

City of Miami

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



Meeting Minutes

Tuesday, June 29, 2010

10:00 AM

Commission Chambers

Civil Service Board

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

PLEDGE OF ALLEGIANCE

The meeting was called to order at 10:13 a.m. The roll call for Board Members at the commencement of the meeting was as follows:

Present: Chairperson de la O, Member Dames, Member Silverman and Member Moy

Absent: Chief Examiner Kaplan

A. APPROVING THE MINUTES OF:

Regular Meeting of June 1, 2010.

Motion by Member Silverman, seconded by Member Dames, to APPROVE.

PASSED by the following vote.

Aye: Silverman, de la O, Dames and Moy

Absent: Kaplan

B. PERSONNEL MATTERS

- B.1** Copy of a letter from Carlos A. Migoya, City Manager, notifying Humberto Mijares, of his reinstatement to his position as a Building Inspector III, effective June 3, 2010. (NOTIFICATION)

NOTIFIED

- B.2** Copy of a letter from Carlos Migoya, City Manager, notifying Milton Mcfarquhar, Painter, of his layoff, effective June 4, 2010 and his name will be placed on the current eligible register for his classification. (NOTIFICATION)

NOTIFIED

- B.3** Copy of a memorandum from Michelle Pina, Director, Department of Employee Relations, to Guillermo Borges, Code Enforcement Inspector Specialist, confirming his voluntary return to his former classification of Code Enforcement Inspector. (NOTIFICATION)

NOTIFIED

- B.4** Copy of a memorandum from Carlos Migoya, City Manager notifying Alvaro Gato, Painter, of his transfer/reassignment from GSA to Miami Police Department, effective June 7, 2010. (NOTIFICATION)

NOTIFIED

C. MILITARY LEAVES OF ABSENCE

- C.1** C.T. Gregoire, Police Officer, requests active duty military leave without pay from May 1, 2010 through December 31, 2010. Copy of Orders Submitted. (DISCUSSION)

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

Aye: Silverman, de la O, Dames and Moy

Absent: Kaplan

D. DISCIPLINARY MATTERS

- D.1** Copy of a Judgment from the City Manager, concerning the Investigation Hearing of Jorge Martinez-Esteve, Project Manager, rejecting the recommendations of the Civil Service Board. (NOTIFICATION)
- NOTIFIED**
- D.2** Copy of a Judgment from the City Manager concerning the Investigation Hearing of Andrea Adderly, Code Enforcement Inspector, rejecting the recommendations of the Civil Service Board. (NOTIFICATION)
- NOTIFIED**
- D.3** Copy of a letter from Fredrick Hobson, Director, Department of Solid Waste, notifying Stephanas Nolton, Waste Collector, of a 1-day suspension, effective June 7, 2010. (NOTIFICATION)
- NOTIFIED**
- D.4** Copy of a letter from Chief Miguel Exposito, Director, Department of Police, notifying Johnny Brutus, Police Officer, of his 20-hour suspension, effective June 20, 2010. (NOTIFICATION)
- NOTIFIED**

E. GENERAL ITEMS

- E.1** Notice of a withdrawal from Orlando Borges, Police Officer, concerning his Appeal hearing relative to his 20-hour suspension, effective June 7, 2006. (NOTIFICATION)
Case will be withdrawn and removed from the Board's docket.
- NOTIFIED**
- E.2** Notice of a withdrawal from Vincent James, Heavy Equipment Specialist, concerning his Appeal hearing relative to his 3-day suspension, effective September 11, 2009. (NOTIFICATION)
Case will be withdrawn and removed from the Board's docket.
- NOTIFIED**
- E.3** Copy of a Settlement Agreement between Bernard Troutman, Electrical Lineworker and the City of Miami, relative to his 1-day suspension, effective February 27, 2009 and a Notice of Withdrawal of Appeal hearing from Osnat K.

Rind, Attorney, on behalf of her client. (NOTIFICATION)

Case will be closed and removed from Board's docket

NOTIFIED

E.4

Copy of a Settlement Agreement between the City of Miami and Cynthia Bennett, Payroll Aide, concerning the Grievance hearing pursuant to Rule 16.2, alleging a violation of Civil Service Rule 8.10(b) and a Notice of Withdrawal of Grievance hearing from Osnat K. Rind, Attorney, on behalf of her client. (NOTIFICATION)

Case will be closed and removed from Board's docket.

NOTIFIED

E.5

Notice of a Request for a continuance from Michael Pancier, Attorney, on behalf of Osmel Martinez, Maintenance Mechanic Supervisor, relative to his Appeal hearing, concerning his 2-day suspension, effective January 26, 2010. Barnaby Min, Assistant City Attorney, expressed no objection to the continuance. Hearing of appeal is scheduled for August 10, 2010. (DISCUSSION)

Hearing that the department's attorney had no objection to the employee's request for a continuance, the Board entered a motion to GRANT the continuance which resulted as follows:

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

Aye: Silverman, de la O, Dames and Moy

Absent: Kaplan

E.6

Notice of a Request for a continuance from Michael Pancier, Attorney, on behalf of Osmel Martinez, Maintenance Mechanic Supervisor, relative to his Appeal hearing, concerning his dismissal, effective February 17, 2010. Barnaby Min, Assistant City Attorney, expressed no objection to the continuance. Hearing of appeal is scheduled for August 10, 2010. (DISCUSSION)

Assistant City Attorney (ACA) Min informed the Board that Agenda Items E.5, E.6 and G.2 are all related so he did not know if the Board wished to address these matters at the same time.

Chairman de la O asked the employee's attorney what were his grounds for the Motion. Michael Pancier, Attorney at Law on behalf of Osmel Martinez, responded that he requested appeal hearings relative to Mr. Martinez' 2-day suspension and termination and that he also requested a Whistle-blower hearing so in an effort to expedite things, he asked to consolidate the matters to which the department's attorney expressed no objection. He went on to say that he requested a continuance because Mr. Martinez will be on vacation the week of August 9, 2010 and he wants to be adequately prepared since this is a quasi-judicial trial.

ACA Min stated that he had no objection to the continuance request; however, his only concern was that Attorney Pancier would not execute the Waiver of Pay and

Emoluments form that Civil Service staff sent him prior to today. He went on to say that this waiver would affect any backpay due the employee since he requested to delay his hearing.

Chairman de la O stated that there was going to be a waiver on the record since the employee requested a continuance. ACA Min responded that he believed that Attorney Pancier did not want to execute the waiver. Chairman de la O responded that Attorney Pancier was "de facto" waiving any emoluments.

Attorney Pancier stated that the way the waiver (of pay and emoluments form) was worded, it would have Mr. Martinez execute a full release of any and all claims for compensation so he could not have his client sign the waiver as worded. He went on to say that he would like the Board to know that in addition to Mr. Martinez' administrative claims, he has a pending charge of discrimination filed with the U.S. Equal Employment Opportunity Commission.

Chairman de la O stated that with regards to Item G.2, he wanted to know if he was correct in understanding that the department's attorney had no objection to Mr. Martinez' request for a Whistle-blower hearing. ACA Min responded in the affirmative.

For clarification purposes, Chairman de la O asked Attorney Pancier if he was requesting to continue Mr. Martinez's two matters that appear under Agenda Items E.5 (2-Day Suspension), E.6 (Dismissal from Employment), and to reschedule these two matters on the same day as Mr. Martinez' Whistle-blower complaint (Item G.2). Attorney Pancier responded that since it would be the same evidence for each of the cases, he was asking that these matters be consolidated and heard on the same day.

Chairman de la O asked ACA Min if he had an objection to consolidating the cases. ACA Min responded in the negative.

Following discussion, the Board entered a motion to GRANT the employee's request for a continuance of Agenda Items E.5 (2-day Suspension), E.6 (Dismissal from employment), and to reschedule Mr. Martinez' appeal hearings (Items E.5 and E.6) on the same day that Mr. Martinez' Whistle-blower complaint (Item G.2) is scheduled. The motion resulted as follows:

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

Aye: Silverman, de la O, Dames and Moy

Absent: Kaplan

E.7

Copy of a "Motion to Dismiss Discipline," filed by David Chonin, Attorney on behalf of Raul Cabrera and a copy of a "Response to the Motion to Dismiss Discipline and Cross-Motion to Dismiss Appeal," filed by Barnaby Min, on behalf of the City of Miami, relative to Raul Cabrera's 160-hour suspension, effective April 21, 2010. (DISCUSSION)

David Chonin, Attorney on behalf of Officer Raul Cabrera, stated that he was before the Board on a Motion to Dismiss Discipline that relates to a 160-hour suspension which his client was ordered to serve. He went on to say that the basis of the Motion is the City violated Florida Statute 112.532 which states in part, "Except as provided in this subsection, disciplinary action, suspension, demotion, or dismissal may not be undertaken by an agency against a law enforcement officer or correctional officer for any act, omission, or other allegation of misconduct, if the investigation of the allegation is not completed within 180 days after the date the agency receives notice of the

allegation by a person authorized by the agency to initiate an investigation of the misconduct." Attorney Chonin further stated that the relevancy is there was a criminal prosecution involving Officer Cabrera that ended on April 7, 2008, but began running again on April 8, 2008. Attorney Chonin further stated that the 180-day period beginning April 8, 2008 would have ended on October 4, 2008; however, Officer Cabrera did not receive written notice of the department's intent to proceed with disciplinary action until January 17, 2009. He stated that the time Officer Cabrera was notified of the department's intent to issue discipline was beyond the 180-day period. Attorney Chonin went on to say that the department violated the 180-day rule cited in the Statute; therefore, this discipline should be dismissed.

Chairman de la O stated that as he understands the department's argument, the department's attorney is saying there was a waiver because the employee agreed to the facts and signed off on the suspension letter. He went on to say that it is also the department's argument that the Board does not have jurisdiction because the employee needs to file a Motion for Injunctive Relief. Chairman de la O asked the department's attorney if he was correct in stating his position on this matter. ACA Min responded in the affirmative.

After hearing the Attorneys' arguments in support of their motions and questions from Board Members regarding the Motions submitted by the employee and the department, the Board entered a motion to GRANT the employee's "Motion to Dismiss Discipline" which resulted as follows:

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

Aye: Silverman, de la O, Dames and Moy

Absent: Kaplan

E.8

Copy of the Report concerning the Grievance hearing of Suzann E. Nicholson, Customer Service Representative III, pursuant to Rule 16.2, to examine the audit results for the Customer Service Representative III position.
(DISCUSSION)

The Board entered a motion to APPROVE the Report as amended, which resulted as follows:

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

Aye: Dames and Moy

No: Silverman

Abstain: de la O

Absent: Kaplan

E.9

Copy of a Report concerning the Grievance Hearing of Neal A. Muhammad, Fire Lieutenant, pursuant to Civil Service Rule 16.2, concerning the 2008 Fire Captain's Oral Board Exam. (DISCUSSION)

The Board entered a motion to APPROVE the Report as amended, which resulted as follows:

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

Aye: Silverman, de la O, Dames and Moy

Absent: Kaplan

F. REPORTS

F.1 Pending Hearings as of June 29, 2010. (NOTIFICATION)

PRESENTED

G. REQUESTS FOR HEARINGS

G.1 A copy of a Request for a Grievance hearing from Michael Pizzi, Jr., on behalf of his client Richard Brioso, former Assistant to the Director of GSA, requesting a hearing pursuant to Civil Service Rules 14, 16, and Florida Statute 112.3187-Whistle-blower's Act. (DISCUSSION)

Chairman de la O asked the Executive Secretary if she received any notification from Attorney Pizzi or his client, Richard Brioso since they were not present. The Executive Secretary responded in the negative. Following discussion, the Board entered a motion to DEFER this matter to the Board's next meeting which resulted as follows:

Motion by Member Silverman, seconded by Chairperson de la O, that this matter be DEFERRED. PASSED by the following vote.

Aye: Silverman, de la O, Dames and Moy

Absent: Kaplan

G.2 A copy of a Request for a Grievance hearing from Michael Pancier, Attorney, on behalf of his client Osmel Martinez, former Maintenance Mechanic Supervisor, requesting a hearing pursuant to Florida Statute 112.3187-Whistle-blower's Act. Assistant City Attorney Min expressed no objection to opposing Counsel's request. (DISCUSSION)

ACA Min expressed that he had no objection to the employee's request for a hearing, therefore the Board entered a motion to GRANT the employee's request for a hearing pursuant to the Whistle-blower Act which resulted as follows:

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

Aye: Silverman, de la O, Dames and Moy

Absent: Kaplan

G.3 A copy of a Request for a Grievance hearing from Catherine Grieve, Attorney, on behalf of her client Olatunbosun "Ola" Aluko, former Director of Capital Improvement Programs, requesting a Whistleblower hearing, pursuant to Florida Statute 112.3187. Assistant City Attorney Min expressed no objection to opposing Counsel's request. (DISCUSSION)

The Executive Secretary informed the Board that she received notice from Attorney Grieve that she would not be available and asked that this item be carried over to the next meeting. Following discussion, the Board entered a motion to DEFER this matter to the Board's next meeting which resulted as follows:

Motion by Member Silverman, seconded by Chairperson de la O, that this matter be DEFERRED. PASSED by the following vote.

Aye: Silverman, de la O, Dames and Moy

Absent: Kaplan

H. TODAY'S HEARINGS

H.1

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

The Board entered into the scheduled hearing of appeal on behalf of Robert Byrd, the Appellant.

Barnaby Min, Assistant City Attorney (ACA), represented the Department. Teri Guttman-Valdes, Attorney at Law, represented the Appellant. Both attorneys presented opening statements.

All witnesses were sworn in individually. Witnesses for the Department appeared in the following order:

1. Marlon Chavez, Automotive Equipment Operator III, City of Miami, Department of Public Works.

Questions were posed by Board Members de la O and Dames during the testimony of Marlon Chavez.

The Department rested its case.

Witnesses for the Appellant appeared in the following order:

1. Ricky Frager, Public Works Supervisor, City of Miami, Department of Public Works.

Questions were posed by Board Members de la O and Dames during the testimony of Ricky Frager.

2. Ricardy Laguerre, Private Citizen (former City of Miami, Department of Public Works employee).

Questions were posed by Board Member Moy during the testimony of Ricardy Laguerre.

3. Robert Byrd, Labor Crew Leader II, City of Miami, Department of Public Works, testified on his own behalf.

Questions were posed by Board Members Dames and Moy during the testimony of Robert Byrd.

The Appellant rested his case.

Henry Darley, Automotive Equipment Operator II, City of Miami, Department of Public Works, was called as a rebuttal witness on behalf of the Department.

Lorraine Scott, Public Works Supervisor, City of Miami, Department of Public Works, was called as a rebuttal witness on behalf of the Department.

Questions were posed by Member Dames during the testimony of Lorraine Scott.

The Department rested on rebuttal and the Appellant waived rebuttal. The Board proceeded to closing argument and both attorneys argued their cases. Following final argument, the Board entered a motion to find the Appellant NOT GUILTY of all three (3) charges.

Under discussion, Chairman de la O stated that this case was very hard to reconcile because of the [accounts given by the four witnesses]. He went on to say that the one thing that he kept coming back to was did Mr. Byrd really peel out or did he just squeal the tires [on his truck]. Chairman de la O further stated that it has been his experience that if [a driver] is turning too sharp to get out of a parking spot, it is possible to squeal the tires without peeling out. Chairman de la O further stated that he has turned too sharp when pulling out of a parking spot causing his tires to squeal, but he would stop because he felt he was going too fast. He stated that was the best he could do to try to reconcile the witness testimony. Chairman de la O went on to say that maybe the witnesses heard the tires squeal because of the angle that Mr. Byrd was pulling out from the parking space. He further stated that he did focus on the fact that Ms. Scott testified that she was not in fear (for her life) and Mr. Darly testified that there was a possibility that they would have been hit if they did not move [from the path in which Mr. Byrd was travelling in his vehicle]; however, his sense of what more likely than not happened was Mr. Byrd turned too sharp to get out of the parking spot which made a (loud) noise, so the noise coming from the engine and the exhaust of the truck scared the witnesses. Chairman de la O stated that he had a hard time believing that Mr. Byrd was trying to run over Marlon Chavez, Henry Darly, and Lorraine Scott.

Following discussion, the motion on the floor to find the Appellant NOT GUILTY of all three (3) charges resulted as follows:

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

Aye: Silverman, de la O, Dames and Moy

Absent: Kaplan

H.2

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

Osnat K. Rind, Attorney at Law on behalf of Officer Carlos Antunez, requested that this matter be continued.

ACA Min stated that he objected to the continuance. He went on to say that the first time opposing counsel requested a continuance it was because she needed additional time to prepare. ACA Min further stated that opposing counsel has had three months to prepare and she is before the Board again requesting a continuance because she is not prepared to present her case.

Chairman de la O asked Attorney Rind to provide the Board with the reason she was requesting a continuance. ACA Rind responded that she had not been able to meet with all of the witnesses; therefore she could not prepare for this case.

Chairman de la O asked Attorney Rind if this was her second request for a continuance. Attorney Rind responded in the affirmative.

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

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

Aye: Silverman, de la O, Dames and Moy

Absent: Kaplan

H.3

Grievance hearing on behalf of Lazaro Cabezas, Telecommunications Technician, regarding violation of Civil Service Rule 14.

Prior to getting into the merits of the case, Teri Guttman-Valdes, Attorney at Law on behalf of Lazaro Cabezas stated that she had some preliminary issues she wished to bring to the Board's attention. She went on to say that they initially filed and requested a Rule 14 hearing which was granted by the Board. Attorney Guttman-Valdes further stated that because this was considered a de facto demotion without cause as such, it is their position that according to Rule 14, the department has the burden of proof and also the burden of proving charges and specifications filed with the Board by the Department Director. She stated that in this case there have been no charges filed or given to the employee; therefore, she moved for a finding of not guilty on that basis and that Mr. Cabezas be returned to his former pay range.

Chairman de la O asked ACA Min for his position on the issues stated by opposing counsel. ACA Min responded that if the Board were to proceed under Rule 14, Attorney Guttman-Valdes would be correct, but this was not the case since they are proceeding under Rule 16 for which the employee alleged there had been a violation of Rule 14. He went on to say that since this is a Rule 16 hearing, the burden is on the employee to show that there has been a violation of Rule 14. ACA Min further stated that to proceed under Rule 14, Mr. Cabezas would have had to receive discipline and he did not.

For purposes of determining whether this was a Rule 14 or 16 hearing, Chairman de la O reviewed the minutes from the August 25, 2009 Board meeting, which indicated that the Board approved a motion for a Rule 14 hearing. He went on to say that the Board would proceed under Rule 14 and for that reason, the burden would be on the department to prove its case.

ACA Min stated that he had no problem with the burden (of proof) being on the department, but this was not a Rule 14 proceeding because there was no charging document.

Chairman de la O stated that [in reading Rule 14.1, it] does not require that there be cited charges in order to proceed under this Rule. He asked Attorney Guttman-Valdes if she was seeking a Motion for a dismissal of the verdict. Attorney Guttman-Valdes responded that she was seeking a directed verdict basically for a finding of not guilty because there were no charges presented, and that Mr. Cabezas be restored to his prior pay range.

Chairman de la O stated that he did not see the basis for dismissing the charges or granting a directed verdict. He went on to say that Mr. Cabezas needs to know why there was a reduction in (pay) grade and it would appear to him that the burden would be on the department to justify the reduction in (pay) grade. Chairman de la O further stated that whether this should have been a Rule 16 hearing, ACA Min's predecessor agreed to a Rule 14 hearing and the Board granted a Rule 14 hearing; therefore, the Board will proceed with a Rule 14 hearing.

Following discussion, the Board entered into the scheduled hearing of appeal on behalf

of Lazaro Cabezas, the Appellant.

Barnaby Min, Assistant City Attorney (ACA) represented the Department.

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

Opening statements were presented by both attorneys. Afterwards, the Board proceeded with the calling of witnesses. All witnesses were sworn in individually.

Witnesses for the Department appeared in the following order:

- 1. Derrick Arias, Assistant Director, Department of Information Technology.*
- 2. Teresita Perez, Personnel Officer, City of Miami, Department of Employee Relations.*

Questions were posed by Board Members de la O, Dames, Moy, and Silverman during the testimony of Teresita Perez.

The Department rested its case.

Witnesses for the Appellant appeared in the following order:

- 1. Lazaro Cabezas, Telecommunications Technician, City of Miami, Department of Information Technology, testified on his own behalf.*

Questions were posed by Board Members Dames and Moy during the testimony of Lazaro Cabezas.

The Appellant rested his case.

On rebuttal, the Department did not call any witnesses, but introduced a document into evidence.

The Department rested on rebuttal and the Appellant waived rebuttal.

The Board proceeded to closing arguments which were presented by both attorneys. Following final argument, Member Silverman stated that he did not have a problem with the audit. He went on to say that the City decided that notwithstanding the audit results, they would not reduce the salary of the two incumbents and would keep the salary level for one of the incumbents; however, it was unattainable that two incumbents are doing the same job but receiving a different level of pay. He stated that there was no way that the two incumbents should be at different pay ranges when they are doing the same job; therefore he moved that the Board grant the grievance of the employee and restore his salary range to the level of 32M.

Chairman de la O stated that he did not have a problem with the audit and he felt that the City met its burden with regards to what the pay should be (for the position of Telecommunications Technician). He went on to say that from what he could see, there were two concerns that were both addressed by conducting the external and internal audits. Chairman de la O further stated that the point of the external audit was the City wanted to make sure it was competitive with other municipalities and that is out of concern for fairness to the taxpayers. He stated that the City should not overpay for employees and that other cities are not paying as much for the same level of service. Chairman de la O went on to say that the purpose of the internal audit was to be fair to other employees. He further stated that under both tests, he thought the audit was correct in that the pay range should have been reduced; however, he also had the same

concern about the fact that the department has two employees (doing the same job, but) receiving different pay. Chairman de la O stated that he thinks what the Board has is a failure of evidence because what he thinks happened was the City's hands were tied since [the other employee had a] confidential settlement. He went on to say that what he heard from the questions ACA Min asked and what he saw from the grievance filed by Attorney Cohen's Office, there was a settlement reached with Mr. Rodrigo Jimenez and in lieu of paying him a check, they decided to amortize the settlement to Mr. Jimenez by putting him back to his regular salary range and until he leaves the position, he would get paid more than he otherwise should based on the audit; however, the problem is the Board did not have any testimony on this matter. Chairman de la O further stated that the Board had the implications based upon the questions ACA Min asked Ms. (Teresita) Perez, and this grievance that did not go to settlement. He stated that the [Jimenez] settlement just seemed to lay out a complaint Attorney Cohen had on behalf of his client, but the Board did not have on record the explanation of why Mr. Cabezas should be paid different from Mr. Jimenez, so this led him to the conclusion that the City did not back up its own audit. Chairman de la O reiterated that he thought the audit was correct in that the salaries should have been reduced and based upon the questions he asked, his position was the fact that there were more or less employees doing the job did not matter as long as the employees worked 40 hours a week. He stated that he did not see how two employees doing the same job and receiving different pay would promote the efficiency of the City; rather it created an unfairness within the department so he would find in favor of the employee.

Following discussion, the Board entered a motion to grant the Appellant's appeal and recommend that the City's decision to reduce the Appellant's pay range from be reversed. The motion resulted as follows:

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

Aye: Silverman, de la O, Dames and Moy

Absent: Kaplan

H.4

Hearing of appeal on behalf of Fignole Lubin, Police Officer, relative to his 40-hour forfeiture, effective August 29, 2006.

The Board entered into the scheduled hearing of appeal on behalf of Fignole Lubin, the Appellant.

Barnaby Min, Assistant City Attorney, represented the Department. Osnat K. Rind, Attorney at Law, represented the Appellant. Barnaby Min presented opening statements and Attorney Rind deferred opening statements.

The Rule of Witnesses was invoked and all witnesses were sworn in individually. Witnesses for the Department appeared in the following order:

Fignole Lubin, Police Officer, City of Miami, Department of Police, testified on his own behalf.

Questions were posed by Board Members Dames and Moy during the testimony of Fignole Lubin. The Department rested its case.

The Appellant called no witnesses or introduced any exhibits into evidence on his behalf. The Appellant rested his case and the Board proceeded to closing arguments which was presented by both attorneys. Following final argument, Member Silverman stated that he did not feel that the department met its burden and moved to find the

Appellant not guilty of all of the charges. Member Dames seconded the motion.

Under discussion, Chairman de la O stated that he did not find that there was a violation of the departmental orders and he felt that Officer Lubin was justified in the handling of the offender because when he tried to place the offender into custody, the offender turned around and at that point the only thing Officer Lubin could do was protect himself. He went on to say that he would not have the departmental orders overrule Officer Lubin's attempt to protect himself.

Following discussion, the Board entered a motion to APPROVE the motion on the floor, to find the Appellant not guilty of all of the charges. The motion resulted as follows:

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

Aye: Silverman, de la O, Dames and Moy

Absent: Kaplan

H.5

Copy of a Settlement Agreement between Maurice Mackens, Waste Collector, and the City of Miami, relative to his termination, effective March 9, 2010.
(NOTIFICATION)

Case will be closed and removed from the Board's docket.

Attorney Rind stated that a settlement was reached in the matter of Mr. Mackens. ACA Min confirmed Attorney Rind's statement concerning the settlement.

NO ACTION TAKEN : Case will be closed and removed from the Board's Docket upon receipt of written settlement agreement or rescheduled in accordance with the Board's Continuance Policy.

ADJOURNMENT:

Chairman de la O called for a motion to ADJOURN which resulted as follows:

Motion by Member Dames, seconded by Chairperson de la O, to APPROVE. PASSED by the following vote.

Aye: Silverman, de la O, Dames and Moy

Absent: Kaplan

The meeting adjourned at 3:56 p.m. Breaks were taken at 10:58-11:14 a.m; 12:36-1:25 p.m. (Lunch); and 3:03-3:13 p.m.

SIGNATURE:

Miguel M. de la O, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary