

City of Miami

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



Meeting Minutes

Tuesday, February 23, 2010

10:00 AM

Commission Chambers

Civil Service Board

*Miguel M. de la O, Chairperson
William J. Scarola, Chief Examiner
Michael T. Dames, Board Member
Gerald Silverman, Board Member
Joseph Kaplan, Board Member*

PLEDGE OF ALLEGIANCE

The meeting was called to order at 10:04 a.m. The roll call at the commencement of the meeting was as follows:

Present: Chief Examiner Scarola, Chairperson de la O, Member Dames, Member Kaplan and Member Silverman

WELCOMING OF BOARD MEMBERS:

Chairman de la O introduced and welcomed new Board Members Gerald Silverman and Joseph Kaplan; and advised that they were appointed by the City Commission to complete the terms of the two Board Members (Cruz and Angel-Capo) who recently resigned.

A. APPROVING THE MINUTES OF:

Regular Meeting of February 9, 2010.

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

Aye: Chairperson de la O, Dames and Scarola

Abstain: Silverman and Kaplan

B. PERSONNEL MATTERS

- B.1** A copy of a memorandum from Pedro G. Hernandez, P.E., City Manager, notifying Larry Ellis, Automotive Equipment Operator I, of his return to former classification. Larry Ellis is being rolled back to Automotive Equipment Operator II. (NOTIFICATION)

NOTIFIED

- B.2** A copy of a memorandum from Pedro G. Hernandez, P.E., City Manager, notifying Frances Walters, Sanitation Inspector, of her return to former classification. Frances Walters is being rolled back to Typist Clerk II. (NOTIFICATION)

NOTIFIED

- B.3** A copy of a memorandum from Pedro G. Hernandez, P.E., City Manager, notifying Ryan Martinez, Automotive Equipment Operator I, of his return to former classification. Ryan Martinez is being rolled back to Grounds Tender. (NOTIFICATION)

NOTIFIED

- B.4** A copy of a memorandum from Pedro G. Hernandez, P.E., City Manager, notifying Virginia Perez, Sanitation Inspector, of her return to former classification. Virginia Perez is being rolled back to Service Center Aide. (NOTIFICATION)

NOTIFIED

- B.5** A copy of a memorandum from Pedro G. Hernandez, P.E., City Manager, notifying Luis Gomez Jr., Finance Revenue Collections Coordinator, of his return to former classification. Luis Gomez Jr. is being rolled back to Typist Clerk II. (NOTIFICATION)
- NOTIFIED**
- B.6** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Javier Arrinda, Finance Revenue Collections Inspector (probationary), of his layoff, effective February 12, 2010 and his name will be placed on a current eligible register of his classification. (NOTIFICATION)
- NOTIFIED**
- B.7** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Oliguet Dies, Finance Revenue Collections Inspector (probationary), of her layoff, effective February 12, 2010 and her name will be placed on a current eligible register of her classification. (NOTIFICATION)
- NOTIFIED**
- B.8** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Milena Gaitan, Finance Revenue Collections Inspector (probationary), of her layoff, effective February 12, 2010 and her name will be placed on a current eligible register of her classification. (NOTIFICATION)
- NOTIFIED**
- B.9** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Alejandro Vega, Finance Revenue Collections Inspector (probationary), of his layoff, effective February 12, 2010 and his name will be placed on a current eligible register of his classification. (NOTIFICATION)
- NOTIFIED**
- B.10** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Andrea Adderly, Code Enforcement Inspector, of her layoff, effective February 12, 2010 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 Ariel R. Coll, Sanitation Inspector, of his layoff, effective February 12, 2010 and that his 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 Shannon Mills, Service Center Aide, of her layoff, effective February 12, 2010

and that her 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 Ulisses Garcia, Sanitation Inspector, of his layoff, effective February 12, 2010 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 Willie Timmons, Sanitation Inspector, of his layoff, effective February 12, 2010 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 Ana M. Valdeon, Sanitation Inspector, of her layoff, effective February 12, 2010 and that her 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 Roy Russell, Plumbing, of his layoff, effective February 12, 2010 and that his name will be placed on a "Layoff" register for a period of no more than 36 months. (NOTIFICATION)

NOTIFIED

- B.17** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Frank D. Rodriguez, Building Inspector I, of his layoff, effective February 12, 2010 and that his name will be placed on a "Layoff" register for a period of no more than 36 months. (NOTIFICATION)

NOTIFIED

- B.18** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Alejandro Pascual, Building Inspector I, of his layoff, effective February 12, 2010 and that his name will be placed on a "Layoff" register for a period of no more than 36 months. (NOTIFICATION)

NOTIFIED

- B.19** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Quatosha N. Palmer, Typist Clerk II, of her layoff, February 12, 2010 and that her name will be placed on a "Layoff" register for a period of no more than 36 months. (NOTIFICATION)

NOTIFIED

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

- D.1** Copy of a Settlement between the City of Miami and the Fraternal Order of Police, rescinding the reprimand of Cesar Villafana, Police Officer, relative to his 40-hour suspension, effective October 25, 2009. (NOTIFICATION)
- NOTIFIED**
- D.2** Copy of a letter from Kelly Barkett, Jr. notifying Osmel Martinez, Maintenance Mechanic Supervisor, of his 2 day suspension, effective January 26, 2010 and a copy of a request to appeal from Osmel Martinez. A hearing will be scheduled in accordance with the Civil Service Rules and Regulations. (NOTIFICATION)
- NOTIFIED**
- D.3** Copy of a letter from Kelly Barkett, Jr. notifying Osmel Martinez, Maintenance Mechanic Supervisor, of his dismissal, effective February 17, 2010. (NOTIFICATION)
- NOTIFIED**
- D.4** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Eddy Rodriguez, Police Officer, of his 40-hour forfeiture, effective February 4, 2010 and a copy of a request to appeal from Officer Rodriguez. A hearing will be scheduled in accordance with Civil Service Rules and Regulations. (NOTIFICATION)
- NOTIFIED**
- D.5** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Dashon Yearby, Police Officer of her, 10-hour suspension, effective February 14, 2010. (NOTIFICATION)
- NOTIFIED**
- D.6** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Mario Gonzalez, Police Officer, of his 10-hour suspension, effective February 14, 2010. (NOTIFICATION)
- NOTIFIED**

E. GENERAL ITEMS

- E.1** Copy of a Memorandum from the City Manager rejecting the recommendations of the Board concerning the Grievance hearing of Edward Diez, Firefighter, pursuant to Civil Service Rules 5-Application for Examinations, 6-Examinations, 7-Eligible Registers and 8-Appointments, Promotions and Advancements. (NOTIFICATION)

NOTIFIED

- E.2** Notice of a withdrawal from Misael Reyes, Police Sergeant, concerning his appeal hearing, relative to his 10-hour forfeiture, effective March 10, 2009. (NOTIFICATION) Case will be withdrawn and removed from the Board's docket.

NOTIFIED

- E.3** Copy of Findings of Fact concerning the appeal hearing of Raul Cabrera, Police Officer, concerning his resignation from employment. (DISCUSSION)

Member Kaplan stated that he would appreciate it and he was sure Member Silverman would also if the Chairman explained what they can and cannot vote on. He went on to say that he voted to approve the minutes, but maybe he should not have done so since he was not present at the last meeting. Chairman de la O responded that the minutes will reflect an abstention for Members Kaplan and Silverman regarding the Board's voting on the approval of the February 9, 2010 minutes and that Special Counsel Everett, who was expected to arrive soon would provide guidance for the new Board Member. Special Counsel Everett arrived at 10:07 a.m.

Chairman de la O stated that Member Kaplan raised the question as to whether the new Members should be voting on the findings of fact and asked Special Counsel Everett for a response. Special Counsel Everett responded that they should not vote on the findings because they did not participate in adjudicating the matter.

Following discussion, the Board was presented with a copy of the Findings of Fact concerning the appeal hearing on behalf of Raul Cabrera. After consideration of revisions to the Findings of Fact as proposed by Attorneys Min and Rind, the Board entered a motion to APPROVE the Findings of Fact as amended which resulted as follows:

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

Aye: Chairperson de la O, Dames and Scarola

Abstain: Silverman and Kaplan

- E.4** Copy of Findings of Fact concerning the appeal hearing of Greicy Lovin, Crime Prevention Specialist, relative to her 8-hour suspension, effective August 17, 2009. (DISCUSSION)

The Board was presented with a copy of the Findings of Fact concerning the appeal hearing on behalf of Greicy Lovin. After consideration of changes to the Findings of Fact as proposed by Attorneys Min and Rind, the Board entered a motion to APPROVE the Findings of Fact as amended which resulted as follows:

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

Aye: Chairperson de la O, Dames and Scarola

Abstain: Silverman and Kaplan

- E.5** Copy of Findings of Fact concerning the appeal hearing of Humberto Mijares, Building Inspector III, of his 14-day suspension, effective May 8, 2009.

(DISCUSSION)

The Board was presented with a copy of the Findings of Fact concerning the appeal hearing on behalf of Humberto Mijares. After consideration of changes to the Findings of Fact as proposed by Attorneys Min and Rind, the Board entered a motion to APPROVE the Findings of Fact as amended which resulted as follows:

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

Aye: Chairperson de la O, Dames and Scarola

Abstain: Silverman and Kaplan

E.6

Copy of Findings of Fact concerning the appeal hearing of Tika Jones, Police Officer, relative to a 10-hour suspension, effective November 23, 2008.

(DISCUSSION)

Chief Examiner Scarola asked that these Findings of Fact be deferred to the next meeting, so that he could confirm with the Departmental Orders that the penalties given to Officer Jones were correct. Without objection, Chairman de la O directed the Executive Secretary to defer these Findings.

DEFERRED TO MARCH 9, 2010 MEETING FOR BOARD CONSIDERATION.

E.7

Copy of Findings of Fact concerning the appeal hearing of Tika Jones, Police Officer, relative to a 10-hour suspension, effective May 31, 2009.

(DISCUSSION)

DEFERRED TO MARCH 9, 2010 MEETING FOR BOARD CONSIDERATION.

E.8

Copy of Findings of Fact concerning the appeal hearing of Tika Jones, Police Officer, relative to a 20-hour suspension, effective June 1, 2009.

(DISCUSSION)

DEFERRED TO MARCH 9, 2010 MEETING FOR BOARD CONSIDERATION.

E.9

Copy of Findings of Fact concerning the appeal hearing of Tika Jones, Police Officer, relative to a 20-hour suspension, effective January 6, 2009.

(DISCUSSION)

DEFERRED TO MARCH 9, MEETING FOR BOARD CONSIDERATION.

E.10

Copy of a "Motion for Partial Summary Judgment" filed by Barnaby Min, Assistant City Attorney, on behalf of the City of Miami, concerning the hearing of appeal on behalf of Fignole P. Lubin, Police Officer. (DISCUSSION)

ITEM ADDITION

Attorney Rind stated that the Motion for Summary Judgement filed by the Department's attorney in the matter of Officer Fignole Lubin was not included on today's printed agenda; however, she was asking if the Board would be willing to consider the Department's Motion for a Summary Judgment since only one case would be heard today, Officer Lubin is present, and she thinks the Department's attorney is willing to go forward with the hearing today.

Chairman de la O asked ACA Min if he had an objection to the Board holding a hearing

today on his Motion for Summary Judgment. ACA Min responded that he did not have an objection; however, he believed the matter of the Summary Judgment Motion was scheduled for discussion before the Board [at the March 9, 2010 meeting].

Chairman de la O stated that the Board would have time to hear the matter today and asked if anyone had an objection in doing so. ACA Min responded that he had no objection but it was with the caveat that he would basically be going on memory, the reprimand that Attorney Rind provided to him, and unfortunately he did not have the exhibits that were attached to the Motion.

Chairman de la O stated that he did not think the Board should force anyone to address an item that was not on the Agenda, but if both attorneys agreed to go forward, the Board would consider it. He went on to say that it was ACA Min's call as to whether the Motion would be considered today.

ACA Min stated that [considering he was not fully prepared], his preference would be to hear the matter in two weeks.

DEFERRED TO THE MARCH 9, 2010 MEETING, AS SCHEDULED, FOR BOARD CONSIDERATION.

F. REPORTS

F.1 Pending Hearings as of February 23, 2010. (NOTIFICATION)

PRESENTED

G. REQUESTS FOR HEARINGS

G.1 Copy of a Request for a Grievance Hearing from Osnat K. Rind, Attorney on behalf of Andrea Adderly, Code Enforcement Inspector, alleging a violation of Civil Service Rules 12.1., regarding her layoff. (DISCUSSION)

Attorney Rind stated that the Board recently heard the case of Suzanne Bermudez for which there was an issue on the application of Rule 12.1(c). She went on to say that Rule explains how seniority is calculated for layoff purposes. Attorney Rind further stated that under the Board's precedent (set in the Bermudez case), Ms. Adderly would lose only one month seniority credit whereas the report shows that she was docked for five months of seniority credit which placed her below several other employees holding the same classification. She stated that for purposes of this hearing request, they want a decision that Ms. Adderly's seniority is higher than the next person in line who would then be subject to layoff.

Chairman de la O asked for the department's position. ACA Min responded that he did not disagree with the majority of what Attorney Rind said; however, he wanted to make sure everyone was on the same page in regards to what happened in the Susanne Bermudez case. He went on to say that [for purposes of calculating seniority], the Board found that the department has to determine how long the employee was in the said classification, determine the amount of days the employee was on leave without pay and if the total leave without pay hours equals more than 173.3, the amount would be subtracted from the employee's total months of service. ACA Min further stated that there has been no judgment issued by the City Manager and the City Manager has neither accepted nor rejected the Board's findings which is why the City cannot move forward. ACA Min further stated that the difference between Ms. Bermudez and Ms. Adderly's case is Ms. Bermudez was deducted an entire month of credit when she was late for only [a few minutes at various times] but in Ms. Adderly's case, she had

substantial leaves of absence without pay during different periods (i.e. 80 hours, 160 hours, etc.)

Chairman de la O stated that regardless of whether the cases are qualitatively different because of the hours [without pay], if the City Manager approves the Board's recommendation, he wants to know if the City would follow the same rule in Ms. Adderly's case thus having no need for a hearing. ACA Min responded in the affirmative.

Chairman de la O stated that it would appear to him that the Board should grant the hearing and hopefully the City Manager would rule before the Board hears the case.

Attorney Rind stated that the leave that the department is referring to in Ms. Adderly's case has to do with family medical leave and while it is their position that it does not matter what the leave is for, she is asking for a decision on the merits today because she did not think it would be productive to wait to hold a final hearing. She went on to say that whether the City Manager agrees with the Board or not, the Board's precedent is still the Board's decision and under the law it is for the Board to decide what the Civil Service Rules mean.

Chairman de la O stated that Ms. Adderly's matter could be set for a hearing and if the City Manager rules on the Board's recommendation, both attorneys may be able to settle the matter before a hearing is held.

Attorney Rind stated that anything could happen, but she just did not see the purpose of waiting for a hearing on the merits.

Chairman de la O asked ACA Min if he objected to holding a hearing on the merits today as requested by opposing counsel. ACA Min responded that if the Board wants him to make an argument, he could but he did not think the Board was ready to hear the matter since there was no file or documents to be considered.

Chairman de la O asked if there was an obstacle to the Board hearing the merits of the case today. The Executive Secretary responded that the major obstacle would be that the Board has no information, documents, exhibits or witnesses which the Board would need in order to make a finding.

Following discussion the Board entered a motion to GRANT a grievance hearing on behalf of Andrea Adderly, concerning the application of Civil Service Rule 12.

Under discussion, Chairman de la O stated that if the Board were to rule on the merits today, neither side was not going to get results any faster because the City Manager has not issued a ruling.

Attorney Rind stated that she did not know when the City Manager would rule, but all she knows is that she has a client who is subject to layoff and she would have to wait two weeks just to get that step taken care of. She went on to say that the only thing she is suggesting is if there really is no factual dispute between the parties, why not hold a hearing on the merits today.

Chairman de la O asked ACA Min for the basis of his objection to a ruling on the merits today. ACA Min responded that he had no objection; however, his concern was that neither the department nor Civil Service are prepared to address this matter since there have been no documents filed with the Executive Secretary.

Member Kaplan asked what the Board's practice was with respect to having a hearing

on the merits at the same time making a decision as to whether there should be a hearing. Chairman de la O responded that this is the first that this issue has come up and asked Member Silverman if he ever had this issue when he Chaired the Board. Member Silverman responded in the negative.

Attorney Rind stated that if the Board grants a hearing, she would ask that it be scheduled within two weeks.

Following discussion, the motion on the floor which was to grant a hearing in the matter of Andrea Adderly, resulted as follows:

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

Aye: Scarola, Silverman and Kaplan

No: Chairperson de la O and Dames

H. TODAY'S HEARINGS

H.1 Hearings of appeal on behalf of Gerardo Quinones, Police Officer, relative to his 20-hour suspension, effective December 19, 2008.

ACA Min informed the Board that Officer Quinones asked for a continuance of his hearing because he needs time to retain an attorney and he (Min) is not ready to proceed because his main witness is on vacation; therefore, they are asking for a joint continuance.

Following discussion, the Board entered a motion to approve a JOINT CONTINUANCE as requested by the department and the employee. The motion resulted as follows:

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

Aye: Chairperson de la O, Scarola, Silverman and Kaplan

No: Dames

H.2 Grievance hearing on behalf of Suzann E. Nicholson, Customer Service Representative III, pursuant to 16.2 to examine the audit results for the Customer Service Representative III position.

ACA Min stated that he was informed that Ms. Nicholson would not be attending today's meeting due to a family emergency. He went on to say that he did not know if the Board wished to hear the other cases on the Board's docket and come back to Ms. Nicholson's case since she advised him that she might be available in the afternoon.

Following discussion, the Board entered a motion to CONTINUE the hearing and charge the continuance to the employee which resulted as follows:

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

Aye: Chairperson de la O, Dames, Scarola, Silverman and Kaplan

H.3 Hearing of appeal on behalf of Victor Cornier, Materials Specialist Supervisor, relative to his 1-Day Suspension, effective February 27, 2009.

The Board entered in the appeal hearing of Victor Cornier, the Appellant.

Barnaby Min, Assistant City Attorney, represented the Department.

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

Both attorneys made opening statements, which was followed by the calling of witnesses. All witnesses were sworn in individually. Witnesses for the Department appeared in the following order:

Alberto Rosemberg, Materials Specialist II, City of Miami, General Services Administration (GSA).

Questions were posed by Board Members Kaplan and Dames during the testimony of witness Rosemberg.

The Department rested its case.

Witnesses for the Appellant appeared in the following order:

1. Luwiz Leiva, General Laborer, City of Miami, Department of Parks and Recreation. (Mr. Leiva was a Maintenance Mechanic Helper in GSA at the time of Appellant's suspension.)

Question was posed by Member Kaplan during the testimony of witness Leiva.

2. Victor Cornier, Materials Specialist Supervisor, City of Miami, General Services Administration (Retired).

Questions were posed by Board Members Kaplan and Scarola during the testimony of witness Cornier.

The Appellant rested his case and the Board proceeded with closing arguments. Following final argument by both attorneys, the Board entered a motion to find the Appellant NOT GUILTY of all of the charges.

Under discussion, Member Dames stated that after watching the video, it appeared to him that the only person assaulted was Marilyn Killings since she was abruptly pushed aside as she came between the Appellant and Mr. Troutman in an attempt to break up the verbal altercation.

Chairman de la O stated that he could not vote in favor of the motion because the Appellant violated Civil Service Rule 14.2(i) by acting in a manner that was wantonly offensive in conduct and language. He went on to say that he read every witness statement cited in the memo (the Workplace Violence report prepared by the Labor Relations Specialist) so unless the City's Workplace Violence Policy is going to indicate that inciting violence is a violation he cannot find the Appellant guilty of this charge. Chairman de la O further stated that there was not a threat of violence demonstrated by the Appellant nor did he view his conduct as being a threat of violence; however, he does believe that a person can threaten someone through their conduct, but that is not what he saw in this case. He stated that all the witnesses did agree that the Appellant confronted Mr. Troutman, which he felt was reckless, conduct unbecoming a supervisor, completely unprofessional and nothing to be proud of in the way the Appellant handled himself even if the Board acquits him because he was completely in the wrong. Chairman de la O went on to say that Mr. Troutman may have been wrong, but the Appellant was not right by coming from behind the counter (to confront Mr. Troutman) rather the Appellant should have picked up the telephone and called his supervisor, Mr.

Troutman's supervisor, the police, etc. He further stated that he did not think the Appellant violated the Workplace Violence Policy and not because it was his personal opinion, but he read the policy and has to apply it as it is written. Chairman de la O stated that if the City puts a policy in place that says there has to be an act or threat of violence, then that has to be enforced; and the department could also include in the policy the inciting of violence as a violation since that certainly was what the Appellant did when he threatened Mr. Troutman to hit him, which he felt was unbelievable since he was the supervisor. He stated that while he did not think the Appellant was not guilty of violating Civil Service 14.2(e) 2 and the Workplace Violence Policy, he did believe he was guilty of violating Civil Service Rule 14.2(i).

Member Scarola stated that whenever an employee attempts to strike another employee which would lead that employee to act so as not to get struck or defend himself by striking the aggressor first; in such cases, the City cited both employees as being the aggressor. He went on to say that however, in one case involving workplace violence, the Board found that an employee does have the right to protect himself because it would be unreasonable to think that one employee was going to allow another employee come at him with a bat (for example) and not protect himself from bodily harm. Member Scarola further stated that in this case, the supervisor should be held to a higher standard and he could personally say as a supervisor himself, he would have never acted in the manner the Appellant did. He stated that the Appellant should have remained behind the counter, advised Mr. Troutman that his request was not going to be honored, asked him to leave and/or called Mr. Troutman's supervisor and his supervisor concerning the incident. Member Scarola went on to say that he was totally appalled by the Appellant's actions as a supervisor and found it very disturbing to know that any supervisor would act in that manner especially when there were several avenues the Appellant could have taken to prevent the situation from escalating. He further stated that the Appellant's actions were almost as if he was inciting a riot because once he came from behind the counter, he made it that much easier for Mr. Troutman to carry out the threat of hitting him which was not the right thing to do.

Following discussion, the motion on the floor, which is to find the Appellant NOT GUILTY of all of the charges resulted as follows:

Motion by Member Silverman, seconded by Member Kaplan, that this matter be APPROVED. FAILED by the following vote.

Aye: Silverman and Kaplan

No: Chairperson de la O, Dames and Scarola

The motion having failed, the Board entered a motion to find the Appellant NOT GUILTY of Charge #1, Civil Service Rule 14.2(e)(2), A serious breach of proper discipline, which resulted as follows:

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

Aye: Chairperson de la O, Dames, Scarola, Silverman and Kaplan

The Board entered a motion to find the Appellant GUILTY of Charge #2, Civil Service Rule 14.2(i) - Has been wantonly offensive in conduct or language towards another...". The motion resulted as follows:

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

Aye: Chairperson de la O, Dames and Scarola

No: Silverman and Kaplan

The Board entered a motion to find the Appellant NOT GUILTY of Charge #3 - Administrative Policy Manual 1-99, Workplace Violence, which resulted as follows:

Motion by Member Silverman, seconded by Member Kaplan, that this matter be APPROVED. PASSED by the following vote.

Aye: Chairperson de la O, Dames, Scarola, Silverman and Kaplan

The Appellant having been found GUILTY of one charge, the Board proceeded to the Penalty Phase of the hearing at which time the Chairman reviewed the Appellant's personnel file, which revealed he had 5 letters of commendation and no disciplinary actions.

The attorneys presented argument but offered no witness testimony. Following discussion, the Board entered a motion to recommend to the City Manager that the Appellant receive a REPRIMAND ONLY in lieu of the 8-hour suspension imposed by the Department. The motion resulted as follows:

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

Aye: Chairperson de la O, Dames, Scarola, Silverman and Kaplan

H.4

Hearing of appeal on behalf of Carlos Antunez, Police Officer, relative to his 40-hour suspension, effective June 1, 2009.

Attorney Rind asked that her client's case be continued. Member Silverman asked for the continuance history of Officer Antunez' hearing. The Executive Secretary responded that this was the first continuance.

Following discussion, the Board entered a motion to CONTINUE the hearing and charge the continuance to the employee which resulted as follows:

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

Aye: Chairperson de la O, Dames, Scarola, Silverman and Kaplan

ADJOURNMENT:

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

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

Aye: Chairperson de la O, Dames, Scarola, Silverman and Kaplan

The meeting adjourned at 12:33 p.m. A break was taken at 11:00-11:11 a.m.

SIGNATURE:

Miguel M. de la O, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary