations personnel are willing to explain the process to applicants with foreign degrees.

Member Dames stated that he was puzzled by the figure of 2,000 because at first glance, it appeared [for eligibility purposes] that this number was tied to the number of employees that the applicant processed payroll for, but after much discussion, it was learned that this number was tied to the size of the organization to mean that the applicant did not have to process payroll for 2,000 employees rather if the applicant

processed payroll and worked for an organization with at least 2,000 employees this would be sufficient to meet the requirement for the Assistant Supervisor of Payroll position. He went on to say that he reviewed three job announcements [for the position of Assistant Supervisor of Payroll] which all required a bachelors degree; however, the person who got this job only has an associate's degree. Member Dames further stated that with regards to the promotional requirement, an individual had to be a payroll specialist, but there is only one payroll specialist position in the City of Miami; therefore, no one else could qualify by means of the promotional requirement. He stated that the Payroll Specialist position previously required that a person have an Associate of Arts degree, but the latest register announcement required that applicants have only a high school diploma. Member Dames went on to say that less is being required which is very confusing to him.

Chairman de la O stated that the purpose of this hearing is strictly to determine whether there was an abuse of power under Rule 16.1 and not whether Ms. Pritchard should have been hired as the Assistant Supervisor of Payroll. He went on to say that he thinks it would be helpful to the City Manager to have along with the findings and recommendations report, a spreadsheet that he would ask the Executive Secretary to prepare that would indicate the names of the applicants that applied for the Assistant Supervisor of Payroll position and the reason they were deemed ineligible because he is going to assume that the majority of the applicants did not qualify because they did not work for an organization with at least 2,000 employees.

Member Scarola stated that he performs payroll functions but because he has a staff of only one person, he would not have qualified for the Assistant Supervisor of Payroll position.

Member Dames responded that Member Scarola would have qualified because he works for the City of Miami, which has over 2,000 employees [and if he has a bachelor's degree].

Following discussion, the Board entered a motion to find that there was an abuse of power by the department in accordance with Rule 16.1.

Under discussion, Chairman de la O stated that he did not see an abuse of power by the department, but he does think the Board could make recommendations to the City Manager as to how the department can do better.

Member Cruz stated that he thinks there was a violation of Rule 5.1. He went on to say that he thinks there should be parity and equality for everyone rather than favor a specific employee.

Member Dames asked what the reason was for discussion about the payroll specialist position.

Chairman de la O responded that applicants could qualify one of two ways. He went on to say that applicants could qualify for the Assistant Supervisor of Payroll position if they held permanent status as a payroll specialist or if applicants had a bachelor's degree and experience doing payroll for a company with at least 2,000 employees.

Following discussion, the motion on the floor to find that there was an abuse of power resulted as follows:

Motion by Member Cruz, seconded by Member Dames, 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, Attorney Guttman-Valdes asked what type of information would be included in the report to the City Manager with regards to the finding of an abuse of power.

Chairman de la O informed Attorney Guttman-Valdes if she has a suggestion on how the report should read, she should forward this information to Special Counsel Everett and that she would also receive a version of Special Counsel's report.

Special Counsel Everett suggested that Attorney Guttman-Valdes propose a draft [and submit it to her.]

Attorney Guttman-Valdes asked when should she submit her report to Special Counsel Everett.

Special Counsel Everett stated that she will be out of the office next week (May 25-29) and that she will not be in attendance at the June 2 meeting; therefore she would ask that Attorney Guttman-Valdes submit a draft to her by May 28, 2009.

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

ACA Vizcaino responded that she would like for Special Counsel Everett to prepare findings as she does on every case that is heard by the Board. She went on to say that she did not want to change the process, and this is how it has been done for a long time, which is Special Counsel Everett submits her proposed findings, and she [ACA Vizcaino] decides which paragraphs she agrees or disagrees with, based upon whatever revisions Attorney Guttman-Valdes proposes.

Chairman de la O stated that both attorneys have the option of submitting proposed findings to Special Counsel Everett.

ACA Vizcaino asked Special Counsel Everett if she was going to prepare a report as she has always done.

Special Counsel Everett responded in the affirmative. She went on to say that she normally uses proposed findings submitted by the attorneys to create her final report.

NO OTHER DISCUSSION TOOK PLACE ON THIS MATTER.

H.3

Hearing of appeal on behalf of Rodrigo Jimenez, Telecommunications Technician, concerning his demotion.

Osnat K. Rind, Attorney on behalf of Rodrigo Jimenez, appeared before the Board on this matter and ACA Vizcaino stated that the hearing would not go forward today because there is a pending settlement of this case.

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

ADJOURNMENT:

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

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

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

*The meeting adjourned at 2:33 p.m. Breaks were taken at 11:27-11:37 a.m. and
1:09-1:21 p.m.*

SIGNATURE:

Miguel M. de la O, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary