

City of Miami

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



Meeting Minutes

Tuesday, October 20, 2009

9:00 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 9:25 a.m. The roll call at the commencement of the meeting was as follows:

Present: Chief Examiner Scarola, Member Dames and Member Cruz

Absent: Chairperson de la O and Member Angel-Capo

NOTE: Chairman's absence was due to a court-related matter; Chief Examiner Scarola chaired the meeting. Member Angel-Capo arrived at the meeting at approximately 10:15 a.m., at which time a second roll call was taken.

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

Absent: Chairperson de la O

A. APPROVING THE MINUTES OF:

Regular Meeting of October 6, 2009.

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

Aye: Dames, Scarola and Cruz

Absent: Angel-Capo and Chairperson de la O

B. PERSONNEL MATTERS

- B.1** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Carlos A. Jimenez, Structural Engineer (Plans Examiner) of his layoff, effective October 16, 2009 and his name will be placed on a "Layoff" register for a period of no more than 36 months. (NOTIFICATION)

NOTIFIED

- B.2** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Gerardo Serrano-Coy, Information Technology Technician I, of his layoff, effective October 16, 2009 and his name will be placed on a "Layoff" register for a period of no more than 36 months. (NOTIFICATION)

NOTIFIED

- B.3** A copy of a memorandum from Pedro G. Hernandez, P.E., City Manager, notifying Guillermo Fernandez, Maintenance Mechanic, of his return to former classification. Guillermo Fernandez is being rolled back to Maintenance Mechanic Helper. (NOTIFICATION)

NOTIFIED

- B.4** A copy of a memorandum from Pedro G. Hernandez, P.E., City Manager, notifying Victor Ochoa-Fernandez, Information Analyst, of his return to former classification. Victor Ochoa-Fernandez is being rolled back to Information Technology Technician I. (NOTIFICATION)

NOTIFIED

- B.5** A copy of a memorandum from Pedro G. Hernandez, P.E., City Manager, notifying Suzanne Bermudez, Administrative Aide I, of her return to former classification. Suzanne Bermudez, is being rolled back to Typist Clerk III. (NOTIFICATION)

NOTIFIED

- B.6** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Cesar R. Nunez, Videographer/Editor, of his layoff, effective October 16, 2009 and that his name will be placed on a "Layoff" register for a period of no more than 36 months. (NOTIFICATION)

NOTIFIED

- B.7** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Arcadio Mestril, Sign Painter, of his layoff, effective October 16, 2009 and that his name will be placed on a "Layoff" register for a period of no more than 36 months. (NOTIFICATION)

NOTIFIED

- B.8** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Roberto A. Pire, of his layoff, effective October 16, 2009 and that his name will be placed on a "Layoff" register for a period of no more than 36 months. (NOTIFICATION)

NOTIFIED

- B.9** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying, Jermaine F. Green, Painter, of his layoff, effective October 16, 2009 and that his name will be placed on a "Layoff" register for a period of no more than 36 months. (NOTIFICATION)

NOTIFIED

- B.10** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Vivian Izsack, Zoning Plans Processor, of her layoff, effective October 16, 2009 and that her name will be placed on a "Layoff" register for a period of no more than 36 months. (NOTIFICATION)

NOTIFIED

- B.11** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Alma J. Ross (probation), Typist Clerk III, of her layoff, effective October 16, 2009 and that her name will be placed on a "Layoff" register for a period of no more than 36 months. (NOTIFICATION)

NOTIFIED

- B.12** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying

Andrew P. Crowther, Maintenance Mechanic, of his layoff, effective October 16, 2009 and that his name will be placed on a "Layoff" register for a period of no more than 36 months. (NOTIFICATION)

NOTIFIED

B.13 A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Francisco Hernandez, Maintenance Mechanic, of his layoff, effective October 16, 2009 and that his name will be placed on a "Layoff" register for a period of no more than 36 months. (NOTIFICATION)

NOTIFIED

B.14 A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Luwiz R. Leiva, Maintenance Mechanic Helper, of his layoff, effective October 16, 2009 and that his name will be placed on a "Layoff" register for a period of no more than 36 months. (NOTIFICATION)

NOTIFIED

B.15 A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Emiliano Silva, Maintenance Mechanic Helper, of his layoff, effective October 16, 2009 and that his name will be placed on a "Layoff" register for a period of no more than 36 months. (NOTIFICATION)

NOTIFIED

B.16 A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Ermo Trujillo, Maintenance Mechanic Helper, of his layoff, effective October 16, 2009 and that his name will be placed on a "Layoff" register for a period of no more than 36 months. (NOTIFICATION)

NOTIFIED

C. MILITARY LEAVES OF ABSENCE

NONE

D. DISCIPLINARY MATTERS

NONE

E. GENERAL ITEMS**E.1**

Copy of a Report concerning the 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. (DISCUSSION)

Chairman Scarola advised the members that they had copies of the combined Rules 16.1 and 16.2 Hearings Report prepared by Special Counsel Everett, as well as the Rule 16.2 Report prepared by Attorney Guttman-Valdes.

Special Counsel Everett stated that it might be easier for the Board if ACA Min voiced his objections, if any, to the report prepared by Attorney Guttman-Valdes.

Barnaby Min, Assistant City Attorney, stated his concern was in the "Recommendations" section of Ms. Guttman-Valdes' report. He went on to say that he did not recall the Board recommending that Mr. Diez receive any back pay, seniority or other benefits, so he was not quite sure where that information came from.

Teri Guttman-Valdes, Attorney at Law on behalf of Edward Diez, stated that it was her understanding and following her review of the Minutes, that the Board recommended that Mr. Diez be promoted retroactively, because if Mr. Diez' name had not been removed, he would have been promoted, and that would include the compensation as listed in her report.

Chairman Scarola stated that he did not recall [the Board making that recommendation].

Special Counsel Everett stated that following the hearing, the Board suggested that Attorney Guttman-Valdes propose the findings and recommendations that she wanted; but confirmed that the Board had not made the aforementioned recommendations.

ACA Min stated that he recalled that the Board had made the recommendation that Mr. Diez' name be placed back on the Register, but that there was no discussion on back pay or anything else along those lines.

Chairman Scarola asked if there was anything else in Attorney Guttman-Valdes' report that ACA Min wished to address.

ACA Min stated that he wished to have more clarification and specify that Mr. Diez had unsatisfactory service, and that the references to the two other employees, in Findings #9 and #10, are not necessary. He went on to say that the employee mentioned in Finding #9 only had a 24-hour suspension, which would not [affect his] satisfactory service; and as for the employee mentioned in #10, although he had a 120-hour suspension, he still had 4 years of continuous, satisfactory service [which qualified him to take the exam for Fire Lieutenant].

Chairman Scarola asked if in both cases, the employees had 4 years of continuous, satisfactory service, even though they had suspensions.

ACA Min responded in the affirmative, and went on to say that he is not sure why Findings #9 and #10 are included in the report because they are irrelevant and as worded they are misleading.

Attorney Guttman-Valdes responded that the reason she feels the findings are relevant is because her client was told that the reason he was ineligible was his length of

satisfactory service; that he had suspensions. She went on to say that she submitted documents that showed the absence of the term "unsatisfactory service", in Mr. Diez' [Department Personnel] Record, leading him to believe that he had satisfactory service.

Member Dames stated that he recalled a Fire-Rescue Department Rule which states that a certain number of hours of suspension would result in an automatic "unsatisfactory" rating.

Chairman Scarola stated that the Rule requires 4 years of continuous, satisfactory service, but it does not say when those years have to take place; that they do not have to be immediately prior to application for promotion. He went on to ask the members if they wished to add these Findings to their Board report.

Following discussion, the Board entered a motion to delete Findings #9 and #10 from the suggested findings and recommendations prepared by Attorney Guttman-Valdes, which resulted as follows:

Motion by Member Dames, seconded by Member Angel-Capo, to APPROVE. PASSED by the following vote.

Aye: Dames, Scarola, Angel-Capo and Cruz

Absent: Chairperson de la O

The Chair called for a motion to include the remaining findings and recommendations as suggested by Attorney Guttman-Valdes, into the Board's Findings and Recommendations Report, which resulted as follows:

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

Aye: Dames, Angel-Capo and Cruz

No: Scarola

Absent: Chairperson de la O

Chairman Scarola stated that the Board would now [consider] the "Recommendations" section, and proceeded to read the proposal from Attorney Guttman-Valdes into the record.

ACA Min asked if Special Counsel Everett would merge the recommendations from Attorney Guttman-Valdes' report, and asked if Findings #1 and #2 as proposed by Special Counsel Everett would then remain in the merged document. Special Counsel Everett responded in the affirmative, and added that she would merge the items agreed upon by the Board into one document, and update the other sections as needed.

Attorney Guttman-Valdes stated that she would agree to keep Finding #2, but not Finding #1, because the Fire-Rescue Department did not enter into Mr. Diez' departmental personnel record, the fact that he had unsatisfactory service.

Following discussion, the Board entered a motion to accept Special Counsel Everett's proposed Finding #2 as prepared, which resulted as follows:

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

Aye: Dames, Scarola, Angel-Capo and Cruz

Absent: Chairperson de la O

Chairman Scarola asked for discussion regarding Special Counsel Everett's Finding #1.

ACA Min stated that he respectfully disagrees with Attorney Guttman-Valdes, and went on to say that specifically, the Minutes (from the Sept. 22nd hearing) show that almost every Board Member stated that it was pretty clear that Mr. Diez was not eligible to take the Lieutenant's exam because he did not have the 4 years of continuous, satisfactory service required. He further stated that the exhibits introduced and conceded by both sides showed that Mr. Diez was hired in 2002, was suspended in 2004 or 2005 and the examination was held in 2007, so he did not have continuous, satisfactory service.

Attorney Guttman-Valdes stated that what ACA Min stated was true, but that she maintains that the departmental records did not have an "unsatisfactory service" entry, and therefore, [the unsatisfactory service] did not exist.

Member Dames stated that it is true that Mr. Diez did not have the required years of satisfactory service, and added that an entry is supposed to be made every year indicating the type of service an employee has.

ACA Min stated that the file did have an entry of a 120-hour suspension, and it's known by all that [a suspension of this magnitude] is automatically unsatisfactory.

Member Dames stated that if such an entry is placed in an employee's folder, it must be initialed by the employee [in accordance with the Department of Fire-Rescue's Operations Procedures Manual]. He went on to say that the word "unsatisfactory" should have been included.

ACA Min stated that if the Board planned to not include Finding #1, he is asking that the detailed information regarding the dates of Mr. Diez' hire, suspension and exam for lieutenant be added.

Chairman Scarola stated that what Special Counsel Everett prepared was indeed a finding of the Board. He added that it might be expanded to include that the unsatisfactory determination was not placed in Mr. Diez' departmental file.

Attorney Guttman-Valdes stated that what the Chairman recommended is what she had in mind for the Findings.

The Executive Secretary reminded the Board that an Unsatisfactory Service Rating Hearing was held for Mr. Diez, in accordance with Civil Service Rule 13, therefore, the Board's Findings can not reflect that Mr. Diez did not have unsatisfactory service. She went on to say that to do so would mean that the Board would have held a hearing for an employee in violation of Rule 13.

Following discussion, a motion was considered to keep Finding #1 as proposed by Special Counsel Everett in the merged document, which resulted as follows:

**Motion by Member Dames, seconded by Member Angel-Capo, to APPROVE.
PASSED by the following vote.**

Aye: Dames, Scarola, Angel-Capo and Cruz

Absent: Chairperson de la O

The Chair called for a motion to accept the Findings and Recommendations pertaining to the Grievance Hearing on behalf of Edward Diez, as amended, which resulted as follows:

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

Aye: Dames, Scarola, Angel-Capo and Cruz

Absent: Chairperson de la O

E.2

Notice of a Request to Continue from Osnat K. Rind, Attorney, on behalf of Alice Dunn, Typist Clerk II, relative to her 40-hour suspension, effective August 11, 2008. (DISCUSSION)

Hearing of appeal is scheduled for November 3, 2009.

Attorney Rind stated that Ms. Dunn is scheduled to be out of the office on November 3, 2009 (which is the reason she requested a continuance). She went on to say that she believed there were at least two other cases scheduled for the same date, one of which both she and ACA Min agreed would go forward.

Attorney Min stated that he had no objection to the employee's request for a continuance.

Attorney Rind stated that two of the cases would be consolidated.

Member Dames asked which two cases would be heard on November 3.

Attorney Rind responded that the cases of Barbara Shaffner and Kenneth McIlwain are scheduled to be heard on November 3.

Attorney Min responded that he believed the cases mentioned by Attorney Rind are scheduled for November 17, 2009 and the cases of Officer Fignole Lubin and Sgt. Gilberto Gomez are scheduled for November 3, 2009.

Attorney Rind responded that Attorney Min was correct concerning the hearings scheduled for November 3rd and 17th. She went on to say that on November 3, 2009, she would be going forward with Officer Lubin's case but she was not too sure if she would be ready to go forward with Sgt. Gomez' case.

Member Cruz stated that he has a commitment on November 3, 2009 which is Election Day so he was not sure if he would be present for that meeting, but he would try to manage so that he could be present.

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

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

Aye: Dames, Scarola and Cruz

Absent: Chairperson de la O and Angel-Capo

E.3

Copy of a Report from Ricardo Martinez, Classification and Pay, Department of Employee Relations, regarding the audit of Suzann E. Nicholson's Customer Service Representative position. (NOTIFICATION)

Member Dames asked if Mr. Martinez would come before the Board to respond to questions.

ACA Min advised that the agenda item was listed as "Notification". Member Dames stated that he still wanted to discuss it.

Chairman Scarola stated that at a previous meeting the Board asked that Mr. Martinez furnish the Board with a status report concerning the position audit requested by Ms. Nicholson. He went on to say that the Board has the report and in it Mr. Martinez says that he needs about 3 weeks to complete the audit with all of the other things he has to do, but if any member had questions, they could ask at this time.

Member Dames stated that two weeks ago the Board asked for something from the department, but it wasn't provided, then asked Special Counsel Everett what the Board could do in this case, since he believed that the Board was being disrespected.

Special Counsel Everett responded that in anticipation of the delay that would likely occur given the tasks that the department had to perform over the next few weeks (determination of layoff scores and preparation of notices), the Board granted a hearing on behalf of Ms. Nicholson and asked for a status update for today's meeting. She went on to say that by proceeding on two fronts, the Board attempted to ensure that a timely hearing would be held, while at the same time obtain a result from Employee Relations which might render the hearing moot.

ACA Min stated that his recollection was that the department would come back today with a status report, not the completed audit, which would most likely take 6 weeks.

Member Angel-Capo stated that she recalled the department saying two weeks ago that it would only take 10 hours (to complete the audit) if Mr. Martinez took no breaks of any kind. She further stated that in the email sent by Mr. Martinez, he states that "there are ALREADY 2 cases in front of the CSB", and asked if that was a problem.

ACA Min stated that what Mr. Martinez wrote was simply the fact that there were two people who had been affected by the layoffs who had requested appearances before the Civil Service Board.

Member Angel-Capo stated that it seemed to her that Mr. Martinez had a problem with employees bringing cases [before the Board] and added that it was their right to come in front of this Board.

ACA Min stated that there are no statements about either of the people, just about the ramifications (in terms of additional issues to address) of the layoffs. He went on to say that what the Board requested at the last meeting was a status update, not the completed audit, so he asked Mr. Martinez to advise him of the status so he could in turn advise the Board. He further stated that neither the response nor the way it was given was meant to be disrespectful.

Special Counsel Everett stated that the Board wanted the audit report done as soon as possible, and wanted today a status update as to where the department was in completing the audit.

Chairman Scarola stated that the Board wanted [the audit completed] as soon as possible, and while he would not tell [the members how to do their respective jobs], he would likewise not tell Mr. Martinez how to do his job. He went on to say that he does not know what Mr. Martinez does in terms of how involved the audits get, but that he must know that all parties are frustrated and there is now another crisis (Citywide layoffs) that we have to deal with.

Member Dames stated that he disagrees with what the Chairman said; that he feels that this is personal. He went on to ask Ms. Nicholson if she could share with the Board the project she worked on over the past two weeks.

Suzann Nicholson stated that she took the list of municipalities contacted in the conduct of her audit, which was forwarded from Mr. Martinez, and obtained the information he stated he was waiting on to complete the audit report.

Chairman Scarola stated that since Ms. Nicholson had been granted a hearing that this was not the time for her to present information concerning the audit.

Member Angel-Capo asked if Mr. Martinez would come before the Board.

Attorney Min stated that based on the previous question that he heard that he wants to remind the Board that the Jennings Rule applied to the Civil Service Board.

Ms. Nicholson asked if that could be explained in layman's terms.

Attorney Min responded that it is meant for the Board Members and that there is a concern that there have been ex-parte communications which is not appropriate considering that is an adversarial proceeding and the Board is supposed to sit in a quasi-judicial manner and be impartial.

Chairman Scarola asked Mr. Martinez how much longer he needed to complete the audit.

Ricardo Martinez, Senior Personnel Officer, Department of Employee Relations, appeared before the Board and stated that he would need approximately three more weeks. Chairman Scarola asked if Mr. Martinez would then have the completed report by the Board's November 17th meeting. Mr. Martinez responded in the affirmative.

Member Dames stated that [the timeline given] was unacceptable to him and asked if Mr. Martinez could have the report ready in two weeks. Mr. Martinez stated that he could not promise to have the report completed by the next Board meeting in two weeks, but could have it completed in three weeks.

ACA Min stated that he would work with Mr. Martinez in completing the report and getting it to the Board by the November 17th meeting, but he felt that the Board was unaware of what the Department of Employee Relations was going through at this time.

Member Dames stated that this (issue) has been pending since November of 2008, and that two weeks from now would make it one year since the matter came to the attention of the department. He went on to say that he thinks that the Board is being disrespected.

Chairman Scarola asked Mr. Martinez how many people perform position audits. Mr. Martinez responded that there were three, including him.

ACA Min stated that Mr. Martinez is working on this audit personally to ensure the accuracy of it and that it meets the requirements of the Board. He went on to say that he understands the Board's frustration but thinks it is unfair to take out aggression on Mr. Martinez who is in fact, doing his job.

Member Cruz asked how the department had the money to purchase a full-page advertisement for jobs in the Miami Herald, when there is currently a hiring freeze.

Chairman Scarola stated that Member Cruz was getting off track and asked if there were any other questions of Mr. Martinez. He went on to ask Ms. Nicholson if she could give a copy of the information she obtained to Mr. Martinez.

Member Dames stated that he wants to go back to discuss the time frame.

Member Angel-Capo asked if Mr. Martinez could now complete the report in two weeks given the information furnished by Ms. Nicholson. Mr. Martinez stated that he still could not promise to have the report completed in two weeks.

Member Dames stated that the department has to prioritize this request and made a motion to request that the department produce the audit report in two weeks (by the Board's November 3, 2009 meeting).

ACA Min stated that to clear the record, the audit was requested by Ms. Nicholson in June of this year, not November of last year.

Chairman Scarola asked if the motion made by Member Dames was in order.

Special Counsel Everett responded that a hearing was granted and is being scheduled; however, if Member Dames wants to make a motion regarding completion of the audit report, he was in order to do so.

Following discussion the Board entered a motion to require that the position audit report in question or a status report of same be furnished to the Board by its November 3, 2009 meeting, 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: Scarola

Absent: Chairperson de la O

F. REPORTS

F.1 Pending Hearings as of October 20, 2009. (NOTIFICATION)

PRESENTED

G. REQUESTS FOR HEARINGS

G.1 Copy of a Request for Appeal Hearing, relative to his termination, or in the alternative a Grievance Hearing, alleging a violation of Rule 12 - Layoff, Resignation and Reinstatement, from Dave Condell, Paralegal, Office of the City Attorney. (DISCUSSION)

Dave Condell appeared before the Board and thanked the members for considering his request. He went to say that he was making this presentation to enlighten the Board to the City's wanton failure to comply and adhere to its own rules and procedures in selection, notice and actual separation of its dedicated employees, without cause of failing of said employees, including himself. He went on to say that as the Board may be aware, for the past several weeks or so, many City employees including himself, have been going through an enormous ordeal of immense proportions, detrimental to

mental well-being and sanity. He further stated that he was asking the Board to exercise its notable and good judgment, and with monumental authority conferred on it by the City Charter and Civil Service Rules, to show strong repugnance against the discriminatory practices, injustice, wrongdoing and abuse of power utilized by the City under its many guises, and show equal bias for justice, impartiality and the Rule of Law. Mr. Condell stated that he is seeking the following remedies: nullification of his separation; immediate reinstatement to his position as a paralegal with the Office of the City Attorney, and for the City to adhere to and fully comply with its clear set of rules without bias or favor.

Mr. Condell went on to start reading into the record his written request for hearing, which has been included in the records of the Board.

ACA Min stated that he hated to interrupt Mr. Condell, but it appeared that Mr. Condell was reading his request word for word, and the Board had copies of the document, therefore he did not think the reading was necessary.

Chairman Scarola stated that at this point, Mr. Condell was to provide to the Board a glimpse of what he intended to prove at a hearing; to show how there was a violation of a Rule and if needed, to refer to the document he'd provided to the Board. He went on to say that details would be required at a hearing, should one be granted, but he now only needed Mr. Condell to provide enough information to show why a hearing was necessary.

It was noted by the Board that Mr. Condell is requesting a hearing pursuant to Rule 16.2, Complaint by Employee, or in the alternative, pursuant to Rule 14, because he is not sure after reading his letter of termination, whether he was laid off pursuant to Rule 12, or terminated pursuant to Rule 14.

Mr. Condell stated that essentially, his contention is that the City did not afford him proper notice in his termination, and failed to give notice regarding the rule concerning temporary positions. He went on to say that the City is alleging inefficiency [as the reason] for letting him and the other paralegals go, but he found that to be erroneous and mistaken, and the actions taken by the City will lead to additional funds being expended due to lower-level employees performing the duties of paralegals and requesting working-out-of-class pay and working overtime.

Member Dames asked Mr. Condell if he received his letter on September 30th, and if the termination was effective October 1st, and Mr. Condell responded in the affirmative. Member Dames asked if Mr. Condell received 5 days notice, and Mr. Condell responded in the negative. Member Dames asked for the department's response.

ACA Min stated that from review of Mr. Condell's paperwork, he is requesting an appeal hearing pursuant to Rule 14, as well as a grievance hearing pursuant to Rule 16.2, and that Mr. Condell is unclear pursuant to (the wording in) the letter, whether he was terminated or laid off. He went on to say that it is the department's position that Rule 14 is not applicable in this case because Mr. Condell was in fact laid off, and this is evident from the letter's reference to the City's Transition Resource Guide, which was given to Mr. Condell with his separation letter. He further stated that the Resource Guide clearly states that Mr. Condell is being laid off, it discusses the budget issues, what is available to Mr. Condell as far as the Layoff Register, and all of the reasons why we are going through this situation today; so when the documents are read together, it is clear that Mr. Condell is in fact being laid off and not terminated. ACA Min further stated that when reviewing the Rule 16.2 request, Mr. Condell is alleging a violation of Rule 16.1 and Rule 12.

Member Dames asked ACA Min if he would agree that Rule 14.1 was violated, and ACA Min responded in the negative.

Member Dames asked why ACA Min believed that Rule 14.1 was not violated when Mr. Condell had not received written notice within 5 days that stated the reason(s) why he was being laid off, in accordance with the Rule. ACA Min responded that Rule 14 deals with discipline, and it was the department's position that Mr. Condell was laid off in accordance with Rule 12 (Layoff, Resignation and Reinstatement), and not Rule 14 (Dismissals, Suspensions, Demotions and Resignations). He went on to say that Rule 14.1 also states that "The Board shall, within thirty days after appeal of the employee disciplined...", so when 14.1 is read in its entirety, it is clear that it deals with discipline and not layoff. He again stated that it is the department's position that Mr. Condell is not being disciplined by being laid off, and this layoff was due to budgetary reasons. He went on to explain that there was no abuse of power, and added that Mr. Condell had not indicated how such an abuse of power was committed; and that Rule 12 was complied with, in that all of the paralegals in the City were laid off, and unfortunately there are no other paralegal positions to which Mr. Condell could "roll back".

Mr. Condell stated that ACA Min had indicated that he had been laid off, but that the letter he received did not include this information, and it would have taken little effort to state in the letter he received that this separation was a layoff. He went on to say that [the letter] is deceptive, it is wrong and his complaint will show and prove that the layoff was more than financial; that there were a number of underlying factors in place here.

Member Cruz asked Mr. Condell who was going to do the job of the paralegals. ACA Min stated that the attorneys were going to take over this work, so that the litigation assistants do not work out of their classification. He went on to say that Mr. Condell is requesting a hearing pursuant to Rule 14.3 or Rule 16.2.

Chairman Scarola stated that the Board must now decide whether to grant Mr. Condell a hearing pursuant to Rule 16.2 or Rule 14.3 and called for a motion.

Special Counsel Everett suggested that considering the totality of Mr. Condell's submission, that if the Board was inclined to grant Mr. Condell a hearing, it would probably be most appropriate to grant him a Rule 16.2 hearing, alleging violation of specific Rules as cited by him.

Following discussion, the Board entered a motion to grant a grievance hearing pursuant to Rule 16.2, alleging a violation of Rule 12, which resulted as follows:

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

Aye: Dames, Scarola and Cruz

Absent: Chairperson de la O and Angel-Capo

G.2

Copy of a Request for Grievance Hearing from Osnat K. Rind, Attorney, on behalf of Jorge Martinez-Esteve, Project Manager, Building Department, alleging a violation of Civil Service Rules 1, 8, 12 and/or 14, City Ordinances and the City Charter, regarding his termination. (DISCUSSION)

Osnat Rind, Attorney at Law on behalf of Mr. Martinez-Esteve appeared before the Board and stated that the employee was a project manager and he was told that his services were no longer required. She went on to say that they do not know whether it was a layoff or was because of some other reason; however, her client did not receive a 5-day notice, which is a violation of Rule 14.1, and for that reason and the others cited in

her request, they were requesting a hearing.

ACA Min responded that the department's position is that Rule 14 does not apply as Mr. Martinez-Esteve's separation from the City was the result of a layoff - his position was eliminated from the Building Department, and was not disciplinary; and Rule 12 was properly followed.

Attorney Rind stated that her client was appointed to Project Manager (Unclassified) in April of 2007, and she has the list of other project managers, and there are at least 4 others who were hired into the position after her client was appointed.

Member Cruz asked if the employees were unclassified. Attorney Rind responded that their position is that the position is covered by the Rules, and they can discuss that as well.

ACA Min stated that the department's position that project manager is unclassified, and the position in the Building Department was eliminated. He went on to say that the title cannot be compared across departments because it is unclassified and those positions can be eliminated at any time.

Attorney Rind stated that [Rule 12] provides that the employee with most seniority in the classification can "bump" (employees with less seniority in the classification) Citywide, regardless of department. She went on to say that whether her client was classified or unclassified, if the Board wanted to discuss it, she was ready to argue the matter; and stated that her client was absolutely not unclassified, and is a member of the classified service.

Member Dames asked Attorney Rind to explain to him whether Mr. Martinez-Esteve's position was classified or unclassified.

Attorney Rind stated that the City has deemed the position to be unclassified. She went on to say that the Charter provision, which is superior to ordinances and rules, defines the unclassified service to include certain positions, which do not include project manager. She went on to say that the Charter also states that the classified service includes all those positions not specifically listed under those stated as being in the unclassified service. Attorney Rind went on to read from Rule 12, and stated that her client, having been laid off presumably, is entitled to replace the employee in the City with the least seniority in that classification. She went on to say that she wants to be clear that she is requesting a hearing pursuant to both Rule 16 and Rule 14.

ACA Min responded that Attorney Rind had a fantastic argument, however; the City Charter 36(c)(1), states that assistants to department heads are unclassified, and it is the department's position that project manager is an assistant to a department head.

Following discussion, Chairman Scarola called for a motion.

Special Counsel Everett, prior to the motion, asked if Attorney Rind was asking for two different proceedings, or one rule over the other.

Attorney Rind stated that she was asking for one hearing under both Rule 14 and Rule 16, alleging violations of the rules cited in her request. Special Counsel Everett asked what the violation was under Rule 14. Attorney Rind responded that there has been a termination or layoff that does not promote the efficiency (of City service).

Special Counsel Everett asked if Attorney Rind would specify which Rules were violated with regards to her Rule 16.2 request. Attorney Rind responded that she specified them

in her request. Special Counsel Everett stated that Attorney Rind cited Rules 1, 8, 12 etc., and wondered if she meant the entire Rule or a specific section. Attorney Rind responded that she's alleging violation of Rules 1.2, 1.3, 8.13, 12.1 and 14.1.

Member Cruz stated that he does not go for all of these Rules because Rule 2.7 allows for anyone who desires to come before the Board to confer with the Executive Secretary, and he has seen people [before the Board] who are not even City employees.

Chairman Scarola responded that it is true that anyone can ask for an appearance, but the Board has to determine whether the request falls within certain guidelines, which is what they are trying to determine here.

Following discussion, the Board entered a motion to grant a Grievance hearing, pursuant to Civil Service Rule 16.2, alleging a violation of Rules 1.2, 1.3, 8.13, 12.1 and 14.1, which resulted in the following vote:

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

Aye: Dames, Scarola and Cruz

Absent: Chairperson de la O and Angel-Capo

H. TODAY'S HEARINGS

H.1 Continuation of the Hearing of appeal on behalf of Clive Vernon, Police Officer, relative to his termination, effective December 1, 2008.

The Board continued (from the meeting held October 6, 2009) with the appeal hearing on behalf of Clive Vernon, regarding his termination effective December 1, 2008.

The witnesses for the Department continued to appear in the following order:

3. *David Arnold, Criminalist, Miami-Dade County Crime Lab.*

Questions were posed by Members Dames and Scarola during the testimony of witness Arnold.

4. *George Law, Police Sergeant, City of Miami, Department of Police.*

Questions were posed by Member Scarola during the testimony of witness Law.

5. *Roscoe Bradley, Police Officer, City of Miami, Department of Police.*

Questions were posed by Member Dames during the testimony of witness Bradley.

6. *Lazaro Alfonso, Police Sergeant, City of Miami, Department of Police.*

Questions were posed by Member Scarola during the testimony of witness Alfonso.

7. *Norbert Bondarenko, Police Sergeant, City of Miami, Department of Police.*

Questions were posed by Members Scarola and Dames during the testimony of witness Bondarenko.

8. *Clive Vernon, Appellant, testified on his own behalf.*

Questions were posed by Members Cruz, Dames and Scarola during the testimony of Appellant Vernon.

9. *Alejandro Mendez, Police Sergeant, City of Miami, Department of Police.*

Questions were posed by Members Dames and Cruz during the testimony of witness Mendez.

Given the lateness of the hour and the need to vacate the chambers for another meeting, the Board discussed the remaining witnesses and exhibits to be introduced, then agreed to continue with this hearing at its next Board meeting, to be held Tuesday, November 3, 2009.

HEARING TO BE CONTINUED AT THE MEETING OF NOVEMBER 3, 2009.

H.2

Hearing of appeal on behalf of Kate Abia, Police Officer, relative to her termination effective July 21, 2008.

Osnat Rind, Attorney at Law on behalf of Ms. Abia, appeared before the Board and stated that she and ACA Min have agreed to request a continuance on this matter, and hopefully schedule it for some time in January, 2010. ACA Min stated that Ms. Abia is currently in military service and should be available in January, so he concurs with the request to continue the hearing.

The Board entered a motion to CONTINUE the hearing and charge the continuance jointly, which resulted as follows:

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

Aye: Dames, Scarola, Angel-Capo and Cruz

Absent: Chairperson de la O

H.3

Investigation hearing on behalf of Teresa Borkowski, Police Sergeant, pursuant to Rule 16.1, Abuse of Power.

ACA Min stated that he might be able to settle the matter and asked if it could be rescheduled.

Chairman Scarola asked if the hearing could be rescheduled for the next meeting date (November 3, 2009), in order to obtain a settlement or hold the hearing. He went on to say that he did not think that the Board would be able to hear this case today, anyway. Both Attorney Rind and ACA Min agreed.

The Board entered a motion to CONTINUE the hearing and charge the continuance to the Board due to insufficient time, which resulted as follows:

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

Aye: Dames, Scarola, Angel-Capo and Cruz

Absent: Chairperson de la O

H.4

Hearing of appeal on behalf of Viona Browne-Williams, Police Officer, relative to her 80-hour suspension, effective April 5, 2007.

Pending Settlement announced July 28, 2009.

A copy of the Settlement Agreement regarding this matter was received by the Board at today's meeting, therefore no action was taken.

SETTLED

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

Osnat Rind, Attorney at Law on behalf of Mr. Byrd, appeared before the Board and agreed to a continuance on this matter, due to the lack of time available to hear the case.

The Board entered a motion to CONTINUE the hearing 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: Dames, Scarola, Angel-Capo and Cruz

Absent: Chairperson de la O

ADJOURNMENT:

The meeting adjourned at 4:15 p.m. Breaks were taken at 11:06-11:31a.m., 12:34-1:41p.m. (lunch) and 3:17-3:28 p.m.

SIGNATURE:

Miguel M. de la O, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary