

City of Miami

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



Meeting Minutes

Tuesday, February 22, 2011

9:00 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 9:08 a.m. The roll call for the Board Members at the commencement of the meeting was as follows:

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

A. APPROVING THE MINUTES OF:

Regular Meeting of February 8, 2011.

**Motion by Member Silverman, seconded by Member Dames, to APPROVE.
PASSED by the following vote.**

Aye: Kaplan, Silverman, de la O, Dames and Moy

B. PERSONNEL MATTERS

- B.1** Copy of a memorandum from Roy Brown, Assistant Chief, Department of Police, requesting an extension of probation of Angie M. Fermin, Detention Officer, for six (6) additional months beyond February 28, 2011. (DISCUSSION)
Deferred from the meeting of February 8, 2011.

Chairman de la O asked Detention Officer Fermin if she was notified about the extension of her probationary period and if so, if she had an objection. Detention Officer Fermin responded that she was notified and had no objection. Following discussion, the Board entered a motion to extend the probationary period of Angie Fermin, Detention Officer, an additional six (6) months beyond February 28, 2011 which resulted as follows:

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

Aye: Kaplan, Silverman, de la O, Dames and Moy

- B.2** Copy of a memorandum from Larry Spring, Interim Director, Department of Employee Relations, notifying Maria Tovar, Code Enforcement Field Inspector, of her voluntary return to former classification. Maria Tovar is being rolled back to Code Enforcement Inspector, effective February 4, 2011. (NOTIFICATION)

NOTIFIED

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

- D.1** Copy of a Judgment from the City Manager concurring with the Board's findings concerning Marcel Jackson, Police Officer, relative to his 40-hour suspension, effective May 16, 2009. It is ordered and adjudged that the decision of the Chief of Police that he shall serve a 40-hour suspension is hereby reversed. (NOTIFICATION)

NOTIFIED

- D.2 Copy of a letter from Chief Miguel Exposito, Director, Department of Police, notifying Eltis Etienne, Police Officer, of his 120-hour suspension, effective February 13, 2011. (NOTIFICATION)

NOTIFIED

- D.3 Copy of a letter from Chief Miguel Exposito, Director, Department of Police, notifying Candace Jones, Police Officer, of her 10-hour forfeiture and 1-month suspension of take home vehicle, effective February 12, 2011 and a request to appeal from Officer Jones. A hearing will be scheduled in accordance with Civil Service Rules and Regulations. (NOTIFICATION)

RECEIVED AND FILED

E. GENERAL ITEMS

F. REPORTS

- F.1 Pending Hearings as of February 22, 2011. (NOTIFICATION)

PRESENTED

G. REQUESTS FOR HEARINGS

- G.1 Copy of a request from Wilfredo Cruz, Police Officer, requesting an Investigation hearing pursuant to Civil Service Rule 16.1, concerning an alleged Abuse of Power complaint against Major Louis Melancon, Commander of Specialized Operations Section, Department of Police. (DISCUSSION)

Ronald J. Cohen, Attorney at Law on behalf of Officer Wilfredo Cruz, appeared before the Board and stated that he was recently retained as counsel and asked that this matter be deferred to the Board's next meeting. Hearing no objection, the Board entered a motion to DEFER this item to the meeting of March 8, 2011 which resulted as follows:

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

Aye: Kaplan, Silverman, de la O, Dames and Moy

H. TODAY'S HEARINGS

- H.1 Whistleblower hearing on behalf of Osmel Martinez, Maintenance Mechanic Supervisor, pursuant to Florida Statute 112.3187.

Attorney Pancier stated that for the purpose of simplifying things, he was withdrawing his client's whistleblower complaint and that the Board could vote on the charges involving Osmel Martinez' two appeal cases (Items H.2: 2-Day Suspension and H.3: Termination).

For clarification purposes, Chairman de la O stated that the Board would not consider voting on Osmel Martinez' whistleblower complaint since it was withdrawn by Attorney

Pancier; however, that the Board would proceed with voting on the charges involving Osmel Martinez' two disciplinary cases that are before the Board.

WITHDRAWN Whistleblower hearing will be removed from the Board's docket.

H.2

Hearing of Appeal on behalf of Osmel Martinez, former Maintenance Mechanic Supervisor, concerning his 2-day suspension, effective January 26, 2009.

At today's meeting, Attorney Pancier withdrew Osmel Martinez' Whistleblower Hearing, and asked that the Board continue to hear the matter of the Appeal hearings.

For purposes of bringing the parties up to speed, Chairman de la O stated at the meeting of February 8, 2011, Mr. Martinez' case concluded with ACA Richard's direct examination of Osmel Martinez and today the attorneys will continue with cross/redirect examination of Osmel Martinez. NOTE: Witnesses for both the department and Appellant testified on different meeting dates and are therefore listed in the order they testified from the start of these hearings that began on January 25, 2011.

The Board continued to hear the cases involving Osmel Martinez' two appeals that consists of this 2-day suspension and Item H.3 which is Mr. Martinez' termination from employment.

Janeen Richard, Kevin Jones, Assistant City Attorneys, represented the Department.

Michael T. Pancier, Kevin Guanaga, Attorneys at Law, represented the Appellant.

Witnesses for the Department appeared in the following order:

- 1. Charles "Chuck" Postis, Superintendent, City of Miami, Department of General Services Administration. Questions were posed by Board Members de la O and Kaplan during the testimony of witness Charles Postis. (Testified on January 25 and February 22, 2011)*
- 2. Alex Martinez, former Deputy Director, City of Miami, Department of General Services Administration. (Testified on January 25, 2011)*
- 3. Lourdes Lopez, former Assistant to the Director, City of Miami, Department of General Services Administration. (Testified on January 25, 2011)*
- 4. Kelly Barket, Jr., former Director, City of Miami, Department of General Services Administration. (Testified on January 25, 2011)*
- 5. Osmel Martinez, former Maintenance Mechanic Supervisor, City of Miami, Department of General Services Administration. (Osmel Martinez provided testimony via Certified Translator Fernando Bouza of Universal Language Services.) Questions were posed by de la O, Kaplan, Dames, and Moy during the testimony of Osmel Martinez. (Testified on February 8 and February 22, 2011)*
- 6. Jorge Delgado, Electrical Supervisor, City of Miami, Department of General Services Administration. (Testified on February 22, 2011)*

The Department rested its case.

Witnesses for the Appellant appeared in the following order:

1. Richard Brioso, former Assistant to the Director, City of Miami, Department of General Services Administration. Questions were posed by Board Members Moy, Dames and Kaplan during the testimony of witness Richard Brioso. (Testified on February 8, 2011)

2. Domingo Jimenez, Maintenance Mechanic, City of Miami, Department of General Services Administration. (Domingo Jimenez provided testimony via Certified Translator Fernando Bouza of Universal Language Services on February 22, 2011.) Questions were posed by Board members Moy and Dames during the testimony of Domingo Jimenez.

3. Guillermo Fernandez, Mechanic Helper, City of Miami, Department of General Services Administration. (Guillermo Fernandez provided testimony via Certified Translator Fernando Bouza of Universal Language Services on February 22, 2011.) Questions were posed by Board Members de la O, Kaplan, and Moy during the testimony of Guillermo Fernandez.

4. Nelso Garcia, Carpenter, City of Miami, Department of General Services Administration. (Nelso Garcia provided testimony via Certified Translator Fernando Bouza of Universal Language Services on February 22, 2011.)

5. Chuck Postis, Superintendent, City of Miami, Department of General Services Administration. Questions were posed by Board Members de la O and Kaplan during the testimony of witness Charles Postis. (Testified on February 22, 2011)

6. Javier Olivera, HVACR Supervisor, City of Miami, Department of General Services Administration. (Testified on February 22, 2011). Questions were posed by Board Members Kaplan, de la O, Moy, and Dames during the testimony of witness Javier Olivera.

The Appellant rested his case, the Department waived rebuttal, and the Board proceeded to closing arguments that were presented by both attorneys.

Following final argument, Member Silverman stated this case is a little unusual because the Board discussed the penalty during the fact-finding phase of Osmel Martinez' hearing. He went on to say that normally he would not say anything about the penalty unless the charges were sustained, nevertheless, he did not think this was a termination case. Member Silverman further stated that he thought the Appellant was guilty of the charge concerning the use of the p-card. He stated that whenever the Appellant's supervisor made a decision, the matter could be discussed, but after a decision had been finalized, the Appellant was required to follow it. Member Silverman went on to say that the Appellant had every opportunity to follow the p-card procedures but he just did not like it and decided to ignore the procedural guidelines. He further stated that an organization cannot be run in that fashion and proceeded to make a motion to find the Appellant GUILTY of all the charges set forth in the January 25, 2010 reprimand issued to the Appellant. The motion DIED FOR LACK OF A SECOND.

Chairman de la O stated that according to what he read in the letter of suspension dated January 25, 2010, he did not understand it to read that the use of the p-card was the basis for the suspension rather he read that the suspension was based on the first sentence in the fourth paragraph of the disciplinary letter which stated, "You, in an aggressive, threatening, disrespectful and loud manner, stated "I am going to City Hall." He went on to say that since Mr. Martinez was already called to the Director's Office regarding a verbal counselling concerning the use of the p-card, the reason Mr. Martinez

was instead suspended had to be due to the statement about going to City Hall. Chairman de la O stated that it was sort of hard to say in a threatening way that "I am going to City Hall" except in a legally threatening way which was that Mr. Martinez wanted to talk to the Mayor or a Commissioner, but this action did not rise to the level of a 2-day suspension. He went on to say that he agreed with everything else Member Silverman mentioned about employees having to understand that whenever they are asked to do something, they must comply unless it was something illegal or immoral.

Member Kaplan asked if everyone was clear that Mr. Martinez violated the changed rule to the P-Card Policy. Chairman de la O responded if anyone believed that the rule was changed, then the understanding would be that Mr. Martinez violated the changed rule. Member Kaplan stated that the only evidence provided of the P-Card Policy change was testimony from Chuck Postis. Chairman de la O responded that he had trouble believing Mr. Postis because he did not believe [Postis] was candid with the Board. He stated that when Mr. Postis was questioned about using his p-card in the same manner as Mr. Martinez, his reasons changed each time and finally at today's hearing when questioned again about his use of the p-card, he stated that the policy had changed. Chairman de la O reiterated that he did not think the letter of suspension was about Mr. Martinez' use of the p-card and neither did he think it was a violation of the Civil Service Rules for a person to say that he/she was going to City Hall so he did not see how the Appellant was guilty of that charge.

Member Dames stated that he agreed with everything the Chairman mentioned. He went on to say that he felt disturbed that Mr. Martinez was called in for a verbal counselling which ultimately resulted in a 2-day suspension. Chairman de la O responded that to be clear, it could happen that an employee was called in for a lesser penalty but made the situation worse which could result in a higher penalty.

Member Moy stated that he agreed with Member Dames about the verbal counselling turning into a 2-day suspension and he felt that Mr. Martinez should not have received a 2-day suspension because he said he was going to City Hall.

Following discussion, the Board entered a motion to find the Appellant NOT GUILTY of all of the charges cited in the Appellant's January 25, 2010 suspension letter as listed below:

- Civil Service Rule 14.2(e) 1 - An act of insubordination
- Civil Service Rule 14.2(3) 2 - A serious breach of proper discipline
- Civil Service Rule 14.2(h) - Insubordination or disgraceful conduct
- Civil Service Rule 14.2(i) - Wantonly offensive in conduct or language
- Civil Service Rule 14.2(k) - Is incompetent, negligent or inefficient in the performance of duties
- Civil Service Rule 14.2(r) - Is antagonistic towards superiors and fellow employees, criticizing orders, rules, and policies

The motion resulted as follows:

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

Aye: Kaplan, de la O, Dames and Moy

No: Silverman

H.3

Hearing of Appeal on behalf of Osmel Martinez, former Maintenance Mechanic Supervisor, concerning his termination, effective February 17, 2010.

and asked that the Board continue to hear the matter of the Appeal hearings .

The Board entered into the scheduled hearing of Osmel Martinez, the Appellant.

Janeen Richard, Kevin Jones, Assistant City Attorneys, represented the Department.

Michael T. Pancier, Kevin Guanaga, Attorneys at Law, represented the Appellant.

Witnesses for the City appeared in the following order:

- 1. Charles "Chuck" Postis, Superintendent, City of Miami, Department of General Services Administration. Questions were posed by Board Members de la O and Kaplan during the testimony of witness Charles Postis. (Testified on January 25 and February 22, 2011)*
- 2. Alex Martinez, former Deputy Director, City of Miami, Department of General Services Administration. (Testified on January 25, 2011)*
- 3. Lourdes Lopez, former Assistant to the Director, City of Miami, Department of General Services Administration. (Testified on January 25, 2011)*
- 4. Kelly Barket, Jr., former Director, City of Miami, Department of General Services Administration. (Testified on January 25, 2011)*
- 5. Jorge Delgado, Electrical Supervisor, City of Miami, Department of General Services Administration. (Testified on February 22, 2011)*
- 6. Osmel Martinez, former Maintenance Mechanic Supervisor, City of Miami, Department of General Services Administration. (Osmel Martinez provided testimony via Certified Translator Fernando Bouza of Universal Language Services.) Questions were posed by de la O, Kaplan, Dames, and Moy during the testimony of Osmel Martinez.*

The Department rested its case.

Witnesses for the Appellant appeared in the following order:

- 1. Richard Briosio, former Assistant to the Director, City of Miami, Department of General Services Administration. Questions were posed by Board Members Moy, Dames and Kaplan during the testimony of witness Richard Briosio. (Testified on February 8, 2011)*

The Appellant rested his case, the Department waived rebuttal, and the Board proceeded to closing arguments which was presented by both attorneys.

Following final argument, Chairman de la O stated that this case encompassed the issue of Mr. Martinez driving through the parking lot the wrong way, Mr. Martinez' history of disciplinary actions inclusive of the suspension that the Board did not uphold today, which resulted in his termination of employment. He went on to say that the Board needed to first determine whether the Appellant was guilty of the charges and afterwards focus on the penalty, if necessary.

Under discussion, Member Kaplan stated that he wished to express his view on the threats that were made by the Appellant on February 26, 2009 for which he received a

1-day suspension. He went on to say that of the witnesses who testified about the Appellant's threatening statement ("You are all going to force me to come here and finish everybody off and then I will have to kill myself, because I will not let the police kill me."), he was up front with asking questions about guns and threats in relations to the Appellant. Member Kaplan further stated that he was really concerned because he believed Mr. Martinez made the threat out of an abundance of tears and internal suffering from some perception of what was occurring in his life at that time. He stated that he was not even sure if he blamed him for making the inappropriate remarks; however, what overwhelmed him was that Mr. Martinez' bosses thought so little of the threat that they suspended him for only one day. Member Kaplan went on to say that when asked why his bosses didn't call the police, the response was that [Martinez] was not the type of person that they suspected to truthfully threaten people. He further stated that he could not take the events of the furniture falling off the back of the Appellant's truck, the Appellant driving the wrong way in the GSA parking lot, and the department's stapling of previous disciplines issued to Mr. Martinez as a means to terminate the Appellant especially when the department gave him only a one-day suspension when he made threats against them.

Chairman de la O stated that he agreed with most of what Member Kaplan had to say on this matter. He went on to say that he thought the only charge that might be supported with regards to the furniture was the violation of Civil Service Rule 14.2(l), "Careless or negligent of the property of the City of Miami." Chairman de la O further stated that the video presented by the department showed that the Appellant was not driving erratically or at an unsafe speed. He stated so that it would not seem the Board was sending the wrong signal in this matter, he would say that if the department had terminated the Appellant on the spot when he made the threat on February 26, 2009, he would have supported that position because he believed the Appellant made the threatening remark. Chairman de la O went on to say that he agreed with Member Kaplan that the Appellant's threat was due to a lot of emotional upheavals in his life, but if it was taken seriously by everyone that the Appellant might carry out the threat since they heard him say it, he could not blame anyone in the City for terminating the appellant's employment. He further stated that it was clear by the department's actions that they did not feel threatened because they acted appropriately and issued the Appellant a one-day suspension and sent him to the Employee Assistance Program. Chairman de la O stated that based upon the department's issuance of a light penalty on such a serious offense (threat) it seemed that the department was now trying to staple the charges and make what otherwise would not amount to a termination become a termination. He went on to say that he could not excuse Mr. Martinez for leaving the furniture on the ground even if it was trash and that he probably would not have believed Mr. Postis that the furniture was not considered junk based on his earlier testimony and his doubts about his credibility, but there was a contemporaneous email from Mr. Postis to an employee in the Parks Department that added a lot of corroboration about the furniture not being junk. Chairman de la O further stated that Mr. Delgado testified that he heard the furniture fall from Mr. Martinez' truck, he saw Mr. Martinez drive away, and he apparently went back to his office because no one had picked up the furniture until Mr. Postis exited his office. He went on to say that nothing happened to Mr. Delgado (in terms of some type of discipline) which he found quite remarkable.

Following discussion, the Board entered a motion to find the Appellant GUILTY of Civil Service Rule 14.2(l).

Under discussion, Member Dames stated that he felt that Mr. Martinez was fired indiscriminantly and that a message should be sent to the City Manager recommending he be returned to his job immediately. Chairman de la O responded that such recommendation could be included in the Findings/Recommendation Report, but he wanted to focus on the charges first.

Following discussion, the motion on the floor to find the Appellant GUILTY of Civil Service Rule 14.2(l) resulted as follows:

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

Aye: Kaplan, Silverman, de la O and Dames

No: Moy

Chairman de la O called for a motion on the remaining charges and the Board entered a motion to find the Appellant NOT GUILTY of the charges listed below:

- Civil Service Rule 14.2(e)(1) an act of insubordination
- Civil Service Rule 14.2(e)(2) a serious breach of proper discipline
- Civil Service Rule 14.2(e)(3) loss or injury to the City or to the public
- Civil Service Rule 14.2(h) Insubordination or disgraceful conduct
- Civil Service Rule 14.2(r) Antagonistic toward superiors and fellow employees, criticizing orders, rules and policies

The motion resulted as follows:

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

Aye: Kaplan, Silverman, de la O and Dames

No: Moy

The Board proceeded to the Penalty Phase of Osmel Martinez' hearings. Chairman de la O stated that he agreed with Member Silverman that the Board had already considered the penalty portion throughout Mr. Martinez' hearings; therefore, he felt there was nothing more to be said; however, if the attorneys had something to add concerning the penalty, they were welcomed to do so. Both attorneys advised they had nothing more to present to the Board concerning the recommended penalty.

The Appellant's official personnel file was reviewed by the Board which revealed 7 commendations and 2 suspensions over the former employees 18 year employment with the City. The attorneys having no further witness testimony or argument to present to the Board on the penalty phase, the Board entered a motion to recommend to the City Manager that the Appellant serve a 5-day suspension in lieu of termination.

Under discussion, Member Dames asked what the recommended 5-day suspension pertained to in this case. Chairman de la O responded that it pertained to the furniture that fell from the Appellant's truck onto the ground.

Member Dames withdrew his motion and Member Kaplan seconded the motion for a 5-day suspension.

Under discussion, Member Silverman stated that the Appellant was found guilty of negligence of the City's property and the only issue to address was the penalty for leaving City furniture on the ground. He went on to say that this was not a case that warranted dismissal; however, he felt that a 5-day suspension was fair for the Appellant's actions. Member Silverman then reinstated the motion.

Member Moy stated that he agreed with Member Silverman's comments and the recommended penalty. Following discussion, the motion on the floor to recommend a

5-day suspension in lieu of termination, resulted as follows:

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

Aye: Kaplan, Silverman and Moy

No: de la O and Dames

H.4

Hearing of Appeal on behalf of Lillie Harris, concerning her demotion from Lieutenant to Sergeant, effective May 19, 2010.

Prior to entering the hearing of Sgt. Lillie Harris, Ronald J. Cohnen, Attorney at Law, stated that he submitted a "Motion to Dismiss or for Sanctions and/or Bill of Particulars" in this case based upon: (1) The City's refusal to release documents he requested, which is a violation of the Public Records Act, and (2) The letter of demotion issued to Sgt. Harris, effective May 19, 2010 failed to advise her of the charges brought against her with sufficient specificity. He cited State ex rel. vs. McCall, Chairman of City Commission, et al (158 Fla. 655, 29 So.2d 739) in support of his argument.

Chairman de la O asked the department's attorney for her position on this matter. Janeen Richard, Assistant City Attorney (ACA), responded that there was a public records request issued by Attorney Cohen; however, it was directed to the Records Custodian at the Police Department but not to the Records Custodian of the Internal Affairs (IA) Division. She went on to say that the Records Custodian at the Police Department did turn over the documents in a timely manner; however, it was not until February 4, 2011 that Attorney Cohen requested IA documents and at that time he was allowed to access the records at Internal Affairs. ACA Richard further stated that Attorney Cohen was asked to put his request in writing for recordkeeping purposes and that payment had to be made prior to releasing the documents.

Chairman de la O stated that he did not agree with Attorney Cohen's argument that Sgt. Harris' letter of demotion failed to advise her of the charges against her with sufficient specificity because at first blush, the reprimand seemed to include the information he was entitled to (i.e. the letter indicated dates the Appellant did not work a full shift, it listed dates and what the payroll records revealed on said dates, how much Lt. Harris was paid at the time, and how many hours she actually worked).

Following discussion, the Board entered a motion to order the City to produce the records requested by Attorney Cohen within 7 days at the City's expense since it was not necessary to send the public records request to every section of the Police Department when there should be only one Records Custodian to handle the request.

Under discussion, Chairman de la O asked if the City was being sanctioned and if so, he wanted to know the reason. Member Silverman responded in the affirmative and stated that the sanction was because the City should have produced the documents and it did not; therefore, the records should be produced at the City's expense. For clarification purposes, Chairman de la O stated that he did not understand why there were different Records Custodians in the Police Department and even if there were, IA is within the Police Department so if a request was made of the Police Department, it should have been handled by a person who had this responsibility. Chairman de la O further stated that he was not sure if the Board could give Attorney Cohen remedy with regards to the sanction, but he certainly had remedy under Writ of Mandamus and actions he could take in court. He stated that he wished Special Counsel Everett was in attendance to counsel the Board, but since she was not, the Board would vote on the motion on the floor ordering the City to produce the documents within 7 working days at the expense of the City which resulted as follows:

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

Aye: Silverman and Dames

No: Kaplan, de la O and Moy

The motion having failed, the Board entered a motion ordering the City to produce the documents within seven (7) working days.

Under discussion, Chairman de la O announced Special Counsel Everett's arrival (which was at 9:30 a.m.) and provided her with an overview of the Board's discussion with regards to Attorney Cohen's Motion to Dismiss and his asking for sanctions because he felt the City violated the Public Records Act by producing some and not all of the documents he requested. He went on to say that the motion ordering the City to produce the documents within 7 days at the City's expense was defeated and he could say, at least on his behalf, that he did not believe the Board had sanctioning powers especially since it was not called for under the Civil Service Rules. Chairman de la O asked Special Counsel to give the Board her professional opinion on whether the Board had powers to sanction the City or any other participant for failing to produce documents for a public records request.

Cynthia Everett, Special Counsel to the Board, responded in the negative. She went on to say that there is a procedure through the Public Records Act to obtain copies of documents and if that statute was violated, then there was a remedy that could be obtained via the courts. Special Counsel Everett further stated that in such instances, the Judge would make a determination if there had been a violation and what if any sanctions or monetary fines, or other costs that might be due.

Following discussion, the motion on the floor ordering the City to produce the documents within 7 working days to Attorney Ronald J. Cohen resulted as follows:

Motion by Chief Examiner Kaplan, seconded by Chairperson de la O, that this matter be APPROVED. PASSED by the following vote.

Aye: Kaplan, Silverman, de la O and Moy

No: Dames

Chairman de la O stated the second issue was that Attorney Cohen asked for specific information which he thought might be premature at this point until he reviewed the records. He went on to say that if upon Attorney Cohen's review of the records he found the information was not contained, he could return so that the Board could address the issue.

Attorney Cohen stated his problem was that the Board indicated that it had no authority to enter any sanctions in connection with the public records request, but there is a remedy in the Public Records Act. He went on to say that his client was entitled to have her hearing today and to know the charges; therefore, he felt something should have been done about the City not producing the documents. Attorney Cohen suggested that the Board punish the City by dismissing the charges since the Board had the authority to do so.

Chairman de la O responded that (under the Rules) he did not think the Board could dismiss the charges, but Attorney Cohen could convince him otherwise if he could find the authority for dismissing the charges. Attorney Cohen responded that every tribunal has a right to strike evidence if things are not done correctly. He went on to say that he was only asking for documents so that his client could have her hearing and that is what

they are entitled to.

Member Kaplan stated that he was impressed with Attorney Cohen's position and argument, but personally, he was not prepared to take any action until the case was heard by the Board. He went on to say that Attorney Cohen has a client to defend so if the records are available for him to review and prepare his case properly, he may find that he did not suffer any from this delay, but if he did suffer, the Board would certainly want to know about it.

Following discussion, the Board entered a motion to CONTINUE Lillie Harris' hearing today and charge the continuance to the department for failing to produce the documents requested which resulted as follows:

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

Aye: Kaplan, Silverman, de la O, Dames and Moy

H.5

Hearing of Appeal on behalf of Luis Hernandez, Police Officer, relative to his 40-hour suspension, effective March 6, 2009.

Ronald J. Cohen, Attorney at Law on behalf of Officer Luis Hernandez, stated that he did not know if he would be able to hang around for his client's case and at the same time call his witnesses to be available in the afternoon should the case take place.

Chairman de la O asked for the scheduling history of Officer Hernandez' case. The Executive Secretary responded that two continuances were granted by the Board in this case, one of which was charged to the department and the other to the employee.

ACA Richard stated that she objected to continuance on the basis that this matter occurred in 2009, she subpoenaed her witnesses who were present, and she was ready to proceed. She went on to say that she tried to get Attorney Cohen to agree to have this case heard before Lillie Harris' case (Item H.4) although she thought they had an agreement so she is a bit surprised to hear Attorney Cohen say that he was not ready to go forward today. ACA Richard further stated that based upon her cited reasons, she felt the case should go forward today and the continuance denied. Chairman de la O responded that he did not think Attorney Cohen was saying that he was not ready but preferred not to go forward today on Officer Hernandez' case.

Attorney Cohen responded that he never agreed to holding Officer Hernandez' case before Lillie Harris' case because he wanted to have her case heard today. Member Silverman interceded and stated that the Board was done with Lillie Harris' case by granting a continuance and therefore needed to focus on the motion on the floor.

Members Dames and Moy stated that they wanted to hear Officer Hernandez' case today.

Following discussion, the motion on the floor to grant a CONTINUANCE of Luis Hernandez' case and charge the continuance to the employee resulted as follows:

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

Aye: Kaplan, Silverman and de la O

No: Dames and Moy

ADJOURNMENT:

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

**Motion by Member Silverman, seconded by Member Dames, to APPROVE.
PASSED by the following vote.**

Aye: Kaplan, Silverman, de la O, Dames and Moy

The meeting adjourned at 5:35 p.m. Breaks were taken at 9:44-9:55 a.m; 11:39-11:47 a.m; 12:52-1:38 p.m. (LUNCH), 3:50-3:53 p.m; and 4:18-4:27 p.m.

SIGNATURE:

Miguel M. de la O, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary