

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

GWENDOLYN BOYD, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 07-3030  
 )  
 CITY OF NORTH MIAMI, FLORIDA, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on November 27 and 28, 2007, by video teleconference, with the parties appearing in Miami, Florida, before Patricia M. Hart, a duly-designated Administrative Law Judge of the Division of Administrative Hearings, who presided in Tallahassee, Florida.

APPEARANCES

For Petitioner: Wendy A. Delvecchio, Esquire  
Conrad & Scherer, LLP  
633 South Federal Highway  
Fort Lauderdale, Florida 33302

For Respondent: Lynn Whitfield, Esquire  
City of North Miami  
776 Northeast 125th Street  
Miami, Florida 33161

STATEMENT OF THE ISSUE

Whether the Respondent discriminated against the Petitioner on the basis of national origin, in violation of the Florida

Civil Rights Act of 1994, Section 760.10(1), Florida Statutes (2005).<sup>1</sup>

PRELIMINARY STATEMENT

On June 29, 2007, Gwendolyn Boyd filed with the Florida Commission on Human Relations ("FCHR") a Petition for Relief from an Unlawful Employment Practice, in which she alleged that the City of North Miami ("City") had denied her a salary increase based on impermissible considerations of her national origin. The FCHR transmitted the Petition to the Division of Administrative Hearings for assignment of an administrative law judge. After one continuance, the final hearing was held pursuant to notice on November 27 and 28, 2007.

At the hearing, Ms. Boyd testified in her own behalf and presented the testimony of Clarence Patterson; Josaphat Celestin; John Dellagloria; Hans Ottinot; and Rebecca Jones. Petitioner's Exhibits 1 through 12, 14 through 22, and 24 through 26 were offered and received into evidence; Petitioner's Exhibit 26 is the transcript of the deposition of Carlos Perez, which was admitted into evidence in lieu of live testimony. The City did not offer any testimony; Respondent's Exhibits 1 and 2 were offered and received into evidence.

The parties also submitted a Pre-Hearing Stipulation which included a number of facts admitted by the parties and requiring no proof. Among the admitted facts were the stipulations that

Ms. Boyd had established a prima facie case of employment discrimination based on national origin; that the City had established a legitimate, non-discriminatory reason for its action; and that the only issue to be determined in this administrative action is whether the City's legitimate, non-discriminatory reason was "legitimate" or "pretextual."

The four-volume transcript of the proceedings was filed with the Division of Administrative Hearings on January 15, 2008. The parties timely filed proposed findings of fact and conclusions of law, which have been considered in the preparation of this Recommended Order.

#### STIPULATED FACTS

#### Facts admitted by the parties and included in their Pre-Hearing Stipulation

1. The City of North Miami ("City") hired Gwendolyn Boyd as its Police Chief on January 14, 2002.
2. At the time the City hired Ms. Boyd, the Police Chief salary grade was 39, which ranged from \$70,948.00 to \$105,164.00.
3. Ms. Boyd is African-American.
4. On September 23, 2003, the City Council voted to terminate its City Manager, Irma Plummer.
5. At the same September 23, 2003, meeting, the City Council voted to accept Mayor Josaphat Celestin's recommendation to engage Ms. Boyd and the City's Interim City Manager.

6. Mayor Celestin is Haitian-American.
7. On October 23, 2003, Ms. Boyd entered into a written agreement, termed a "Letter of Understanding," with the City to serve as the Interim City Manager for a period of thirty (30) days effective October 24, 2003.
8. Mayor Celestin executed Ms. Boyd's October 23, 2003, Letter of Understanding on behalf of the City.
9. The Letter of Understanding between the City and Ms. Boyd provided that when she returned to her position of Police Chief, she would receive \$2,313.20 weekly (roughly \$120,000 a year) and yearly increases of 5 % on her anniversary date.
10. Subsequent to the execution of the Letter of Understanding between Ms. Boyd and the City, Director of Personnel Administration, Rebecca Jones, sent a memorandum dated October 27, 2003, to Mayor Celestin advising him that the amount to be paid to Ms. Boyd upon her return to her position as Police Chief exceeded Ms. Boyd's current pay range and, therefore, she could not be paid that amount.
11. According to Ms. Jones' memorandum, Ms. Boyd, as Police Chief, was at the top of her pay range 39-9, and she would not be entitled to merit increases and would only receive cost-of-living adjustments until the City Manager would upgrade her classification.
12. At its meeting on January 27, 2004, the City Council selected Mr. Clarence Patterson as its City Manager.
13. Mr. Patterson is African-American.
14. Mr. Patterson assumed his official duties as City Manager on February 24, 2004.

15. On February 25, 2004, Ms. Boyd returned to the position as Police Chief.

16. On March 9, 23, and 30, 2004, the City Commission [Council?] voted to approve new pay plans for the City Manager and the Deputy City Manager, as well as the newly created position of Chief of Staff.

17. During March 2004, the Deputy City Manager was a Caucasian Male, and the Chief of Staff was a Haitian-American Female.

18. Mayor Celestin continued in office until Mayor Kevin Burns was sworn in on May 24, 2005.

19. Mr. Patterson provided an affidavit which states that he decided not to upgrade Ms. Boyd's classification upon becoming the City's City Manager because her pay range was already higher than most other department heads' pay ranges.

20. On September 9, 2004, during the budget process for [the] 2004-2005 year, a pay grade classification and title change was proposed by John Dellagloria, City Attorney, for a number of positions within the City Attorney's office including: Deputy City Attorney, Paralegal/Legal Secretary and Legal Secretary. The reason for the requested pay grade change was to regain parity between the City Attorney's Office and the City Manager's Office [sic] with regard to salaries.

21. During the City Council meeting on September 21, 2004, the [City] Council initially approved the Deputy City Attorney's pay grade change, but deferred to the City Manager, and the pay grade was not changed at that time.

22. Patricia Saint Vil-Joseph was hired as the City's Deputy City Attorney on November 15, 1999.

23. On October 26, 2004, Mayor Celestin proposed to the City Council that Ms. Saint Vil-Joseph be appointed as the Interim City Attorney.

24. At its October 26, 2004, meeting, the City Council approved the hiring of Ms. Saint Vil-Joseph as the Interim City Attorney and further advised the Mayor to follow the same procedure/percentage increase for compensation as used when the Chief of Police was hired as the Interim City Manager. (see transcript of City Council meeting[.] )

25. On October 27, 2004, Ms. Saint Vil-Joseph entered into a Letter of Understanding with the City, to be effective November 1, 2004, regarding the position of Interim City Attorney.

26. Ms. Saint Vil-Joseph's Letter of Understanding provided for the increase of her salary from \$37.66 per hour (roughly \$78,332 a year) to \$58.93 per hour (roughly \$122,574 a year).

27. Ms. Saint Vil-Joseph's Letter of Understanding further provided that "upon selection of a new City Attorney, or upon the Council removing Joseph from the position of Interim City Attorney, Joseph shall return to her current position of Deputy City Attorney, and shall return to her current pay grade."

28. On April 26, 2005, Mayor Celestin proposed that the Deputy City Attorney's pay grade be upgraded and that Ms. Saint Vil-Joseph, upon returning to the position of Deputy City Attorney, retain the same salary she received as the Interim City Attorney. The upgrade was approved by [the City] Council by a vote of 4-0 and the City Manager did not oppose the motion. The

range for salary grade 42 was \$82,201 to \$121,700.

29. On May 2, 2005, Ms. Saint Vil-Joseph returned to her former position of Deputy City Attorney. Because she was making more as the Interim City Attorney, her pay had to be adjusted downward so that she could remain within her new pay grade.

30. In October 2005, two years after entering into the Letter of Agreement [Letter of Understanding?] with the City, Ms. Boyd received an upgrade in her salary to grade 41, which ranged from \$82,284 to \$121,742. Ms. Saint Vil-Joseph's new pay grade was changed to 42, which ranged from \$86,340 to \$127,857.

31. The parties have stipulated to the factual findings by the Florida Commission on Human Relations that:

(1) Ms. Boyd was able to establish a prima facie case of national origin discrimination because:

a. Ms. Boyd is a member of a protected class, national origin (African American);

b. Ms. Boyd did not get an increase in salary as promised;

c. Ms. Boyd was qualified for the position as evidenced by the fact that she had already been in the position for at least one year; and

d. The City did treat similarly situated employees outside Ms. Boyd's protected class more favorable as evidenced by the fact that Ms. Saint Vil-Joseph did receive a salary increase.

(2) The City's articulated "legitimate, non-discriminatory reason" for not allowing Ms. Boyd to retain the salary

amount paid while she served as Interim City Manager was that the increased salary exceeded the Police Chief's pay grade, and that, at the time, Ms. Boyd was already making more than most of the City's department heads.

32. The remaining factual issue to be resolved is whether the City's articulated legitimate, non-discriminatory reason is (1) legitimate or (2) pretextual.

#### FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing, and on the entire record of this proceeding, the following findings of fact are made:

1. According to the Charter of the City of North Miami ("City Charter"), the City has a "council-manager" form of government. All powers of the City are vested in an elected City Council, including the power "to enact legislation, adopt budgets, and determine policies." The City Council also appoints the City Manager to administer the City's government.<sup>2</sup>

2. The City Council consists of four council members and a mayor. The mayor presides at the City Council meetings and is "recognized as the head of the city government for all ceremonial purposes . . . and shall have a voice and vote in the proceedings of the council, but shall have no regular administrative duties."<sup>3</sup>

3. The City Manager "shall be the chief administrative officer of the city, responsible to the council for the



administration of all city affairs placed in the manager's charge by or under" the City Charter. Among those powers is the power to "[d]irect and supervise the administration of all departments, offices and agencies of the city, except as otherwise provided by the charter or by law."<sup>4</sup> The City's Police Department is an administrative department of the City, and the Police Chief, as head of the Police Department, supervises and controls the department "subject to the city manager."<sup>5</sup>

4. The City Attorney is the head of the City's Department of Law and is appointed by the City Council. The City Attorney's salary is fixed by the council and included in the budget.<sup>6</sup> The Department of Law is not an administrative department subject to the direction and supervision of the City Manager.<sup>7</sup>

5. The City Manager is responsible for proposing salary increases to the City Council for the department heads under his supervision, which includes the Police Chief. The heads of the various administrative departments are responsible for proposing salary increases to the City Manager for the employees under their supervision.

6. The City Attorney is responsible for proposing salary increases to the City Council for the employees under his supervision, which includes the Deputy City Attorney.

7. The salaries of all City officers and employees, including the City Manager and the City Attorney, must be within the ranges provided in the City's pay plan. If someone is hired at a salary outside the salary range for the position in the pay plan, or if someone is promoted or given a salary increase that is outside the salary range in the pay plan for the position, the pay plan must be amended by the City Council to re-classify the position or to increase the maximum salary for the position.

8. Ms. Boyd was hired as the City's Police Chief in January 2002 at a pay grade of 39-9, the maximum salary for the position. Consequently, she had received only cost-of-living raises since January 2002.

9. In October 2003, after the City Council appointed Ms. Boyd as Interim City Manager, John Dellagloria, then the City Attorney, prepared a Letter of Understanding at the direction of Mayor Celestin to address Ms. Boyd's salary and benefits while serving as Interim City Manager. Ms. Boyd spoke with Mr. Dellagloria as he was preparing the Letter of Understanding and told him that she wanted him to include a provision increasing her salary upon her return to her position as Police Chief. After talking with Mayor Celestin, Mr. Dellagloria included a provision specifying the salary that Ms. Boyd would receive when she left the position of Interim City Manager and returned to her position as Police Chief.

10. Mayor Celestin and Ms. Boyd executed the Letter of Understanding on October 23, 2003.

11. Mayor Celestin's signature on the Letter of Understanding signified his intention that Ms. Boyd would receive a salary increase when she returned to her position as Police Chief. Mayor Celestin understood, however, that he could prepare letters of understanding that implemented resolutions of the City Council that he did not have the power to bind the City by his signature on a document in the absence of a City Council resolution or other directive. The City Council action appointing Ms. Boyd Interim City Manager did not include anything related to her salary when she returned to her position as Police Chief.

12. The salary increase included in the Letter of Understanding for Ms. Boyd when she returned to her position as Police Chief exceeded the maximum salary range specified in the City's pay plan for her pay grade of 39-9. Rebecca Jones, the City's Director of Personnel, noticed this when she prepared the Personnel Action Form to send to the City Manager for his approval of the salary agreement with Ms. Boyd when she became Interim City Manager. Ms. Jones advised Mayor Celestin that the raise could not be given without the City Council's approval of an amendment in the pay plan, but she did not discuss her

conclusion with Ms. Boyd as Interim City Manager; Ms. Jones considered that improper because the matter concerned Ms. Boyd.

13. After he executed the October 23, 2003, Letter of Understanding, Mayor Celestin was advised by someone in the Legal Department that he did not have the authority to increase the salary for the head of an administrative department such as the Police Chief. He was told that this authority was vested in the City Manager because the City Manager directly supervised the Police Chief.

14. Clarence Patterson was appointed City Manager by the City Council in January 2004. He took office in late February 2004, and Ms. Boyd returned to her position as Police Chief at the salary she had received before she was appointed Interim City Manager.

15. During the time she served as Interim City Manager, Ms. Boyd served on the screening committee for applicants for the position of City Manager. The committee was to review the qualifications of the applicants and determine those candidates who were minimally qualified for the position. Ms. Boyd presented the report of the committee at the January 27, 2004, meeting of the City Council, and reported that the committee had found only one highly-qualified candidate.

16. Only two candidates attended the January 27, 2004, meeting, Nadine Pierre Louis and Clarence Patterson;

Mayor Celestin supported Ms. Louis, and Mr. Patterson was backed by another City Council member. When asked by the City Council if these two candidates were qualified for the position, Ms. Boyd reported that they were not: Ms. Louis did not have the required municipal job experience, and Mr. Patterson did not meet the educational requirements.

17. Ms. Louis and Mr. Patterson were offered to the City Council for a vote; Mayor Celestin walked out of the council room and did not vote; Mr. Patterson was selected by vote of the City Council. Mr. Patterson was aware that Mayor Celestin did not support his candidacy.

18. Shortly after Mr. Patterson began as City Manager, Ms. Jones brought the October 23, 2003, Letter of Understanding between Mayor Celestin and Ms. Boyd to his attention. He reviewed the city charter and advised Mayor Celestin that he did not have the authority to give Ms. Boyd a salary increase. Only the City Manager has that authority under the charter.

19. Mr. Patterson also discussed the matter of the salary increase referenced in the third paragraph of the October 23, 2003, Letter of Understanding with Ms. Boyd. He told her that Mayor Celestin did not have the authority to effect such a salary increase, and he also told her that he was not going to recommend to the City Council that it increase her pay grade to accommodate the salary increase promised by Mayor Celestin.

Having reviewed the pay grades of the administrative department heads, Mr. Patterson did not consider a raise for Ms. Boyd appropriate at the time.

20. Because he had been advised that the Police Chief was directly supervised by the City Manager and that only the City Manager had the authority to recommend a salary increase for the Police Chief, Mayor Celestin did not propose to the City Council that it either increase Ms. Boyd's salary as Police Chief or amend the City's pay plan to increase the pay grade for the Police Chief so that Ms. Boyd could receive the salary increase included in the Letter of Understanding dated October 23, 2003. Mayor Celestin did, however, assure Ms. Boyd several times that he would "take care of it."

21. At the last meeting of his tenure as mayor, Mayor Celestin proposed to the City Council that Ms. Saint Vil-Joseph receive a salary increase so that she could retain the same salary when she returned to her position as Deputy City Attorney that she received while serving as Interim City Attorney.

22. Mr. Patterson did not oppose the proposal because the salary increase for Ms. Saint Vil-Joseph was not a "pay raise" as such, but, rather, implemented a prior decision of the City Council to achieve parity between the Deputy City Attorney and Deputy City Manager.<sup>8</sup> An amendment in the pay plan to increase

the pay grade for the Deputy City Attorney was passed by the City Council by a vote of 4 to 0, and the Personnel Action form dated May 2, 2005, reflecting a change of pay grade for the position of Deputy City Attorney was approved by Hans Ottinot, City Attorney; Ms. Jones, personnel directory; and Mr. Patterson, City Manager.

23. Ms. Saint Vil-Joseph is a Haitian American.

24. In October 2005, Ms. Boyd's pay grade was increased from 39 to 41, and she received a concomitant salary increase.

25. Ms. Boyd presented the following testimony as evidence that the City's legitimate, non-discriminatory reason for failing to increase her pay grade and salary when she returned to her position as Police Chief in February 2004 was a pretext for discrimination on the basis of national origin:<sup>9</sup>

Q.[by Ms. Whitfield] And that's really your issue here, isn't it? You believe that he [Mayor Celestin] violated his letter of understanding with you, correct?

A. He violated his letter of understanding and he's discriminated against me because of the clashes that we had pertaining to the hiring of Haitian African, the clash that we had over his referring to some of my directors are racist, and because I would not void a ticket that was given by another white officer, and the fact that I would not hire some of the people that he --

Q. Well, let me ask you this. When all of that happened, was that before he signed a letter of understanding with you or after?

A. It was afterwards.

Q. Was is [sic] before you went back to being police chief or after?

A. It was during the period.

Q. So it was during that period?

A. It was before I returned to my position as police chief.

Q. Okay. So when? When was it?

A. There were several incidents. A couple of police applicants who he referred, one was a personal friend and I had to find out why they were turned down. Another incident pertaining to the -- he thought we weren't doing enough to hire Haitian applicants and wanted me to do away with the --

Q. Let me ask you this. You were both the interim city manager and the police chief at the same time?

A. No. I was not.

Q. Okay. Who was head of the police department then?

A. I had my two assistant chiefs to alternate service as the acting police chief.

Q. So as acting police chief, they would be responsible for making recommendations and hiring decision to take to the city manager?

A. No. What they would do, if [sic] they would do the complete background process and they will [sic] decide on who was qualified and who was not, and because a couple of people did not get hired the mayor asked me about this and I had to meet with the assistant chief to find out why those individuals were disqualified. And they



were for valid reasons, but the mayor did not want to believe me. He thought we were just not doing enough to hire Haitian Africans and made a suggestion -- or made the remark that he was going to bring Guy Eugene (phonetic\_ who is a police lieutenant, Haitian police lieutenant with Miami, that maybe he would want my job as police chief.

Q. Do you have any documentation or anything else to corroborate what you're telling use was said by Mayor Celestin about your hiring of Haitians or not hiring of Haitians?

A. Only the testimony of my staff at the police department.

Q. My question is, do you have any documentation here --

A. I didn't write that down. I didn't -- discussions every day because I was trying to just get through the interim period and returning to be police chief.

#### CONCLUSIONS OF LAW

26. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2007).

27. Section 760.10, Florida Statutes, part of the Florida Civil Rights Act of 1992, as amended, provides in pertinent part:

(1) It is an unlawful employment practice for an employer:

(a) To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges or employment, because of such individual's race, color, religion, sex, national origin, age, handicap, or marital status.

28. Florida courts routinely rely on decisions of the federal courts construing Title VII of the Civil Rights Act of 1964, codified at Title 42, Section 2000e et seq., United States Code, ("Title VII"), when construing the Florida Civil Rights Act of 1992, "because the Florida act was patterned after Title VII." Harper v. Blockbuster Entertainment Corp., 139 F.3d 1385, 1387 (11th Cir. 1998), citing, inter alia, Ranger Insurance Co. v. Bal Harbor Club, Inc., 549 So. 2d 1005, 1009 (Fla. 1989), and Florida State University v. Sondel, 685 So. 2d 923, 925, n. 1 (Fla. 1st DCA 1996).

29. Ms. Boyd has the burden of proving by a preponderance of the evidence that she was the victim of employment discrimination on the basis of her national origin as an African American, and she can establish discrimination either through direct evidence of discrimination or through circumstantial evidence, which is evaluated within the framework of the burden-shifting analysis first articulated in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-04 (1973). See Logan v. Denny's Inc., 259 F.3d 558, 566-67 (11th Cir. 2001).

30. To establish discrimination through circumstantial evidence, as set forth in McDonnell Douglas, Ms. Boyd must establish a prima facie case of discrimination by producing evidence to show that (1) she is the member of a protected class; (2) she suffered an adverse employment action; (3) she was qualified to do the job; and (4) she was treated differently than a similarly-situated person outside the protected class. See Haas v. Kelly Servs. Inc., 409 F.3d 1030, 1035 (8th Cir. 2005); Chapman v. AI Transp., 229 F.3d 1012, 1024 (11th Cir. 2000). As noted above in the Stipulated Facts, the parties have stipulated that Ms. Boyd has established a prima facie case of discrimination on the basis of her national origin.<sup>10</sup>

31. Since the parties stipulated that Ms. Boyd established a prima facie case of discrimination on the basis of national origin, the burden shifts to the City to produce evidence articulating "a legitimate, non-discriminatory reason" for the adverse employment action. Id. As noted above in the Stipulated Facts, the parties have stipulated that the City has articulated a "legitimate, non-discriminatory reason" for its failure to give Ms. Boyd an increase in her pay grade and salary so that she would receive the same salary when she returned to her position as Police Chief as she received during the months she served as Interim City Manager.

32. Since the parties stipulated that the City articulated a "legitimate, non-discriminatory reason" for its failure to raise Ms. Boyd's salary when she returned to her position as Police Chief, the burden shifts to Ms. Boyd to produce evidence that the reason articulated by the City was a pretext for discrimination. Jones v. School Dist. of Philadelphia, 198 F.3d 403, 410 (3d Cir. 1999). Ms. Boyd can establish that the reason given by the City for its failure to act was merely a pretext for discrimination (1) by presenting evidence that casts doubt on the reason articulated by the City and supports the conclusion that the reason offered was a fabrication or (2) by presenting evidence sufficient to support an inference that Ms. Boyd's termination was more likely than not motivated by discrimination. See Fuentes v. Perskie, 32 F.3d 759, 762 (3d Cir. 1994). The evidence offered to establish that the reason offered by the City for failure to increase Ms. Boyd's pay grade and salary was pretextual "must demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered reasons for its action that a reasonable fact finder could rationally find them unworthy of credence, and hence infer that the employer did not act for [the asserted] non-discriminatory reasons." Id.

33. Based on the findings of fact herein, Ms. Boyd has failed to produce evidence that the City's articulated reason

for its failure to increase Ms. Boyd's pay grade was a pretext for discrimination and has, therefore, failed to prove by a preponderance of the evidence that the City engaged in an unlawful employment practice. Mayor Celestin was the only person in the City government that indicated to Ms. Boyd that he intended for her to maintain the salary she received as Interim City Manager when she returned to her position as Police Chief. Mayor Celestin was also the only person in the City government to whom Ms. Boyd attributed a discriminatory motive for his failure to bring before the City Council the issue of a raise in her pay grade and an increase in her salary.

34. There is, however, no question that, under the City Charter, Mayor Celestin did not have the authority to bind the City with any promise in the Letter of Understanding of October 23, 2003, that was not supported by a directive from the City Council. The evidence is uncontroverted that the City Council did not authorize Mayor Celestin to promise Ms. Boyd that she would retain the same salary she was receiving as the Interim City Manager when she returned to her position as Police Chief. The City Charter clearly provides that the Mayor of the City has no administrative duties but serves as the presiding member of the City Council. Although Mayor Celestin could have brought the matter before the City Council, he was not bound to do so by the October 23, 2003, Letter of Understanding, and his

failure to do so cannot be attributed to the City, regardless of his motives.

35. In any event, the reasons Ms. Boyd gave for her belief that Mayor Celestin's failure to bring the pay-grade/salary issue before the City Council was attributable to a motive to discriminate against her because she is African American are uncorroborated, too vague and non-specific to be credible or persuasive, and wholly insufficient to render suspect the non-discriminatory reason for the City's failure to increase the pay grade for the Police Chief and increase Ms. Boyd's salary in the winter and spring of 2004.

36. According to the greater weight of the evidence, Mayor Celestin did not take the matter of the increase in pay grade and salary for the Police-Chief position to the City Council because he had been told both by the City's Legal Department and by Mr. Patterson that he had no authority to propose salary increases for the heads of administrative departments. Pursuant to the City Charter, the City Manager is responsible for supervising and directing administrative department heads, including the Police Chief, and it was his responsibility to propose to the City Council an increase in the pay grade for the Police Chief's position and an increase in Ms. Boyd's salary. The reason offered by Mr. Patterson for his failure to make such a proposal to the City Council, that

Ms. Boyd was making as much or more than other administrative department heads, is not so weak, implausible, inconsistent, incoherent, or contradictory as to support the inference that the only reason for his action was discriminatory.

37. Furthermore, the evidence presented by Ms. Boyd was devoid of any possible discriminatory motive for Mr. Patterson's refusal to propose an increase in the Police Chief's pay grade and Ms. Boyd's salary. Rather, Ms. Boyd's evidence regarding Mr. Patterson's possible motive for his refusal to take the pay-grade/salary increase to the City Council was that she did not support him for the position of City Manager when she was a member of the selection committee. Even if Mr. Patterson's actions were based on such a motive, it would not be an unlawful, discriminatory employment practice within the prohibitions of Section 760.10, Florida Statutes.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Commission on Human Relations enter a final order dismissing the Petition for Relief from Unlawful Employment Practice filed by Gwendolyn Boyd.

DONE AND ENTERED this 4th day of March, 2008, in  
Tallahassee, Leon County, Florida.



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PATRICIA M. HART  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 4th day of March, 2008.

ENDNOTES

- <sup>1</sup>/ All references to the Florida Statutes are to the 2005 edition unless noted otherwise.
- <sup>2</sup>/ Petitioner's Exh. 4, Art. I, § 2.
- <sup>3</sup>/ Petitioner's Exh. 4, Art. II, §§ 5 and 8.
- <sup>4</sup>/ Petitioner's Exh. 4, Art. III, § 25.
- <sup>5</sup>/ Petitioner's Exh. 4, Art. III, §§ 27 and 28.
- <sup>6</sup>/ Petitioner's Exh. 4, Art. VII, §§ 84 and 85.
- <sup>7</sup>/ See Petitioner's Exh. 4, Art. III, §§ 25, 27, and 28.
- <sup>8</sup>/ On October 5, 2003, before Mr. Patterson became City manager, the City Council voted, at the request of Mr. Dellagloria, to bring the salary of the City Attorney into parity with the salary of the City Manager. According to Mr. Patterson's recollection, the decision to bring the salary of the Deputy City Attorney into parity with the salary of the Deputy City



Attorney was made during the tenure of Hans Ottinot, who served as City Attorney from approximately March 2005 to June 2005.

<sup>9/</sup> Transcript, volume IV, pages 475 - 78 and as summarized by Ms. Boyd in her Proposed Recommended Order at page 15, paragraph 75.

<sup>10/</sup> The parties stipulated to the finding of the FCHR that Ms. Boyd had established a prima facie case of discrimination based on national origin. The parties apparently felt they were bound by the FCHR's findings. See Transcript, volume IV, pages 479-80. The findings of the FCHR are not, however, binding in an administrative hearing conducted pursuant to Section 120.57(1), Florida Statutes, because such a hearing is a de novo proceeding, in which the findings of fact are based exclusively on the evidence contained in the record of the proceeding. See § 120.57(1)(f), (j), and (k), Fla. Stat. Absent the stipulation of the parties limiting the issue presented for decision herein and based exclusively on the record of this proceeding, a different finding/conclusion may have been reached regarding Ms. Boyd's having established a prima facie case of discrimination based on national origin.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.