

DEPARTMENT OF CITY CLERK

CITY HALL

MARCH 3, 2003

The Retirement Board of the Employees' Retirement System meets this day at 10:00 o'clock A.M., in The Conference Room, Third Floor, City Hall.

PRESENT: Chairman Pasquale D'Amico, Vice-Chairwoman Betty J. Jackson, Joseph L. Chiodo, Edward J. Maroney, Brian Jackvony and Dr. Melvin Hershkowitz – 6.

ABSENT/EXCUSED: Mayor David N. Cicilline, Pasquale Grieco, Daniel J. McCarthy, Carla Dowben and Councilman Kevin Jackson – 3.

Also present are Joseph Fernandez, City Solicitor, Law Department; Kenneth Chiavarini, Assistant City Solicitor, Law Department; Karen Southern, Mayor's Press Secretary; Mayor's Office; Greg Smith, Providence Journal; Claire E. Bestwick, First Deputy City Clerk and Lori L. Hagen, Assistant Clerk.

Suspension and/or revocation of Urbano Prignano's pension pending a hearing on whether he violated the Honorable Service Statute – Daniel J. McCarthy

Recommendation from the City Solicitor regarding the selection/appointment of a hearing officer relative to the suspension/revocation of Urbano Prignano's pension

CHAIRMAN D'AMICO: The first order of business is the suspension of the Chief's pension, the ex-Chief.

CITY SOLICITOR FERNANDEZ: Thank you, Mr. Chairman, Members of the Board, at your direction my office has looked into the question regarding a potential suspension of a pensioners pension pending a hearing on revocation or reduction. The conclusion that we have reached is that pending a revocation or reduction, the Board does in fact have the power to suspend a pension. In order for

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that suspension to take place, a pensioner does – is entitled to have some notice that the Board contemplates a suspension. The notice would include reasons why the Board thinks a suspension, pending a revocation or reduction, would be warranted. And then the pensioner would be entitled to some hearing or – a hearing to respond to the Board's intended action. And the hearing would not, in our view, rise to the level of a hearing that would take place for a revocation or reduction, but it would simply be an opportunity for the pensioner to come into the Board and simply explain his or herself why it shouldn't happen. A representative should be able to accompany the pensioner. But the mechanics simply would be that a letter would go out from the Board saying, dear pensioner, pending a revocation or reduction hearing we contemplate suspending your pension for the following reasons. Please come before the Board – you are invited to come before the Board on X day to respond and that's all. And then at the conclusion of that then the Board can decide to suspend, pending a full revocation or reduction hearing, that pension.

CHAIRMAN D'AMICO: Doctor.

DR. HERSHKOWITZ: Would the Board need a hearing officer present for this preliminary hearing for suspension, or could the Board act on its own without a hearing officer?

CITY SOLICITOR FERNANDEZ: We don't – we don't believe that a hearing officer would be necessary, in fact, we don't believe that a hearing officer is absolutely necessary for a revocation or reduction. We do think, however, that that – since that becomes a larger question that that would be a prudent way for the Board to proceed. However, in the case merely of a suspension in the interim, it's sufficient simply for the Board to convene, perhaps at a regular meeting, and – and hear from – and hear from the pensioner in response.

CHAIRMAN D'AMICO: I really don't think it'd be fair to suspend his pension before any hearing or anything. I think it's fair enough –

CITY SOLICITOR FERNANDEZ: And that's the concern that we raise.

CHAIRMAN D'AMICO: -- that we hear it and then we can do what we have to do.

MR. MARONEY: That's what --

VICE-CHAIRWOMAN JACKSON: Mr. Chairman.

MR. MARONEY: Excuse me, Betty, go right ahead. You were going to say the same thing I was.

VICE-CHAIRWOMAN JACKSON: Based on what the Solicitor Fernandez has said, I am so moved to make a motion that what he is stated be put on the docket for our next -- for the next meeting.

DR. HERSHKOWITZ: I don't understand the motion, Betty. I'm sorry. Are you moving that we hold a hearing to suspend the pension?

VICE-CHAIRWOMAN JACKSON: Yes, invite -- to invite Mr. Prignano in before the Board, to send a letter, as Solicitor Fernandez has stated.

CHAIRMAN D'AMICO: Do I have a second?

DR. HERSHKOWITZ: I'm still not clear on --

VICE-CHAIRWOMAN JACKSON: You're still not clear.

DR. HERSHKOWITZ: No, I'm sorry.

MR. MARONEY: I think I -- if you wouldn't mind, Betty.

VICE-CHAIRWOMAN JACKSON: Sure.

MR. MARONEY: Just what Mr. Fernandez says, this -- the next meeting and he wanted to put it on the docket for a regular meeting is to have on the docket suspension while they look into the reduction or revocation of the Colonel's pension, he be invited to participate along with anybody, he wants his attorney to speak up on conditions of why we shouldn't do that. So, there'd be nothing being done --

DR. HERSHKOWITZ: All right but my sense is that if we were to call such a meeting and invite Colonel Prignano here, that our intent is to suspend the

pension, and he is then being provided a hearing to defend himself against our intent. Now, am I wrong in that or –

MR. MARONEY: I think that's the step before.

VICE-CHAIRWOMAN JACKSON: That's before. I think what – my interpretation of what the Solicitor said is that he's invited, given a letter – sent a letter that he's invited before the full Board to explain, to give his intentions of why we should not suspend his pension, to get – to hear from him before any action is taken.

DR. HERSHKOWITZ: But in order for him to say that, Betty, there's a presumption that we do intend to suspend the pension. If he's telling us why we shouldn't, there is a presumption that we're going to do it. Is that –

VICE-CHAIRWOMAN JACKSON: Sure, it's been documented all along.

DR. HERSHKOWITZ: Yeah. All right.

CITY SOLICITOR FERNANDEZ: If I may, that's what the letter would in fact say –

VICE-CHAIRWOMAN JACKSON: Yeah.

CITY SOLICITOR FERNANDEZ: -- that it is our, you know, that – that based on – on the following – for the following reasons, we – we contemplate – well, we are – we are beginning a revocation and reduction proceeding –

DR. HERSHKOWITZ: Right.

CITY SOLICITOR FERNANDEZ: -- and in the meantime we are contemplating suspending your pension.

DR. HERSHKOWITZ: Okay, okay. That clears that up.

CITY SOLICITOR FERNANDEZ: So, please – for the following reasons, please come in, and – you are invited to come in if you'd like, and if – and explain or respond to this letter. And at the conclusion of that, again, that's by no means a full blown hearing, that's perhaps simply listening to what the pensioner has to say,

and at the conclusion of that you can decide whether or not to suspend in the interim.

DR. HERSHKOWITZ: All right.

CHAIRMAN D'AMICO: To suspend or what? What'd you just say?

CITY SOLICITOR FERNANDEZ: Whether or not to suspend pending the full revocation –

CHAIRMAN D'AMICO: Then what do we need this lawyer for if we're going to do it that way? What do we need –

CITY SOLICITOR FERNANDEZ: Well, that's only – that's the first step. That's the first step.

VICE-CHAIRWOMAN JACKSON: That's the first step.

CHAIRMAN D'AMICO: Oh, all right.

CITY SOLICITOR FERNANDEZ: The question is just to – whether to suspend –

DR. HERSHKOWITZ: -- pending the –

CITY SOLICITOR FERNANDEZ: -- until such time as you have that full hearing.

CHAIRMAN D'AMICO: Oh, okay.

CITY SOLICITOR FERNANDEZ: And that's what you have to –

VICE-CHAIRWOMAN JACKSON: We have to do that first.

CHAIRMAN D'AMICO: Yeah, I know.

DR. HERSHKOWITZ: I would second that motion.

VICE-CHAIRWOMAN JACKSON: Thank you.

On motion of Vice-Chairwoman Jackson, Seconded by Dr. Hershkowitz, it is voted to accept the Solicitor's recommendation to prepare a letter to Mr. Prignano relative to the suspension and/or revocation of his pension in the interim, and that this letter be considered at the Board's next meeting, by the following Roll Call Vote:

AYES: Chairman D'Amico, Vice-Chairwoman Jackson, Mr. Chiodo, Mr. Jackvony, Mr. Maroney and Dr. Hershkowitz – 6.

ABSENT/EXCUSED: Mayor Cicilline, Mr. Grieco, Mr. McCarthy, Mrs. Dowben and Councilman Jackson – 5.

Motion carries.

CHAIRMAN D'AMICO: Now, on this second one –

CITY SOLICITOR FERNANDEZ: Just to follow up on that, Mr. Chairman, I will – my office will draft a letter for your review –

VICE-CHAIRWOMAN JACKSON: Fine.

CITY SOLICITOR FERNANDEZ: -- and approval, and the letter would go out from the Board.

CHAIRMAN D'AMICO: Okay.

DR. HERSHKOWITZ: And we will consider that letter at our current – next regular meeting or –

CITY SOLICITOR FERNANDEZ: Well, I was just speaking with Assistant Solicitor Chiavarini, and we think that, you know, given the nature of the proceedings as they're moving forward regarding Mr. Prignano, that it probably would be a good idea to continue to have a separate meeting to review –

DR. HERSHKOWITZ: Yeah.

VICE-CHAIRWOMAN JACKSON: Yeah.

ASSISTANT CITY SOLICITOR CHIAVARINI: Mr. Chairman, may I clarify – speak with the Solicitor.

VICE-CHAIRWOMAN JACKSON: That was, you know, my motion to –

CITY SOLICITOR FERNANDEZ: Oh, I see. Okay.

VICE-CHAIRWOMAN JACKSON: -- bring him in.

MR. MARONEY: Let's hear what he's got to say.

VICE-CHAIRWOMAN JACKSON: Yeah.

CITY SOLICITOR FERNANDEZ: Thank you, Mr. Chiavarini. What I propose to do, Mr. Chairman and Members, is have our office draft a letter. You can consider that at your next regular meeting. And it will be at that time that we will propose a – where we will schedule another special meeting, and at that point Colonel Prignano will be invited to attend.

CHAIRMAN D'AMICO: Oh, okay.

CITY SOLICITOR FERNANDEZ: Okay.

DR. HERSHKOWITZ: We – we'll have that letter on March 26th, our next regular meeting and then go forward from there.

VICE-CHAIRWOMAN JACKSON: So – yeah. Okay.

DR. HERSHKOWITZ: Right. Okay, thanks.

CITY SOLICITOR FERNANDEZ: Thank you.

CHAIRMAN D'AMICO: And on this hiring of this attorney –

VICE-CHAIRWOMAN JACKSON: May I – may I ask that we receive that letter prior to March 26th –

CITY SOLICITOR FERNANDEZ: Yes, Ma'am.

VICE-CHAIRWOMAN JACKSON: -- and not at the meeting.

CITY SOLICITOR FERNANDEZ: Yes.

VICE-CHAIRWOMAN JACKSON: Okay, thank you.

MR. MARONEY: Good.

CHAIRMAN D'AMICO: On the recommendation of the City Solicitor to hire an attorney for a hearing officer, you've got a couple of attorneys here.

CITY SOLICITOR FERNANDEZ: Yes. Under of cover of letter dated today, we are providing to you responses to our request for information sent to Attorney Ragosta and Attorney Ritchie. You have those before you. We – we contacted Attorney Ritchie after last week's meeting, when we scheduled today's meeting. Unfortunately, as Mr. – as Professor Ritchie writes to you, "Please thank the Board for the opportunity to attend today's meeting. Unfortunately, while the

first week in March is our spring break at the law school, I have jury duty in Newport scheduled for today". So, he -- he is down in Newport unfortunately.

DR. HERSHKOWITZ: We've already heard from Mr. Ragosta in person. And we have a prompt response from him, and his letter outlines the circumstances under which he's ready and willing to serve us. And I would like to make a suggestion to the Board as follows, that we hire Mr. Ragosta to conduct Colonel Prignano's hearing, and that since Mr. Corrente's hearing will also be coming up, that we ask Professor Ritchie to conduct Mr. Corrente's hearing. They're both --

CHAIRMAN D'AMICO: We only can act on this one today.

DR. HERSHKOWITZ: Is that right?

ASSISTANT CITY SOLICITOR CHIAVARINI: The only thing that's noticed for this meeting is Mr. Prignano.

DR. HERSHKOWITZ: I'm sorry. All right, fine. All right. I understand. Am I permitted to make this suggestion anyway now?

ASSISTANT CITY SOLICITOR CHIAVARINI: Yeah.

VICE-CHAIRWOMAN JACKSON: Yes.

DR. HERSHKOWITZ: I would like to suggest that we -- we hire Mr. Ragosta to conduct Colonel Prignano's hearing, and that when it's appropriate, that we would consider hiring Professor Ritchie to conduct Mr. Corrente's hearing. We won't be voting on that today. The reason is that these may both be lengthy hearings. There's a chance that they may occur simultaneously. And it would be propitious to have the work shared by these two well-qualified attorneys. And I would suggest that for now I would support Mr. Ragosta to move forward with Colonel Prignano.

MR. JACKVONY: Did he -- just one question. He's the one that worked on the cases for Annarino and Glancy, right?

DR. HERSHKOWITZ: Yes, yes. He's experienced.

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MR. JACKVONY: And I'm not familiar with the bill, and they talked about it last week but I think you can probably follow up.

MR. MARONEY: Yeah. At a price of \$50,000.00, and that's what I think was paid, is that right, Joe?

MR. CHIODO: Yeah. I didn't go pull the bills for it. I can go pull the bills.

MR. MARONEY: But that's what – that's what I heard.

MR. CHIODO: It's fifty some odd –

MR. MARONEY: And \$175.00 an hour, that's over seven weeks working nine to five. It didn't look to me as if there was that much research in that paper. I mean –

MR. CHIODO: Yeah but it took him over a year, about a year. So, that is reasonable. I'm just saying there's hourly time.

MR. MARONEY: Yeah.

MR. CHIODO: But you remember, right, any frustration that the Board had, in all due respect to the process or to Mr. Ragosta, it did take a long time. We were criticized because it was taking such a long time.

CHAIRMAN D'AMICO: We were criticized –

MR. CHIODO: No, we were criticized.

MR. MARONEY: I'm not done yet, please. And we're going to meet again – because Professor Ritchie's fulfilling his civic duty by going to a jury, we're not in a great rush. We're not going to deal with this until after Mr. Prignano comes in and sits down. I still would like to hear what Mr. Ritchie says.

CHAIRMAN D'AMICO: Well, the Doctor made a motion.

DR. HERSHKOWITZ: No, I –

MR. MARONEY: This is the discussion on it.

DR. HERSHKOWITZ: -- I have no objection to that. We are now going to be able to see the timesheets and hourly bills. We did not see them.

MR. CHIODO: Well, the Solicitor sees them. We didn't see them.

DR. HERSHKOWITZ: The Solicitor saw them.

MR. CHIODO: He approved them. Well, the former Solicitor.

DR. HERSHKOWITZ: Right. But we will now have a chance to see them, Ted, and look at the work product and see if it makes sense.

MR. MARONEY: Well, Doctor, I like your original idea of having one take one and one take –

DR. HERSHKOWITZ: Right.

MR. MARONEY: -- the other.

DR. HERSHKOWITZ: Right.

MR. MARONEY: So –

MR. CHIODO: Why don't they work at the same rate of pay, too?

CHAIRMAN D'AMICO: You can't – you can't do that. You only can act on this one here.

MR. MARONEY: I know.

VICE-CHAIRWOMAN JACKSON: No, he's just suggesting. He's only –

MR. MARONEY: That was just a suggestion.

DR. HERSHKOWITZ: So – but what I'm trying to reassure Ted is since we will see the timesheets and the hourly billing, we can assess whether the charges are reasonable for the work done. And if we have an objection, we can make it directly to the hearing officer.

CHAIRMAN D'AMICO: Doctor, you made a motion to hire Mr. Ragosta.

DR. HERSHKOWITZ: Yes, I did.

CHAIRMAN D'AMICO: Do I have a second?

VICE-CHAIRWOMAN JACKSON: I second.

On motion of Dr. Hershkovitz, Seconded by Vice-Chairwoman Jackson, it is voted to hire Attorney Vincent Ragosta as the hearing officer regarding Urbano Prignano's pension, by the following Roll Call Vote:

AYES: Chairman D'Amico, Vice-Chairwoman Jackson, Mr. Jackvony, Mr. Chiodo, Mr. Maroney and Dr. Hershkowitz – 6.

ABSENT/EXCUSED: Mayor Cicilline, Mr. Grieco, Mr. McCarthy, Mrs. Dowben and Councilman Jackson – 5.

Motion carries.

MR. CHIODO: I just have a comment. I still think the bills still have to be submitted to the Solicitor as well as here. I still think the – the bill has to be reviewed and analyzed by the Solicitor. He is an attorney. He is our attorney. I rely on him for almost – even a yes or no question with this Board because many things are legal. And I have full confidence in him reviewing the bill. He's an attorney. He understands attorney's business. If I need electrical work, I wouldn't call a plumber. I'd call an attorney.

DR. HERSHKOWITZ: I have no objection to that, Joe. My –

VICE-CHAIRWOMAN JACKSON: I don't think that was the thing. I think they wanted to just see the finished product.

MR. CHIODO: I know but sometimes we – sometimes as a group we step out of the realm of what we should be doing I think.

DR. HERSHKOWITZ: Let me reply to that, Joe. My request to see the hourly bills was not based on the power of this Board to reject them.

MR. CHIODO: Right.

DR. HERSHKOWITZ: I respect –

MR. CHIODO: Right, I know.

DR. HERSHKOWITZ: -- Mr. Fernandez to do that. I've had a long personal experience with lawyers and legal fees in my personal life, and I consider myself well suited to judge the charges for work done. I don't ask for the power to reject it but simply to render an opinion to the Solicitor.

MR. CHIODO: Well, in addition they're also going to be charged to Solicitor Fernandez and his budget. He probably would want to review them just for that reason, too.

DR. HERSHKOWITZ: Sure. I'm not asking to take that away from him. I would just like us to have a chance to see them.

CHAIRMAN D'AMICO: Anything else now? Teddy.

MR. MARONEY: Yeah, part of my voting for Ragosta was the fact that we were going to be able to review the things. And I have confidence in the Solicitor to go along with his recommendation, but I would like to see them also.

MR. CHIODO: That's fine.

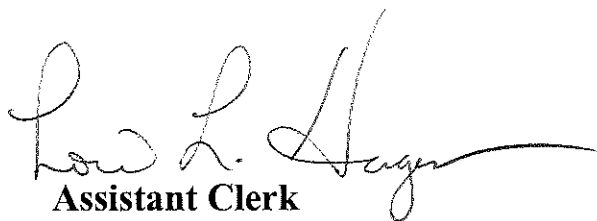
MR. MARONEY: So, that was part of my Aye.

CHAIRMAN D'AMICO: All right. A motion to adjourn.

ADJOURNMENT: On motion of Dr. Hershkowitz, Seconded by Mr. Maroney, it is voted to adjourn the meeting at 10:21 o'clock A.M.



First Deputy City Clerk



Assistant Clerk