

City of Miami

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

Tuesday, March 20, 2012

9:30 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 9:42 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 March 6, 2012.

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

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

B. PERSONNEL MATTERS**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 Jorge E. Aguilar, Police Officer, relative to his 80-hour forfeiture, effective October 26, 2008. It is ordered and adjudged that the decision of the Department Director to forfeit Officer Aguilar 80-hours is hereby reversed. (NOTIFICATION)

NOTIFIED : Case will be closed and forwarded to Human Resources for filing in employee's official personnel file.

E. GENERAL ITEMS

- E.1 Hearing of Appeal on behalf of Shekita Johnson, Emergency Dispatcher, relative to her 8-hour suspension, effective February 8, 2009. (DISCUSSION)

Rescheduled pursuant to continuance policy; pending settlement since August 23, 2011.

Chairman de la O asked for the status of Ms. Johnson's settlement. Assistant City Attorney (ACA) Richard responded there was some confusion last week as to what type of document would be prepared in order to restore the 8 hours back to Ms. Johnson but she now believes that she and opposing counsel are on the same page regarding what needs to be prepared so the matter will be taken care of.

Michael A. Braverman, Attorney at Law on behalf of Shekita Johnson, stated that he does not mean to belabor the matter but it had [been on the Agenda] two times before and has not been resolved. He went on to say at this time he and opposing counsel have agreed to a settlement but he wants the Board to know this is not a traditional settlement in that the City has decided to rescind Ms. Johnson's 8-hour suspension and return the hours back to her. Attorney Braverman further stated once this happens, the issue would be moot because the Board has no jurisdiction to hear appeals of discipline (that results in a reprimand with no loss of time). He stated this matter needs to be

resolved so that the 8 hours can be returned to Ms. Johnson and they can move on from this point.

DISCUSSED : Ms. Johnson's case will be closed and removed from the Board's docket upon receipt of a written settlement agreement or rescheduled in accordance with the Board's Continuance Policy.

E.2

Hearing of Appeal on behalf of Eddy Rodriguez Jr., Police Officer, concerning his 40-hour forfeiture, effective February 4, 2010. (DISCUSSION)
Rescheduled pursuant to continuance policy; pending settlement since August 24, 2010.

Teri Guttman-Valdes, Attorney at Law on behalf of Officer Eddy Rodriguez, Jr., stated approximately a week ago, she received a new settlement agreement from opposing counsel because she was advised that the original pending settlement agreement signed by her client and forwarded to the Police Department somehow got lost. She went on to say that as soon as her client signs the document, she will return it to ACA Richard so that she can do whatever else needs to be done to finalize the settlement.

DISCUSSED : Officer Rodriguez' case will be closed and removed from the Board's docket upon receipt of a written settlement agreement or rescheduled in accordance with the Board's Continuance Policy.

E.3

Copy of Findings of Fact in the Appeal Hearing of Meredith Nation, Procurement Supervisor (former), relative to her termination, effective March 23, 2011. (DISCUSSION)

Attorney Guttman-Valdes informed the Board that her new co-counsel, Reginald J. Clyne, will handle Ms. Nation's matter before the Board today.

Reginald J. Clyne of Clyne & Associates, P.A., stated that he submitted detailed additions to the findings of fact and conclusions of law for consideration by the Board. The Executive Secretary informed the Board that she received Attorney Clyne's changes to the findings of fact yesterday afternoon, which is 10-pages long. She went on to say that she has not been able to figure out the new information that has been added so the document was not copied for the Board Members to review.

Chairman de la O asked Attorney Clyne if he wanted to address the findings of fact today. Attorney Clyne responded that he spoke to ACA Richard regarding the findings and she advised that she needed more time to review, and he has no objection. He went on to say that he would also like to be able to supplement the record because there was an abdication of due process of this Board when it reached a not guilty verdict finding and then switched its finding which he thinks is a violation of the Board's own policy and procedures. Attorney Clyne further stated the Board's action did not afford Ms. Nation her rights under the policy and procedures of the Constitution and that he thinks there is a lot of case law on this issue. He stated that the Board made a ruling and the Board's own Chairman stated that he had doubts about [changing votes] because there was the appearance of impropriety. Attorney Clyne went on to say that as a trier of facts, the Board cannot make a decision and then come back three months later and change their vote. He further stated the Board debated whether it used Robert's Rules of Order, but even under the Board's own policy and procedures, after an evidentiary ruling has been made, the Board is not supposed to get advice from its Special Counsel. Attorney Clyne stated that Robert's Rules of Order does not apply because there is nothing in the Civil Service Rules, City Code, or City Charter that says otherwise. He went on to say that the "skeleton" findings of fact and conclusion of law that were submitted are not sufficient so before the Board rules on this matter, he would like to be able to get in all of the findings of fact and conclusion of law, then give the

Board a full brief on the issue so that the Board knows and has a chance to fix what he finds to be a very egregious error.

Chairman de la O asked for the department's position on this matter. ACA Richard responded that she does not have a problem taking time to review the findings of fact because it is a 10-page document that she received yesterday afternoon and she cannot tell what was added based on Special Counsel Everett's draft. She went on to say that the whole issue about whether the Board had authority to do what it did has already been raised and decided. ACA Richard further stated historically when the motion was made by Members Kaplan and Moy to rescind their prior vote, a recess was taken to give Attorney Guttman-Valdes an opportunity to make any legal arguments that needed to be made at least a month before this issue was revisited. She stated that was the whole purpose in resetting the matter for discussion at a subsequent meeting. ACA Richard went on to say she believes the notice was to give counsel an opportunity to make argument as to whether the Board could do what Members Kaplan and Moy wished to do. She further stated the time has come and gone to raise whatever constitutional issues that needed to be raised so anything after that should be raised on an appeal. ACA Richard stated on the issue as to how this Board rehears arguments is not necessary at this point.

Chairman de la O suggested that Attorney Clyne obtain a copy of the findings of fact and conclusions of law that was prepared by Special Counsel Everett and prepare his changes from that format. Attorney Clyne responded that he made tract changes to Special Counsel Everett's findings which is the 10-page document that has been referenced by opposing counsel.

Chairman de la O stated when the Board brings the matter to discuss the findings of fact, he cannot stop Attorney Clyne from filing any memorandum that he wants but he would hope the focus is for the Board to make the right decision. He went on to say if there are legal issues raised in the report that causes the Board to doubt what it did, the Board may or may not choose to hear argument. He went on to say obviously he cannot predict what the Board will do but he would encourage Attorney Clyne to submit a memo of law so that the Board has time to review it prior to the meeting when the findings of fact is discussed. Chairman de la O further stated that the Board's tenure is coming to an end and there will be approximately three new members, so it is important that this matter gets done on or before April 17, 2012 because that will be the last day as a Board as presently constituted. Attorney Clyne responded that he has no problem meeting the deadline.

ACA Richard stated that she objects to adding additional information to the record because opportunity has been given to raise argument. She went on to say the Board was informed by its Special Counsel on the matter of Robert's Rules of Order and she presented a case which indicated the Board could do what it did, but to now come back months later to supplement a record and to submit legal briefs, the time has passed. Chairman de la O advised ACA Richard that she could make her argument when the matter is presented because the Board is not ready to debate the issue today.

DEFERRED : Matter deferred to the April 17, 2012 meeting. Attorney Clyne was instructed by the Chairman to submit his memo of law prior to the April 17th meeting so that everyone has an opportunity to review it before the meeting.

E.4

Notice of a Request to Continue from Janeen Richard, Assistant City Attorney, concerning the Appeal Hearing of Johnny Brutus, Police Officer, relative to his 20-hour suspension, effective September 10, 2011. Jon M. Kreger, Attorney, on behalf of Officer Brutus, expressed no objection to the continuance request. (DISCUSSION)

ACA Richard presented to the Board that one of her witnesses is not available and that she spoke with opposing counsel concerning her request for a continuance and he expressed no objection.

Chairman de la O asked for the employee's position on the continuance request. Jon Kreger, Attorney at Law on behalf of Officer Brutus, responded that he has no objection to the department's request for a continuance. Following discussion, the Board entered a motion to APPROVE the department's request for a continuance which 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, de la O, Dames and Moy

E.5

Notice of a Request to Continue from Ronald J. Cohen, Attorney, on behalf of Daniel Fernandez, Police Officer, relative to his termination, effective November 6, 2010. (DISCUSSION)

Hearing of Appeal is scheduled for April 3, 2012.

Attorney Kreger stated there are two main reasons he requested a continuance of Officer Fernandez' hearing. He went on to say that there is an ongoing criminal investigation and at 10:30 a.m. on the same day as Officer Fernandez' scheduled Civil Service hearing he has a hearing with the Third District Court of Appeals so it will be impossible for them to be present.

Chairman de la O asked for the department's position on the employee's request for a continuance. ACA Richard responded that she does not oppose the continuance request as long as the employee or his attorney signs the Waiver of Pay and Emolument form which is required under the Board's procedures (whenever an employee is dismissed from employment and requests a continuance). Chairman de la O asked Attorney Kreger if his client is prepared to sign the Waiver. Attorney Kreger responded that he has not had an opportunity to discuss this matter with his client so he will meet with his client and Attorney Cohen about the waiver since the waiver has to be submitted before April 3, 2012. Chairman de la O stated that perhaps the Board should leave Officer Fernandez' hearing as scheduled for April 3 until the Waiver is submitted or otherwise the Board will discuss the matter about the continuance on April 3. Attorney Kreger responded he was not sure they would be available on April 3 because they have the Third DCA hearing on the same day at 10:30 a.m. Chairman de la O stated the Waiver is a form that can be signed beforehand. Attorney Kreger reiterated that he will take a look at the document and review it with his client.

Following discussion, the Board entered a motion to grant the employee's request for a continuance with the understanding that if the Waiver of Pay and Emoluments form is not signed and filed by April 3, 2012, the hearing will be scheduled as soon as possible. The motion resulted as follows:

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

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

F. REPORTS

F.1 Pending Hearings as of March 20, 2012. (NOTIFICATION)

PRESENTED

G. REQUESTS FOR HEARINGS

H. TODAY'S HEARINGS

- H.1 Continuation of the Hearing of Appeal on behalf of Ansonia Chatfield, Communications Operator, relative to her termination, effective October 20, 2012.
- The Board continued with the hearing of Ansonia Chatfield from the meetings of February 21, 2012 and March 6, 2012. The Board reconvened to hear the conclusion of Ms. Chatfield's case today.*
- Janeen Richard, Assistant City Attorney, represented the Department.*
- Michael A. Braverman, Attorney at Law, represented the Appellant.*
- The Rule of Witnesses continued to be invoked and the witnesses were sworn in individually. Witnesses for the Department continued in the following order:*
- 8. Kimberly Andrews-Caruso, Sergeant, City of Miami, Department of Police. Questions were posed by Board Member Moy during the testimony of Sgt. Andrews-Caruso.*
- The Department rested its case.*
- Witnesses for the Appellant appeared in the following order:*
- Ansonia Chatfield, Emergency Dispatcher, City of Miami, Department of Police, testified on her own behalf. Questions were posed by Board Members Dames, de la O, and Moy during the testimony of Ansonia Chatfield.*
- The Appellant rested her case. Rebuttal witnesses were recalled to testify on behalf of the Department as follows:*
- 1. Octavio Aguero, Sergeant, City of Miami, Department of Police.*
- 2. Angela Glass, Dispatcher Supervisor, City of Miami, Department of Police. Questions were posed by Board Members Kaplan and Dames during the testimony of Angela Glass.*
- The Department rested on rebuttal and the Appellant waived rebuttal. The Board then proceeded to closing arguments that were presented by both attorneys. Following final argument, Member Silverman stated he thinks many of the violations cited in the charging document are either minor or do not apply to the matter at hand; however, he thinks Ms. Chatfield is guilty of two major charges cited in her reprimand which are insubordination and disrespect. He went on to say that he also believes Ms. Chatfield is guilty of violating Civil Service Rules 14.2(e) (1), (2) and (3); therefore, he would be in favor of finding her guilty of the two departmental orders and the Civil Service Rules as mentioned and not guilty of the other charges.*

Member Dames suggested that the Board consider each charge individually since he did not completely agree with Member Silverman's position on the charges as it relates to finding the Appellant guilty or not guilty. Considering Member Dames' position, Member Silverman agreed that the Board consider each charge individually.

Following discussion, the Board entered a motion to find the Appellant NOT GUILTY of Charge #1, Departmental Order 11.6.13.2 - Effort and Manner of Members and Civilian Employees. The motion resulted as follows:

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

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

The Board entered a motion to find the Appellant GUILTY of Charge #2 - Departmental Order 11.6.17.8 - Insubordination.

Under discussion, Chairman de la O stated that he agreed with Member Silverman that some of the charges are minor or not supported, but it does come down to whether Ms. Chatfield failed to follow an order. He went on to say that Attorney Braverman is correct when he said that with conflicting orders there has to be a basis for determining which one to follow and in this case, the field sergeant would obviously take precedent. Chairman de la O further stated that he also understands ACA Richard's point as well that Sgt. Andrews-Caruso was really not the field sergeant, but at the end of the day how he resolved the argument was he did not view (orders from Sergeants Andrews-Caruso and Aguero) as conflicting orders. He stated when Sgt. Andrews-Caruso asked Ms. Chatfield to transmit to the field officers that they canvas the area and issue a B.O.L.O. (Be on the look out), that would not be inconsistent with a signal 07 (cancel the chase). Chairman de la O went on to say one thing that everyone seems to agree with is that Sgt. Aguero issued an order for an 07 of the chase so the question is why wasn't an 07 order issued sooner (by Ms. Chatfield). He further stated he did not find credible the argument that Ms. Chatfield was unable to do so because of transmissions received from the field officer. Chairman de la O stated upon listening to the audiotape, he did hear times when Ms. Chatfield was cut off but he also heard times when there was silence, so after listening to the audiotape twice, it seemed to him there were plenty of opportunities for Ms. Chatfield to 07 the chase. He went on to say that even when Ms. Chatfield responded to one of the field officer's transmissions, she could have acknowledged the officer's transmission and at that time given the officer a signal 07 to cancel the chase, but that did not happen. Chairman de la O further stated this is where he thinks the department was correct when it said there was an act of insubordination demonstrated by Ms. Chatfield.

Member Kaplan stated it is his view that from all of the testimony heard of the particular minutes involving the motorcycle chase that occurred, this gave the Board insight into an extremely mixed-up, confusing, cloudy, difficult, and smoky, work environment for which Ms. Chatfield was told to 07 a chase and that it was not until five minutes later that she obeyed the sergeant's order to 07 the chase. Member Kaplan further stated in the course of what the Board now knows after listening to all of the witnesses' testimony, it was a chaotic scene that the Board is now going to translate into an act of insubordination by Ms. Chatfield. He stated he thinks this is a stretch, that it is unfair, and that the Board should not find Ms. Chatfield guilty of this charge. Member Kaplan went on to say he think it is wrong for the Board to select one employee out of this chaotic environment and say, "Oh we are sorry; it took too many minutes before you obeyed the sergeant's order (so we are going to find you guilty of this charge)." He further stated that a B.O.L.O. and a signal 07 are totally different. Member Kaplan stated a B.O.L.O. happens to be something that police officers are told by radio or in personal command to be on the look out for someone that has committed a crime or the police department suspects an individual is still on the loose and the police are going to

look for the individual. He went on to say that the B.O.L.O. was not issued to stop the chase but to continue the chase. Member Kaplan further stated it is his view that the department cannot hold Ms. Chatfield responsible for what occurred on that day because we are talking mere minutes that the chase took place.

Chairman de la O stated in response to the comments made by Member Kaplan, his concern is if Ms. Chatfield were to issue the B.O.L.O. per Sgt. Andrews-Caruso's orders, but did not 07 the chase, a chase would ensue if the officers were to spot the motorcyclist during the B.O.L.O. because the chase was never stopped. He went on to say there could be a B.O.L.O. issued without there being a chase [and the reason he says this is because] police officers can be on the look out for someone and if the officers are told to 07 the chase, there is not going to be a situation if the officers spot the motorcyclist because the chase was 07'd. Chairman de la O further stated for this very reason he does not believe the orders were contradictory, but different orders. Member Kaplan responded that we must remember that the five Board Members sit as a body who were not present at the time of the hectic environment involving the chase. He went on to say the dispatchers' testimony was that all of the dispatchers use words (profanity) that they would not normally use and that is because the job of a dispatcher is very tough. Member Kaplan further stated it is police science and technology as to what a dispatcher does under certain circumstances so it is his opinion that everyone that testified against Ms. Chatfield just does not like her. He stated that he thinks Ms. Chatfield can probably improve on everything that she does but she did not act disrespectful in a way that was different from all of the other dispatchers.

Following discussion, the motion on the floor to find the Appellant GUILTY of Charge #2 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

No: Kaplan

The Board entered a motion to find the Appellant NOT GUILTY of Charge #3 - Departmental Order 11.6.28.3 - Members to Conform, which resulted as follows:

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

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

The Board entered a motion to find the Appellant NOT GUILTY of Charge #4 - S.O.P. 24 D XI - Dispatch Techniques, which resulted as follows:

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

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

The Board entered a motion to find the Appellant NOT GUILTY of charge #5 - Communications Section SOP 24F XIV - FCC Rules and Regulations. Under discussion on the motion, Chairman de la O stated in looking at what Ms. Chatfield put in the log, "Per the Complaint Sergeant, I have no further information.", he suppose sometimes we hear things differently based upon our culture or experiences with people, but he read it and it did not seem to be some sort of shot at Sgt. Aguero.

Following discussion, the motion on the floor to find the Appellant NOT GUILTY of charge #5 resulted as follows:

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

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

The Board entered a motion to find the Appellant NOT GUILTY of Charge #6 - Communications Section S.O.P. 24 XXIII - Intercity Radio, which resulted as follows:

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

Aye: Kaplan, Silverman, Dames and Moy

No: de la O

The Board entered a motion to find the Appellant GUILTY of Charge #7 - Civil Service Rule 14.2(e)(1) - Act of Insubordination

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

No: Kaplan

The Board entered a motion to find the Appellant GUILTY of Charge #8 - Civil Service Rule 14.2(e)(2) - Breach of Proper Discipline.

Under discussion, Member Dames stated he agreed that Ms. Chatfield did fail to follow a direct order but he felt uncomfortable to say that this was a "serious" breach of proper discipline as indicated in Rule 14.2(e)(2). He went on to say according to police protocol, the motorcycle chase never should have taken place so he did not see that this was a serious breach of proper discipline.

Member Kaplan stated that Member Dames made mention about the chase but Ms. Chatfield had nothing to do with the initiation of the chase. He went on to say that the chase was in progress, Ms. Chatfield was told to 07 the call, and minutes later she 07'd the chase.

Following discussion, the motion on the floor to find the Appellant GUILTY of violating Civil Service Rule 14.2(e)(2) resulted as follows:

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

Aye: Silverman

No: Kaplan, de la O, Dames and Moy

The motion having failed, the Board entered a motion to find the Appellant NOT GUILTY of Charge #8, which resulted as follows:

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

Aye: Kaplan, de la O, Dames and Moy

No: Silverman

The Board entered a motion to find the Appellant NOT GUILTY of Charge #9 - Civil Service Rule 14.2(e)(3) - Loss or injury to the City or to the public or to the prisoners or wards of the City.

Under discussion on the motion, Member Dames stated that the Rule says that the injury or loss to the City might be expected to occur as a result of a person's actions. He went on to say Ms. Chatfield disobeyed Sgt. Aguero's order to 07 the chase so if something had happen in those few minutes, the City would have been liable. Member Dames further stated it is fortunate that nothing happened but those few minutes were very precious minutes where something could have easily happened (i.e. a civilian hit by a police vehicle or the motorcycle, etc.)

Following discussion, the motion on the floor to find the Appellant NOT GUILTY of violating Civil Service Rule 14.2(e)(3) resulted as follows:

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

Aye: Kaplan and Moy

No: Silverman, de la O and Dames

The motion having failed, the Board entered a motion to find the Appellant GUILTY of Charge #9 - Civil Service Rule 14.2(e)(3) - "Loss or injury to the City or to the public or to the prisoners or wards of the City." 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 and Dames

No: Kaplan and Moy

The Board entered a motion to find the Appellant GUILTY of Charge #10 - Civil Service Rule 14.2(h) - Insubordination or Disgraceful Conduct.

Under discussion Member Kaplan stated to elevate what took place (with Ms. Chatfield and her handling of the call concerning the chase) to something of disgrace is absurd. Chairman de la O responded that according to the motion, he does not believe the indication is to find solely on the charge of disgraceful conduct because the word "or" is used to imply a charge of insubordination or disgraceful conduct. Member Kaplan responded that the two words should be viewed with the same degree of intensity or definition.

Following discussion on the motion on the floor to find the Appellant GUILTY of Charge #10, 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 and Dames

No: Kaplan and Moy

The Board entered a motion to find the Appellant NOT GUILTY of Charge #11 - Civil Service Rule 14.2(i) - Offensive in Conduct or Language, which resulted as follows:

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

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

The Board entered a motion to find the Appellant NOT GUILTY of Charge #12 - Civil Service Rule 14.2(k) - Is incompetent, negligent, or inefficient in the performance of duties, which resulted as follows:

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

Aye: Kaplan, de la O, Dames and Moy

No: Silverman

The Board entered a motion to find the Appellant GUILTY of Charge #13 - Civil Service Rule 14.2(r) - Is antagonistic towards superiors and fellow employees.

Under discussion, Chairman de la O stated that he listened to the audiotape, but it did not sound like Ms. Chatfield was being antagonistic or rude towards Sgt. Andrews-Caruso. Member Dames responded that he was in agreement with the Chairman's view. He went on to say that he only considered the documents and not the audiotape which was the basis for him seconding the motion.

Following discussion, the motion on the floor to find the Appellant GUILTY of Charge #13 resulted as follows:

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

Aye: Silverman

No: Kaplan, de la O, Dames and Moy

The motion having failed, the Board entered a motion to find the Appellant NOT GUILTY of Charge #13 which resulted as follows:

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

Aye: Kaplan, de la O, Dames and Moy

No: Silverman

Following the vote on all 13 charges, the Board entered into the Penalty Phase of Ansonia Chatfield's hearing. Her personnel file was reviewed by the Board which revealed 2 letters of commendation, 1 reprimand, and 1 suspension (pending Appeal).

Both attorneys presented closing argument relative to their positions on the penalty. Following final argument, Member Kaplan asked if the Board is to consider the penalties as if this case is standing alone or is the Board to consider this case in connection with Ms. Chatfield's pending 120-hour suspension that has not been heard by the Board. Member Silverman responded that he did not see how the 120-hour suspension could be considered when the penalty has not been affirmed by the Board. Chairman de la O asked for Special Counsel Everett's position on this matter. Special Counsel Everett agreed with Member Silverman that the matter pending appeal should not be considered when determining the penalty.

Following clarification on Member Kaplan's question, the Board began its deliberations on the penalty portion of Ms. Chatfield's case. Member Dames stated that the City Attorney made a good point when she revealed to the Board that Ms. Chatfield worked all three shifts and experienced problems with co-workers and authority (on each of the shifts). He went on to say that according to Ms. Chatfield's performance evaluations, the highest rating she will ever receive is a 3, she will never be promoted which is a shame because she is very good at her job. Member Dames further stated that Sgt. Aguero gave Ms. Chatfield a glowing recommendation and also indicated that she has the capability of becoming a supervisor; however, he doubts Ms. Chatfield can supervise herself unless she changes. He proceeded to read into the record a portion

of Lt. Najiy's endorsement dated August 13, 2010 that was included in Ms. Chatfield's annual performance evaluation for the period June 30, 2009 through June 30, 2010 which states, "While the nature of the work in the Communications Section is very stressful and at times can stretch the employee's interpersonal skills to the limit, there is still an expectation of courtesy and decorum towards and with each other. It is apparent to me that there are some chronic issues which require intervention, which is beyond my scope as a commanding officer. Therefore, I recommend that CO Chatfield, as part of her Development Plan, be mandated to seek the assistance of the Employee Assistance Program." Member Dames stated that he is a big believer in progressive discipline so the question is when considering the prior disciplines with the exception of the pending 120-hour suspension, do Ms. Chatfield's actions rise to the level of terminating her employment. He went on to say that he would answer in the negative because in his mind the police chase never should have happened but at the same time Ms. Chatfield disobeyed an order. Member Dames further stated that the department has given Ms. Chatfield numerous breaks (by not recording every incident to writing) because after hearing the witnesses' testimony, he could only reason that her disciplinary profile should have been five pages long. He stated if something would have happened (i.e. person injured, etc.), within those few minutes that Ms. Chatfield failed to 07 the chase when asked to do so, he would recommend termination but Ms. Chatfield got lucky because nothing happened. Member Dames went on to say that Ms. Chatfield has an attitude problem and he does not know what to say about it, but he will say there is nothing in the Civil Service Rules that says a person's employment is to be terminated because of having a bad attitude.

Member Silverman stated that Ms. Chatfield would have come off better if she would have admitted that she made a mistake rather than taking the position that everyone is wrong and she is right. He went on to say that he thought Ms. Chatfield had a chip on her shoulder or bad attitude but not withstanding that she has been out of work for 6 months, so he would recommend a 240-day suspension in lieu of termination. Member Silverman further stated if the City Manager decides to accept the Board's recommendation, Ms. Chatfield would be reinstated, but she would not receive back pay.

Member Kaplan stated that the Board is going to ask for a 6-month suspension on the basis that Ms. Chatfield, for 5 minutes, failed to 07 the chase. Member Silverman responded if the Board does not agree with the 6-month suspension, the City Manager would have to reinstate Ms. Chatfield and give her back pay or he could terminate her employment. He went on to say that he thinks this is a reasonable and fair solution.

Following discussion, the Board entered a motion to recommend to the City Manager that Ms. Chatfield serve a 960-hour suspension in lieu of termination. Under discussion on the motion, Member Dames stated that he wants to send a message in order to get Ms. Chatfield's attention and if not, she will be back before the Board on a different disciplinary action.

Member Silverman stated if Ms. Chatfield ever comes back before the Board, as far as he was concerned, she has exhausted all of her generosity. Attorney Braverman stated that Ms. Chatfield has the 120-hour suspension that is pending before the Board so he would like to know from Member Silverman if his warning excludes Ms. Chatfield's pending case. Member Silverman responded that he knows nothing about the pending case so as far as he was concerned, that case has no consideration. Attorney Braverman stated that he asked because he did not want the Board to have a predisposition on the case before it is heard. Member Silverman stated that he may have misspoke; however, what he is saying is if Ms. Chatfield receives disciplinary action from any incidents that happen in the future, it shall serve as a warning.

Following discussion, the motion on the floor to recommend a 960-hour suspension in lieu of termination 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 and Dames

No: Kaplan and Moy

H.2

Grievance Hearing on behalf of Corina S. Esquijarosa, former Sr. Project Representative, pursuant to Rule 16.2, alleging a violation of Rule 12.1, as it concerns her layoff, effective September 23, 2011.

Chairman de la O asked Ms. Esquijarosa if she was prepared to go forward with her case today. Ms. Esquijarosa responded in the affirmative. Chairman de la O then asked the department's attorney if she was prepared to go forward. ACA Richard responded she is ready but only if Ms. Esquijarosa qualifies the two charges she now wishes to add to her complaint. She went on to say that the Board may recall at the February 21, 2012 meeting which was when Ms. Esquijarosa's case was originally scheduled, she was asked if she was ready to go forward and she was given an opportunity to read her opening statement. ACA Richard stated at that time, the Board had a clear understanding of what Rules she was travelling under; however, two weeks ago she received notice that Ms. Esquijarosa is now adding two additional charges consisting of a violation of Civil Service Rules 17 and 14.1 without any explanation. She went on to say she has no idea what the additional charges are about or even how to prepare so she thinks it is unfair for Ms. Esquijarosa to now add these two charges and expect the department to go forward with its case today.

Chairman de la O asked ACA Richard if she was asking that the two charges be stricken, that the hearing be continued, or both. ACA Richard responded that she is asking that the charges be stricken.

Chairman de la O asked Ms. Esquijarosa for her position. Ms. Esquijarosa apologized about the short notice. She went on to say that these charges were already included in her formal complaint but she failed to formally submit the charges to the Board. Chairman de la O stated he needs clarification because he did not understand what Ms. Esquijarosa meant when she said that the charges were included in her package but were not formally submitted. Ms. Esquijarosa responded that the charges were included in her personal package but she never formally submitted them to the Board. She went on to say the reason she presented the additional charges was because she was told she would not be able to address the charges if they were not formally presented to the Board.

Following discussion, the Board entered a motion to proceed with Ms. Esquijarosa's case today and that she be allowed to include Civil Service Rules 14.1 and 17 in her complaint.

Under discussion on the motion, Special Counsel Everett stated at a minimum it might be appropriate to have Ms. Esquijarosa proffer as to what the additional charges are because depending on the scope, they might be something that can be reasonably heard and responded to by the department's attorney today or the department can be ready to respond at a subsequent hearing since the Board probably will not finish Ms. Esquijarosa's hearing today. Chairman de la O stated if the roles were reversed and the department was bringing forth a new charge that the employee was not ready to proceed on, the Board would not force the employee to go forward so he does not think it is right. He asked Ms. Esquijarosa if she was ready to make a proffer as to the two

new charges.

Member Silverman stated while the Board is waiting for Ms. Esquijarosa to make a proffer to the new charges, he would like to take up the matter of whether to hear Ms. Esquijarosa's case today. He went on to say he does not personally want to start Ms. Esquijarosa's case if the Board will not finish her case today and if this is what is going to happen, he would rescind his motion and grant a continuance of Ms. Esquijarosa's hearing. Member Silverman further stated he thought this was a case the Board could finish today but if Ms. Esquijarosa has a lot of witnesses, the Board will not finish today, which means he would have to take back what he said about hearing her case today. He stated he does not like starting cases and then three months going forward to finish especially since the current Board will be changing. Member Silverman went on to say that he would like to hear Ms. Esquijarosa's proffer and he would also like to know if the Board will finish her case today.

Chairman de la O informed Ms. Esquijarosa that she could proceed with her proffer on the two charges she added. She went on to say that with regards to Rule 14.1, she would proffer that only a Department Director or the City Manager may remove, fine, or layoff an employee, but this was not done in her case when she was laid off. Ms. Esquijarosa further stated with regards to Rule 17, Prohibited Practices, she is alleging that there was discrimination based upon sex, age, and political opinions based upon the fact that she was a political figure at the same time she was employed with the City of Miami.

Member Kaplan asked Ms. Esquijarosa if she ever presented anything in writing regarding the two new charges she is requesting to include in her complaint. Ms. Esquijarosa responded in the negative. She went on to say that in all fairness to ACA Richard, the two charges can be considered new but she is not adding any new witnesses. Ms. Esquijarosa further stated she has been out of work for 6 months and the portion of the new violations are towards the end of her witness list so if her case were to continue to the following meeting, the City could address the issue of the two new charges at that time.

Chairman de la O stated he is aware that with the additional new charges, there might be a need for additional witnesses but he would like to know from the department's attorney how many witnesses would testify today. ACA Richard responded that [although the Grievant would put on her case first] she has two witnesses. She went on to say that at the time Chief Examiner Kaplan held a preliminary investigation of Ms. Esquijarosa's case, the two additional charges that she is requesting to include in her complaint were not presented. Chairman de la O asked Ms. Esquijarosa for the number of witnesses she has to testify today. Ms. Esquijarosa responded that she originally had 12 witnesses but only 7 witnesses showed up today. After hearing from both the employee and ACA Richard, Member Silverman withdrew his motion.

The motion having been withdrawn, the Board entered a motion to move forward with Ms. Esquijarosa's case today, but excluding the two additional charges (Rules 14.1 and 17).

Under discussion, Member Silverman stated that he does not think the Board should start the case because there will not be sufficient time to finish today based upon the number of witnesses so he will vote against the motion. Chairman de la O stated the Board has a potential problem in that it is obvious the Board will not finish Ms. Esquijarosa's case today, Member Silverman probably will not be available for the April 3 meeting so that means the Board will not be able to hear the second part of Ms. Esquijarosa's case on April 3. He went on to say that the only meeting left before the Board changes is on April 17 and if the Board does not finish, it will have to hear this

case all over again and everything the Board does today will be a waste. Following discussion, the motion on the floor to hear Ms. Esquijarosa's case today, excluding consideration of the two new charges (Rules 14.1 and 17) resulted as follows:

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

Aye: Kaplan and Moy

No: Silverman, de la O and Dames

CONTINUED : The motion having failed, Ms. Esquijarosa's case is continued and will be rescheduled to a future meeting date.

During the morning session, the Board approved a motion not to proceed with Ms. Esquijarosa's hearing today; however, at the conclusion of Ms. Chatfield's hearing at approximately 4:00 p.m., Chairman de la O stated the Board needs to decide how it will proceed with Ms. Esquijarosa's case. He went on to say that Member Silverman might not be available for the April 3, 2012 meeting so the Board's options are it can either start the case today and reconvene on April 3 to conclude the hearing. Chairman de la O further stated if Member Silverman is not available on April 3, the Board can proceed with four Members and alternatively Member Silverman can be brought to speed (i.e. viewing videotape of hearing) before the April 17 hearing of what happened at the April 3 hearing and be ready to participate at the April 17, 2012 meeting. He stated that the Board obviously will not be done with Ms. Esquijarosa's case today, nor will it be done with her case on April 3 so it will be a question of the April 17 meeting. Chairman de la O went on to say if the current Board changes by two Members after April 17, the risk the Board takes is having to hear the case anew. He asked Ms. Esquijarosa if she wished to proceed today. Ms. Esquijarosa responded whatever is the will of the Board she will follow.

Chairman de la O asked the department's attorney for her preference. ACA Richard responded that she did not wish to go forward with Ms. Esquijarosa's case today because it is now 4:00 p.m., she is exhausted, and the Board would only have the Chambers for one hour. She went on to say that she did not mind going forward on April 3; however, it is a short day and Mr. Kendrick's case is already scheduled for that day. ACA Richard further stated if the Board does not receive the waiver of pay and emoluments form, the case of Officer Daniel Fernandez will also be scheduled for April 3. Chairman de la O stated that Officer Fernandez' case will not be scheduled on April 3 but for an immediate date after April 3.

Member Kaplan stated that he would like to hear from Ms. Esquijarosa so that she could tell the Board factually what she believes occurred and so she can give her grounds for the case before the Board. ACA Richard stated she believes what Member Kaplan is asking was done at the last meeting. Member Kaplan responded generalities were presented at that time, but he wants to hear facts. Chairman de la O asked Member Kaplan if he wanted the parties to provide opening statements. Member Kaplan responded in the affirmative. Chairman de la O stated the problem is he does not know if the Board will go forward with Ms. Esquijarosa's case on April 3 and the Board definitely will not begin her case on April 17 because the case will not be finished. Member Kaplan withdrew his request.

Member Moy stated that Ms. Esquijarosa has been waiting to have her case heard all day so he would suggest that the Board start Ms. Esquijarosa's case today and try to finish it on April 3. Chairman de la O responded that he agrees that Ms. Esquijarosa has been waiting to have her case heard today but it is not a time that the Board can realistically finish the case. Following discussion, the Board entered a motion to

continue Ms. Esquijarosa's case to a time when the new Board is put in place.

Under discussion on the motion, Ms. Esquijarosa asked if the Board's motion implies that her case would not be scheduled until some time in May 2012. Chairman de la O responded in the affirmative. Ms. Esquijarosa stated if her hearing is rescheduled she would like to withdraw Rule 17 from her complaint but continue with Rule 14.1. Following discussion, the motion on the floor to continue Ms. Esquijarosa's case to the time when the new Board is in place, 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, Silverman, de la O and Dames

No: Moy

Chairman de la O stated that earlier when this matter was discussed, Ms. Esquijarosa temporarily withdrew Rule 17 because she was not aware that the Board would discuss this matter today. He went on to say that since Ms. Esquijarosa is no longer withdrawing Rule 17 and that her case will not be heard until after May 17, he would like to know from ACA Richard if she has an objection to Ms. Esquijarosa amending her complaint to include the charge of violating Civil Service Rules 14.1 and 17. ACA Richard responded she does not have an objection because she believes every employee should have the right to state whatever rules he/she feels was violated. She went on to say that she would ask that Ms. Esquijarosa present to the Board a detailed written explanation of how Rules 14.1 and 17 were violated if she chooses to add these rules in her complaint. Chairman de la O asked Ms. Esquijarosa if she could have this information prepared by May 1, 2012. Ms. Esquijarosa responded in the affirmative.

DISCUSSED : Chairman de la O instructed Ms. Esquijarosa to prepare detailed explanation of how Civil Service Rules 14.1 and 17 were violated and submit to the Executive Secretary no later than May 1, 2012.

Following discussion on the matter concerning Corina Esquijarosa, Member Moy stated that he felt a special meeting should be held which would give the Board more time to hear Ms. Esquijarosa's case. Chairman de la O responded that he would need a motion for either a special meeting or adjournment. Member Moy made a motion to hold a special meeting on April 10.

Under discussion, ACA Richard stated that she would not be available on April 10.

DISCUSSED : Member Moy withdrew his motion; the proposed Special meeting for April 10, 2012 will not take place.

H.3

Grievance hearing on behalf of Min-Li Nar, Process Design Analyst, pursuant to Rule 16.2, alleging a violation of Rules 11.1 and 12.1, as it concerns her layoff, effective September 23, 2011.

Chairman de la O asked Attorneys Teri Guttman-Valdes and Janeen Richard if there were prepared to go forward with Min-Li Nar's case today. Both attorneys responded in the affirmative, and advised of the number of witnesses. Chairman de la O stated that the Board will not have sufficient time to hear Ms. Nar's case today and asked for a motion to continue. Following discussion, the Board entered a motion to CONTINUE Min-Li Nar's hearing and charge the continuance to the Board.

Under discussion on the motion, Member Moy asked to what date will Ms. Nar's case be continued. Attorney Guttman-Valdes responded that she will not be available on April 3 because she is scheduled for mediation. Chairman de la O stated that Ms. Nar's hearing will be scheduled some time after the new Board is in place. Attorney Guttman-Valdes asked the Executive Secretary to coordinate with her when she

rescheduled Ms. Nar's case so that she can check for availability.

Following discussion, the motion on the floor to charge a Board Continuance resulted as follows:

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

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

H.4

Hearing of Appeal on behalf of Johnny Brutus, Police Officer, relative to his 20-hour suspension, effective September 10, 2011.

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

CONTINUED : Case will be rescheduled to a future meeting date.

ADJOURNMENT:

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

Breaks were taken at 10:18-10:30 a.m., 11:15-11:26 a.m., 12:27-1:14 pm (LUNCH) and 2:15-2:22 p.m. The meeting ADJOURNED at 4:10 p.m.

SIGNATURE:

Miguel M. de la O, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary