

City of Miami

*City Hall
3500 Pan American Drive
Miami, FL 33133
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Meeting Minutes

Tuesday, March 9, 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 10:05 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

A. APPROVING THE MINUTES OF:

Regular Meeting of February 23, 2010.

Motion by Chief Examiner Scarola, seconded by Member Dames, to APPROVE.

PASSED by the following vote.

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

B. PERSONNEL MATTERS

- B.1** A copy of a letter from Elsa Jaramillo-Velez, Interim Director, Department of Employee Relations, notifying Ulisses Garcia, who was laid off as a Sanitation Inspector, of his placement into Plans Processing Aide, in accordance with AFSCME Contract, Section 17.2. (NOTIFICATION)

NOTIFIED

- B.2** A copy of a letter from Elsa Jaramillo-Velez, Interim Director, Department of Employee Relations, notifying Willie Timmons, who was laid off as a Sanitation Inspector, of his placement into Legal Services Aide, in accordance with AFSCME Contract, Section 17.2. (NOTIFICATION)

NOTIFIED

- B.3** A copy of a memorandum from Elsa Jaramillo-Velez, Interim Director, notifying Marissa Portillo, Communications Operator, of her return to former classification. Marissa Portillo is being rolled back to Communications Assistant. (NOTIFICATION)

NOTIFIED

- B.4** A copy of a letter from Elsa Jaramillo-Velez, Interim Director, Department of Employee Relations, notifying Larry Ellis, AEO I, and Donaldson Pierre, AEO I, of a departmental transfer/reassignment, pursuant to Civil Service Rule 11. (NOTIFICATION)

NOTIFIED

- B.5** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Frank D. Rodriguez, Building Inspector I, of his placement in a temporary position. (NOTIFICATION)

NOTIFIED

- B.6** Copy of a letter from Barbara L. Pruitt, Director, Department of Solid Waste, notifying Sedrick Davis, Waste Collector II, of his 5-day suspension, effective February 25, 2010. (NOTIFICATION)
NOTIFIED
- B.7** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Shannon Mills, Service Center Aide, of her placement in a temp. position. (NOTIFICATION)
NOTIFIED
- B.8** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Ana M. Valdeon, Sanitation Inspector, of her placement in a temp. position. (NOTIFICATION)
NOTIFIED
- B.9** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Alejandro Pascual, Building Inspector I, of his placement in a temp. position. (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 placement in a temp. position. (NOTIFICATION)
NOTIFIED
- B.11** A copy of a letter from Pedro G. Hernandez, P.E., City Manager, notifying Jose M. Roman, Grounds Tender, of his placement in a temp. position. (NOTIFICATION)
NOTIFIED

C. MILITARY LEAVES OF ABSENCE

D. DISCIPLINARY MATTERS

- D.1** Copy of a letter from Chief Miguel Exposito, Director, Department of Police, notifying Eddy Rodriguez Jr., Police Officer, of his 40-hour forfeiture, effective February 4, 2010. (NOTIFICATION)
NOTIFIED
- D.2** Copy of a letter from Chief Miguel Exposito, Director, Department of Police, notifying Carlos Mendez, Police Officer, of his 10-hour suspension, effective March 2, 2010. (NOTIFICATION)
NOTIFIED

- D.3 Copy of a letter from Chief Miguel Exposito, Director, Department of Police, notifying Deborah Hudson, Typist Clerk III, of her 16-hour suspension, effective February 25, 2010. (NOTIFICATION)

NOTIFIED

- D.4 A copy of a letter from Chief Miguel A. Exposito, Director, Department of Police, notifying Edmond Croughwell, Police Lieutenant, of his 10-hour suspension, effective February 13, 2010. (NOTIFICATION)

NOTIFIED

- D.5 A copy of a letter from Chief Miguel A. Exposito, Director, Department of Police, notifying Luis Hernandez, Police Officer, of his 40-hour suspension, effective February 28, 2010. (NOTIFICATION)

NOTIFIED

- D.6 A copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Nadia Jerry, Communications Assistant, of her 16-hour suspension, effective February 20, 2010. (NOTIFICATION)

NOTIFIED

- D.7 Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Michelangelo Rojas, Police Officer, of his 10-hour forfeiture, effective February 23, 2010. (NOTIFICATION)

NOTIFIED

E. GENERAL ITEMS

- E.1 Response from Osnat K. Rind, Attorney, on behalf of Fignole P. Lubin, Police Officer, concerning, the "Motion for Partial Summary Judgment" filed by Barnaby Min, Assistant City Attorney. (DISCUSSION)

Assistant City Attorney (ACA) Min stated that the basis of the department's Motion is that at the time the reprimand was issued to Officer Lubin, he indicated that he agreed with the facts as stated in the reprimand. He went on to say that at the time Officer Lubin appealed the reprimand to the Civil Service Board, he again indicated that he agreed with the facts as stated in the reprimand and in the comments section of the appeal form Officer Lubin wrote, "I agree with the fact that the incident took place in the manner stated; however, I did not intend to discharge my firearm; therefore I disagree with the penalty. As a result, I am requesting a hearing regarding said penalty." ACA Min further stated that based upon Officer Lubin's admissions that he agreed with the facts as stated in the reprimand, it is the department's position that there are no facts to dispute and the sole issue for the Board would be to determine the appropriate discipline to impose. He stated that Civil Service Board proceedings are two-prong; the first prong being: Did [the employee] violate the Civil Service Rules, and if he did, the Board would move to the second prong to determine the appropriate discipline. He further stated that it is the department's position that the Motion for Summary Judgment should be granted on the first prong because there are no facts to dispute since Officer Lubin indicated that

he was in violation of the rules by unlawfully discharging his firearm and hold a hearing on the second prong which is to decide the appropriate penalty.

Chairman de la O asked Attorney Rind for her position on the department's Motion. Attorney Rind responded that Officer Lubin never agreed that he was in violation of any rules; all he said was he agreed with the facts as stated in the reprimand. She went on to say that the question before the Board is whether Officer Lubin was careless in discharging his firearm. Attorney Rind further stated that the person seeking a Motion for Summary Judgment has a very onerous burden and must prove that the facts as alleged in the reprimand show conclusively to the Board that there was in essence carelessness or negligence on the part of Officer Lubin. She stated that the facts as alleged in the reprimand do not rise to the level of carelessness or negligence so they feel the Motion for Summary Judgment should be denied and the Board should have a hearing.

Chairman de la O stated that he agreed with Attorney Rind that what Officer Lubin agreed to were the facts and not the violation. He went on to say that a person can agree to the facts, but not agree that they violated anything. Chairman de la O further stated that the charges cited in the disciplinary letter would require a finding by the Board so he did not see how ACA Min's Motion could be granted.

Member Silverman stated that the Civil Service Rules do not provide for Summary Judgment, discovery, depositions, Motions in Limine, etc. and this matter before the Board is a classic reason why the Rules do not allow for such. He went on to say that the facts were presented and there was argument about what the facts meant, so he thinks a hearing should be granted. Member Silverman further stated that this is a quasi-judicial Board the same as arbitrations are considered quasi-judicial and there is no provision for discovery in arbitration cases. He stated there was argument of who said what to who and whether that means anything which is why the Board has hearings so that the witnesses can testify and the Board can make a decision.

Following discussion, the Board entered a motion to DENY the department's Motion for Summary Judgment which resulted as follows:

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

The appeal hearing on behalf of Officer Lubin will be heard as scheduled.

E.2

Copy of Findings of Fact concerning the appeal hearing of Victor Cornier, Materials Specialist Supervisor, relative to his 1-Day Suspension, effective February 27, 2009. (DISCUSSION)

Member Kaplan stated that in the Findings of Fact and Conclusions of Law which is submitted for the Board's vote, he had seen references to what the Board did without any reference as to how the Board voted on the matter. He asked if the Findings of Fact could include the Board's vote in the future.

Cynthia A. Everett, Special Counsel to the Board, stated that the Executive Secretary keeps track of the Board's votes but she had no problem including the votes in the Findings of Fact.

Member Scarola stated that the votes were not recorded in the findings if there was a (3-2) vote, but if there was a tie vote, it was included in the findings.

The Executive Secretary stated there was a time when the Board's vote was included in the findings, but that was when there was a tie vote or no majority decision from the

Board; but if it is the Board's pleasure, it can be included in the findings.

Chairman de la O asked if any Board Member had an objection to including the vote in the Findings of Fact. Hearing none, the Chairman directed staff to include the votes of the Members in future Findings.

Following discussion, the Board entered a motion to APPROVE the Findings of Fact which 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, Member Dames, Chief Examiner Scarola, Member Silverman and Member Kaplan

E.3

Notice of a "Request for Continuance," from Diana Vizcaino, Assistant City Attorney, on behalf of the Department, relative to the appeal hearing of Jeffrey Locke, Police Lieutenant, concerning his 20-hour suspension, effective February 25, 2009. (DISCUSSION)
Hearing of appeal is scheduled for today.

Attorney Min stated that he was standing in for both Attorneys Diana Vizcaino and Teri Guttman-Valdes concerning the continuance request. He went on to say that Attorney Vizcaino asked that the hearing be continued due to the unavailability of two of her witnesses and Attorney Guttman-Valdes advised that she had no objection to the continuance.

Chairman de la O called for a motion on the continuance request and stated that he would abstain. The motion resulted as follows:

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

Aye: Member Dames, Chief Examiner Scarola, Member Silverman and Member Kaplan

Abstain: Chairperson de la O

E.4

Notice of a "Motion for Continuance," filed by Kathleen M. Phillips, Attorney, on behalf of Maurice Brighaupt, Fire Fighter, relative to his 24-hour suspension, effective November 19, 2008. (DISCUSSION)

Hearing of appeal is scheduled for today.

Stella S. Chu of Phillips & Richard P.A., Attorney at Law on behalf of Maurice Brighaupt, stated that Attorney Kathleen Phillips was recently retained as counsel for Fire Fighter Maurice Brighaupt; however, she cannot be present today due to a conflict and is therefore requesting the hearing be continued.

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

Following discussion, the Board entered a motion to APPROVE the employee's request for a continuance of his appeal hearing which 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, Member Dames, Chief Examiner Scarola, Member Silverman and Member Kaplan

E.5

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)

Deferred from the meeting of February 23, 2010.

Attorney Min stated that Items E5 through E8 were deferred from the February 23, 2010 meeting and at that time he related to the Board that the department had no substantive changes, but only grammatical changes and also that Officer Jones expressed no objection to the findings.

Member Scarola stated that at the last meeting, he asked that these items be deferred because he wanted to make changes to the findings; however, after his review, he determined that the findings should remain as written with no changes.

Following discussion, the Board entered a motion to APPROVE the Findings of Fact (Items E5 - E8) 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, Member Dames, Chief Examiner Scarola, Member Silverman and Member Kaplan

E.6

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 from the meeting of February 23, 2010.

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

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

E.7

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 from the meeting of February 23, 2010.

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

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

E.8

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 from the meeting of February 23, 2010.

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

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

F. REPORTS

F.1 Pending Hearings as of March 9, 2010. (NOTIFICATION)

PRESENTED

G. REQUESTS FOR HEARINGS**H. TODAY'S HEARINGS**

H.1 Hearing of appeal on behalf of Orlando Borges, Police Officer, relative to his 20-hour suspension, effective June 7, 2006.

Ronald J. Cohen, Attorney at Law, moved for a motion to continue the hearing of Officer Orlando Borges for the sole purpose of allowing time to withdraw as counsel for Officer Borges and to send direct notice to him as to when the hearing would be held so that he can attend if he chooses to do so.

Chairman de la O asked opposing counsel if he had an objection to the continuance. Attorney Min responded in the affirmative. He went on to say that he thinks the continuance request should be denied on the basis that this is a 6-year old case for which Attorney Cohen served as counsel during this entire time, and that this case has been continued six times which include four continuances granted on behalf of the employee and two charged to the Board.

Member Silverman asked Attorney Min if he was asking the Board to require Attorney Cohen to represent an employee that he does not want to represent or an employee who does not want Attorney Cohen's representation. Attorney Min responded that he had no objection to Attorney Cohen's withdrawal from the case, but he did have an objection to the case being continued especially since it has been continued numerous times for the past 6 years.

Attorney Cohen stated that he found it ironic and troubling that the department was concerned about timeliness of this case because the investigation began in 1998 and a statement was not taken until approximately 2005 and by that time the department had already misplaced the red-line memorandum that Officer Borges wrote to his sergeant.

Following discussion, the Board entered a motion to grant Attorney Cohen's request for a withdrawal as counsel in the matter of Officer Orlando Borges which 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, Member Dames, Chief Examiner Scarola, Member Silverman and Member Kaplan

Following the Board's approved motion regarding Attorney Cohen's withdrawal from Officer Borges' case, the Board entered a motion to CONTINUE Officer Borges' appeal hearing.

Under discussion, Member Scarola stated that he felt the Board should grant at least one more continuance because in doing so, the employee would know that he is on his own. He went on to say that this is an old case and it is obvious that something is going on and the Board needs to get to the bottom of it. Member Scarola further stated that as

far as he could remember, Officer Borges worked the midnight shift, but he was not sure about his current shift, so there could have been a problem of contacting the officer.

Member Kaplan asked Attorney Cohen if Officer Borges was aware of the two motions he made today. Attorney Cohen responded in the negative.

Chairman de la O asked Attorney Cohen if Officer Borges was made aware that he would be moving to withdraw as his counsel. Attorney Cohen responded that he informed Officer Borges that he would move to withdraw as his counsel if he was not present at today's meeting. He went on to say that he could not offer more than what he has already said on this matter, but he would say that he notified Officer Borges of the issues concerning his case.

Chairman de la O stated that he just needs to know from Attorney Cohen if Officer Borges was notified that he would be withdrawing as his counsel because otherwise the officer needs to be present if he has an objection. Attorney Cohen responded that Officer Borges was notified.

Chairman de la O stated that he thinks the Board should reconsider the motion.

Special Counsel Everett stated that she understands there may be an issue between Attorney Cohen and his client; however, her concern is if the client was noticed to appear for his hearing today and it seems as if Attorney Cohen had expected Officer Borges not to appear, the Board might need to consider whether this is a tactic perhaps to further delay these proceedings as opposed to an issue between counsel and his client. She went on to say that if Officer Borges does not know the substance of the motions or what is going on, how does the Board know that he was ever notified by counsel.

Chairman de la O stated that his only concern is that Officer Borges has a chance to be heard if he objects to Attorney Cohen's withdrawal as his attorney. He went on to say that it may be meaningless that he objects, but he thinks the officer should be heard if he has an objection.

Attorney Cohen stated that they informed Officer Borges that if they did not hear from him within a particular period of time, they would move to withdraw as his attorneys.

Member Kaplan asked if Officer Borges' suspension was carried out. Attorney Cohen responded in the affirmative. Member Kaplan responded that being the case, this would not be a matter of great public interest.

Member Silverman stated that the interest is 20 hours worth of money [that the officer lost upon serving the suspension.]

Member Kaplan stated that being the case, he feels Officer Borges should express and demonstrate his own interest in the case with regards to the overall issue of 20 hours [of pay being restored back to him] and the only thing the Board is discussing today is whether the hearing should be postponed and should counsel be allowed to withdraw from the case, which are minor issues.

Chairman de la O asked if there was any other discussion. Attorney Min responded in the affirmative. He asked if the Board would consider amending its motion to include that this would be the last continuance granted on behalf of the employee. Chairman de la O responded that he believed Member Scarola had already expressed his sentiments on the record concerning the continuance and that he would rather not do as Attorney Min suggested especially since the Board does not know what might happen the next

time. He went on to say that he feels that continuances need to be considered as they come about so he thinks Attorney Min could assume that other Board Members agree with Member Scarola that this matter needs to come to fruition.

Following discussion, the motion on the floor to grant a continuance of Officer Borges' hearing and charge the continuance to the employee 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, Member Dames, Chief Examiner Scarola, Member Silverman and Member Kaplan

H.2

Grievance Hearing on behalf of Andrea Adderly, Code Enforcement Inspector, alleging a violation of Civil Service Rules 12.1 regarding her layoff.

The Board entered into the scheduled grievance hearing of Andrea Adderly, the Grievant.

Osnat K. Rind represented the Grievant.

Barnaby Min, Assistant City Attorney, represented the Department.

Opening statements were waived by both attorneys.

The Board went directly to closing arguments since there would be no witness testimony and both attorneys stipulated to the facts and evidence.

During closing arguments, Member Dames asked how the layoff scores were calculated. Attorney Rind responded that the department determined the number of months her client served in the classification of Code Enforcement Inspector and deducted .1 of seniority credit for every month she had unpaid leave. She went on to say that her client had 26 months of service which equated to a layoff score of 2.6 ($26 \times .1 = 2.6$) and .5 credits were deducted from her total score because the department documented 5 months for which she was without pay thereby decreasing her score to 2.1 ($2.6 - .5 = 2.1$); however, according to the Board's recommendation on how layoff scores should be calculated, she should have a score of 2.5.

Chairman de la O asked Attorney Min for his position on the matter. Attorney Min responded that he agreed with the majority of what Attorney Rind stated; however, the department did not want the Board to think its ruling made in the Suzanne Bermudez case was being ignored rather the problem is the case is not final until the City Manager has issued a decision. He went on to say that the former City Manager was about to rule on the Board's recommendation, but there was a change in administration so it is still up in the air as to how administration wants to handle the Board's recommendation. Attorney Min further stated that in response to Member Dames' question of how seniority is calculated, Rule 12.1(c) states that seniority would be credited for each full month of employment so if there is not a full month of employment the employee does not receive credit for that month. Attorney Min went on to say that the Grievant had 21 full months of employment as a Code Enforcement Inspector [after deducting .1 credit for each of the 5 months for which her payroll reports reflected leave without pay.] He further stated that he did not agree with the report introduced into evidence by Attorney Rind and provided argument in support of his position.

Chairman de la O stated that he was sure Attorney Min would agree that the Board needs a bright line rule with regards to calculating seniority credit because it cannot take each situation as they occur and just have rulings on whether there was contiguous time

missed and how much of it was missed. He went on to say that the rule needs to be the same regardless of whether the department was calculating seniority credit for the Grievant or Ms. Bermudez.

Attorney Min stated that he agreed with the Chairman's statement, which is the reason the department asked during the Suzanne Bermudez case for the definition of a full month. He went on to say that it is the department's position that if an employee has any leave without pay, during a month, it is not considered a full month and they receive no credit for that month; but, if the Board's decision is different as far as what the definition of a full month is, they would be happy to listen to that recommendation.

Chairman de la O stated that the way Attorney Rind is calculating a full month is until the employee reaches 173.3 hours of unpaid leave, that employee would not lose a month of seniority. He went on to say that Rule 12.1(c) is written as to how an employee receives a month's credit but not how the employee loses a month's credit, so it would appear to him that any time from 0 to 173.3 hours without pay, the employee should lose a month's credit [of .1]. Chairman de la O further stated that if the employee went past the 173.3 mark, that employee would lose two months of credit [.2], but would not lose the third month unless the employee's leave without pay totalled more than 346.6, and so on.

Attorney Rind stated that it was not her calculation, but the calculation the Board approved during the Suzanne Bermudez case, which states in the Findings of Fact, "The Board interprets the seniority provision, 12.1(c), to mean that in calculating seniority credits the City must first calculate the total number of months that the employee has worked in the classification, which will be the number of seniority credits. The City must then calculate the total sum of all unpaid leave time taken by the employee while employed in the classification. The City may then deduct one seniority credit (.1) from the total number of seniority credits when the total sum of unpaid leave time exceeds one month of employment (or 173.3 hours); the City may then deduct two seniority credits from the total number of seniority credits when the total sum of unpaid leave time exceeds two month of employment (or 346.6 hours), and so on." She went on to say that she did not think this matter was argued at the Suzanne Bermudez case, but she based her calculations on what the Board determined.

Member Silverman stated that he understands the Board is waiting for the City Manager to make a decision in the Suzanne Bermudez case, but in the meantime what has happened to the employee? Attorney Min responded that Ms. Bermudez was [placed on a Layoff Register and] rolled back to her former classification. He went on to say that Ms. Adderly was laid off and then hired into a temporary position.

Member Silverman asked what happens if the City Manager does not accept the Board's recommendation in the Bermudez case. Attorney Rind responded that she thinks it is a misnomer to say the decision of the Board is a recommendation because the Board has the ability under the case law to interpret its own rules and that it is the remedy she would guess theoretically is the recommendation to the Board, which is to place Ms. Adderly back into her position of Code Enforcement Inspector. She went on to say if that decision is made, the employee then has the right to go to court and sue for violation of the ordinance. Attorney Rind further stated the fact that the City Manager has not agreed or disagreed is irrelevant to the Board's determination because the Board has already said what the Board means.

Chairman de la O stated that the employee would cross that bridge when the City Manager makes a decision.

Both attorneys rested their cases.

Following final argument, the Board entered a motion to recommend to the City Manager that the Grievant's seniority score be increased from 2.1 to 2.5 consistent with the Board's decision in the Suzanne Bermudez case, which reads in part, "....The City may then deduct one seniority credit from the total number of seniority credits when the total sum of unpaid leave time exceeds one month of employment or 173.3 hours.", which was not done in this case and the Board must conform with its prior ruling.

Under discussion, Member Dames asked Member Kaplan if he would be agreeable to amending his motion to say that the score should increase from 2.1 to 2.4. Member Kaplan stated that he thought the difference was 2.1 or 2.5 and asked the Chairman for guidance.

Chairman de la O stated that it depends because based upon the Board's decision in the Bermudez case, the Grievant's seniority credit would increase from 2.1 to 2.5, but he personally felt that [score] was incorrect based upon his reading of Rule 12.1 which says to him that the employee is supposed to be earning months of credit and not that months are deducted; therefore, he thinks that once the employee crosses the first month into a second month where there is unpaid leave of [173.4 or greater], the employee would lose credit for that month. He went on to say that is the way he would have interpreted the rule, but apparently that argument was neither made or decided when the Board considered the matter. Chairman de la O further stated that under his calculation, the Grievant would have a total seniority credit score of 2.3, but under the Bermudez calculation, it would be 2.4.

Following discussion, Member Kaplan amended his motion to recommend that the Grievant's seniority score be increased from 2.1 to 2.4 consistent with the Board's decision in the Suzanne Bermudez case.

Attorney Min suggested that Member Kaplan's motion be amended to reflect that the calculation be made consistent with the Suzanne Bermudez case in lieu of stating the amount of seniority credit in the event there has to be changes. Member Kaplan responded that he had no problem amending his motion.

Member Silverman stated that he thinks the previous decision made by the Board in the Bermudez case was incorrect; however, he did not think every time the Board changed personnel that the current Board should review a decision made by a previous Board and that he would vote in favor of the motion because he thinks the Board needs to be consistent and not change the rules each time there is a new Board Member.

Following discussion, the motion on the floor to recommend to the City Manager that the Grievant's seniority credit be calculated consistent with the Board's decision in the Suzanne Bermudez case 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, Member Dames, Chief Examiner Scarola, Member Silverman and Member Kaplan

H.3

Hearing of appeal on behalf of Maurice Brighthaupt, Fire Fighter, relative to his 24-hour suspension, effective November 19, 2008.

The Board took no action on this case because a CONTINUANCE was granted at today's hearing.

CONTINUED

H.4

Hearing of appeal on behalf of Jeffrey Locke, Police Lieutenant, relative to his 20-hour suspension, effective February 25, 2009.

The Board took no action on this case because a CONTINUANCE was granted at today's meeting.

CONTINUED

ADJOURNMENT:

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

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

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

The meeting adjourned at 10:50 a.m.

SIGNATURE:

Miguel M. de la O, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary