

City of Miami

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



Meeting Minutes

Tuesday, April 16, 2013

10:00 AM

Commission Chambers

Civil Service Board

*Gerald Silverman, Chairperson
Sean Moy, Chief Examiner
Lillie Harris, Board Member
Javier Baños, Board Member*

PLEDGE OF ALLEGIANCE

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

Present: Chairperson Silverman, Chief Examiner Moy, Member Harris and Member Baños

A. APPROVING THE MINUTES OF:

Regular Meeting of April 2, 2013.

**Motion by Member Baños, seconded by Chief Examiner Moy, to APPROVE.
PASSED by the following vote.**

Aye: Silverman, Moy, Baños and Harris

B. PERSONNEL MATTERS

- B.1** Copy of memorandum from Beverly Pruitt, Director, Department of Human Resources, confirming the request of Sandra Garcia, Police Officer Recruit, Department of Police, to return to her former classification of Emergency Dispatcher, Department of Police, effective March 26, 2013.
(NOTIFICATION)

NOTIFIED

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

- D.1** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Sabine Raymovil, Police Officer, of her 20-hour suspension, effective April 3, 2013 and a copy of a request to appeal from Officer Raymovil. A hearing will be scheduled in accordance with Civil Service Rules and Regulations. (NOTIFICATION)

NOTIFIED

- D.2** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Helene Lugo, Emergency Dispatcher, of her 40-hour suspension, effective April 7, 2013 and a copy of a request to appeal from Michael Braverman, Attorney, on behalf of Ms. Lugo. A hearing will be scheduled in accordance with Civil Service Rules and Regulations. (NOTIFICATION)

NOTIFIED

- D.3** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Magdiel Perez, Police Officer, of his 80-hour suspension, effective April 14, 2013. (NOTIFICATION)

NOTIFIED

E. GENERAL ITEMS

- E.1** Copy of Findings and Recommendations concerning the Investigation Hearing on behalf of F.O.P Miami Lodge #20, pursuant to Civil Service Rule 16.1 - Investigation by the Board, as it concerns Civil Service Rule 7.3 - Duration of Registers. (DISCUSSION)

Chairman Silverman asked if Attorney Cohen was coming to today's meeting. The Executive Secretary responded that she did not know, but she did receive a letter from Attorney Cohen stating he had no objections to the Findings of Fact. Following discussion, the Board entered a motion to the APPROVE the Findings and Recommendation which resulted as follows:

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

Aye: Silverman, Moy, Baños and Harris

- E.2** Copy of Findings and Recommendations concerning the Grievance Hearing on behalf of Armando Alvarez, pursuant to 16.2 - Complaint by Employee, alleging a violation of Civil Service Rule 7.3- Duration of Registers, as it relates to the Eligible Register for Police Sergeant. (DISCUSSION)

The Board entered a motion to APPROVE the Findings of Fact which resulted as follows:

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

Aye: Silverman, Moy, Baños and Harris

Some time after having considered Items E.1 (Findings and Recommendations concerning the Investigation Hearing on behalf of F.O.P. Lodge #20) and E.2 (Findings and Recommendations concerning the Grievance Hearing on behalf of Armando Alvarez), Attorney Cohen appeared at the meeting and the Board revisited these items for discussion.

Chairman Silverman asked Attorney Cohen if there was anything he wished to say on these items. Attorney Cohen responded in the affirmative. He went on to say they were not looking to have these matters reheard and are willing to live with the Board's decision, but there were two points he wished to make on the Findings.

Attorney Cohen stated the first point was he did not ever know that Armando Alvarez filed a grievance since this was a FOP case and Officer Alvarez was a witness to the FOP in the one grievance case. He went on to say that his second point was he had a complaint about the closing argument made by opposing counsel, which was very personal. Attorney Cohen further stated counsel for the City was allowed to state her personal opinion over an objection as to the justice of the cause, which in his opinion is always incorrect, in that she stated she had been before the Board for many years and never thought she would see the day when the FOP would come forward to kill a list when people had been waiting to be promoted. Attorney Cohen went on to say that the department's attorney stated that she is a City of Miami resident and is aware that sergeants are needed on the street and police officers need to be supervisors. He further stated there was an attitude that pervaded the hearing which made the closing argument improper. Attorney Cohen stated not everything was fair game in closing argument which is the reason they objected to the closing argument and thought it important enough to write the letter to the Board (dated April 15, 2013), to research the cases and to come before the Board to make that point.

Chairman Silverman stated the Board approved individual findings in the matters of the FOP and Officer Armando Alvarez and asked its Special Counsel for clarification since Attorney Cohen claimed he was unaware of any grievance filed by Officer Alvarez. Cynthia A. Everett, Special Counsel to the Board, responded it was her understanding that a grievance was filed by Officer Alvarez and a complaint filed by the FOP; however, the Executive Secretary might have more information to clarify this matter.

The Executive Secretary responded that [at the Board's February 5, 2013 meeting] the Board approved a Rule 16.1 hearing on behalf of the FOP and a Rule 16.2 hearing on behalf of Officer Alvarez, as requested by Attorney Cohen. Attorney Cohen responded that he requested to see the grievance on behalf of Officer Alvarez yesterday and they were told there was no grievance hearing for Officer Alvarez. He went on to say he was sure there was no grievance on behalf of Officer Alvarez because Officer Alvarez was a witness in the hearing.

Special Counsel Everett stated that Officer Alvarez was at the hearing and she believed he testified. She went on to say that Officer Alvarez was not present today, nor did they have representation from him that he did not file a complaint or wished to withdraw his complaint in order for the Board to do so.

Chairman Silverman asked ACA Richard if she received anything in writing from Officer Alvarez concerning a grievance complaint. ACA Richard responded if her memory served her correctly, at the time there was a request for hearing she made the argument that under Rule 16.2 (Complaint By Employee) an employee of the City had to come forward to allege violation of Civil Service Rules. She went on to say at that time Attorney Cohen along with the Union President indicated they had an employee whose name was Armando Alvarez. ACA Richard further stated based upon the FOP's response was how Officer Alvarez then became the grievant and testified at the hearing. She further stated that during the hearing, Officer Alvarez testified that he was aggrieved by the (sergeants') list still being alive and that he was more than just a witness. ACA Richard went on to say that Officer Alvarez was the person the FOP proffered as being an employee who was aggrieved by a violation of the Civil Service Rules, and Officer Alvarez concurred.

Attorney Cohen stated the Chairman asked opposing counsel if she received paperwork concerning a grievance hearing filed on behalf of Armando Alvarez and he received no answer. He went on to say there was no grievance on behalf of Officer Alvarez rather there were a lot of officers that testified. Attorney Cohen further stated when he went to argue what opposing counsel said, the Chairman told him to move past that and to argue the substance of the case.

Member Harris stated she concurred with what was presented to the Board by the Executive Secretary and ACA Richard [concerning how Officer Alvarez came to be named as the grievant.] She went on to say she did recall it was the FOP President who put on the floor the name of Officer Armando Alvarez as the grievant for purposes of travelling under Rule 16.2. Member Harris further stated the fact that the FOP named Officer Alvarez was considered formal notification in her opinion.

Chairman Silverman asked Attorney Cohen if he wished to make any changes to the Findings and Recommendations (Items E.1 and E.2) since the Board approved them prior to his arrival at the meeting. Attorney Cohen responded in the negative. He went on to say they were willing to live with the Board's decision and that he only wanted to make the point about opposing counsel's statements made during closing argument, which was also stated in his letter to the Board dated April 15, 2013.

Chairman Silverman stated there was a good chance that this case could go to court and asked ACA Richard if there was anything she wished to say on the matter. ACA Richard responded she did agree with what Attorney Cohen wrote on the third page of his letter where he wrote, "We recognize that rules cited above are not strictly applicable to a Civil Service Hearing." She went on to say [based upon this statement], she did not understand the point of him going through this analysis only to concede on the third page that it does not apply to Civil Service hearings.

Attorney Cohen responded that the Rules governing closing argument are codes of ethics of the rules regulating the Florida Bar, in particular what an attorney can and cannot do. He went on to say it is a violation of the Code of Ethics in a trial to inject your personal opinion so they were not accusing anybody of violating the Code of Ethics, but to think that somebody can come at a Civil Service hearing and involve the personal opinion of counsel as to the justice of a cause and the accuracy of a witness, throws out the whole idea of closing argument. Attorney Cohen further stated closing argument is a review of the evidence and applying the facts and the evidence to the law. He stated the Board has said it does not apply and therefore does not have to follow it, which is just too bad because the courts have found historically in the Third District and the Florida Supreme Court that it is fundamentally unfair and changes the entire idea of a fact-finding hearing. Attorney Cohen went on to say when the Board is sitting as a jury, the Board is supposed to base its decision on the evidence as applied to the law and not upon the personal opinion of counsel.

DISCUSSED : No further action required by the Board.

F. REPORTS

F.1 Pending Hearings as of April 16, 2013. (NOTIFICATION)

PRESENTED

G. REQUESTS FOR HEARINGS

H. TODAY'S HEARINGS

H.1 Grievance Hearing on behalf of Paul Hernandez, Chief Mechanical Inspector, pursuant to Civil Service Rule 16.1, violation of 14.10 Reduction in Pay.

Attorney Braverman informed the Board that his client, Paul Hernandez, was unable to be present for his hearing today because he was called to Federal jury duty on April 9, 2013. He went on to say that he apprised Assistant City Attorney Richard and the Executive Secretary there was a possibility that he would not be going forward on his client's case today. Attorney Braverman further stated that Mr. Hernandez is currently sitting in a jury trial that is going on before Judge Moore so he would ask that this matter be rescheduled to the Board's next meeting date.

Chairman Silverman asked the department's attorney if she had an objection to the continuance request. Assistant City Attorney (ACA) Richard responded that she did not have an objection; however, she wanted to make one point for the record. She went on to say that Mr. Hernandez filed an abuse of power claim against Mariano Fernandez, Building Director, who will be leaving the City of Miami at the end of this month. ACA Richard further stated if this case is rescheduled to the Board's next meeting on May 6, 2013, Mr. Fernandez will no longer be the director of the Building Department so it is the opinion of the City that this would become a moot issue.

Chairman Silverman suggested that both attorneys work out the matter. He then called for a motion on the continuance request. Following discussion, the Board entered a motion to APPROVE the employee's request for a continuance which resulted as follows:

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

Aye: Silverman, Moy, Baños and Harris

H.2

Hearing of Appeal on behalf of Osmar Martinez, Police Officer, relative to his 10-hr suspension, effective September 30, 2012.

The Board entered into the scheduled hearing of appeal on behalf of Osmar Martinez, the Appellant.

Janeen Richard, Assistant City Attorney, represented the Department.

Eugene G. Gibbons, Attorney at Law, represented the Appellant.

ACA Richard presented opening statements and Attorney Gibbons reserved opening statements. The Rule of Witnesses was invoked and all witnesses were sworn in individually. Witnesses for the department appeared in the following order:

- 1. Christopher Vital, Police Officer, City of Miami, Department of Police. Questions were posed by Board Members Harris and Moy during the testimony of Officer Vital.*
- 2. Rolando Padron, Sergeant, City of Miami, Department of Police. Questions were posed by Board Members Harris and Banos during the testimony of Sgt. Padron.*

The department rested its case and Attorney Gibbons moved for a Motion to Dismiss the case on the basis of contradictory, convoluted, and distorted evidence presented by the opposing side. Chairman Silverman denied the Motion and asked Attorney Gibbons to call his first witness. Witnesses for the Appellant appeared in the following order:

- 1. Eric Johnson, Police Officer, City of Miami, Department of Police.*
- 2. Osmar Martinez, Police Officer, City of Miami, Department of Police. Questions were posed by Member Harris during the testimony of Officer Martinez.*

The Appellant rested his case and the Board proceeded to closing arguments. Following final argument, Member Harris stated she did not feel the department proved its case based upon inconsistencies contained in the reprimand prepared by Sgt. Padron and testimony presented by Officer Vital. She went on to say she felt Sgt. Padron could have handled the situation better and it troubled her to know that he did not prevent Officer Martinez from having to contend with a prisoner especially after relating his concerns to Sgt. Padron about the prisoner. Member Harris further stated according to Officer Vital's testimony, the prisoner was consistently unruly and he had to request back-up assistance so it would seem to her that Sgt. Padron needed to gather facts of the incident in its totality when conducting his investigation. She stated in the past, Sgt. Padron worked under her command when she was the field duty lieutenant and while she did view him as a good sergeant, she felt he could have handled the situation better. She further stated it is inevitable that officers working the streets will encounter confrontations but how the confrontations are dealt with is what is important. Member Harris reiterated what bothered her were the inconsistencies of written details in the reprimand prepared by Sgt. Padron when compared with Officer Vital's testimony

concerning a conversation he had with Sgt. Padron while at the scene.

Member Baños stated he agreed with Member Harris that Sgt. Padron could have handled the situation better. He went on to say as a supervisor, there are moments when the person will act on situations some of the time and sometimes a supervisor's absence is more important than what he might actually do in a situation. Member Baños further stated with regards to Officer Martinez, he has to realize that sometimes he will have supervisors that are going to be difficult; which is part of the job and that there is a process to complain if Officer Martinez believed he was treated unfairly by his supervisor. He stated the moment was not for Officer Martinez to be argumentative or antagonistic with his superior so in his view according to the reading of the Rules, the department met its burden as to Officer Martinez' violation of Departmental Orders 1.11.6.17.8 - Insubordination, 1.11.16.16 - Discourteous Language, and Civil Service Rules 14.2(d) - Willfully Violated the Rules and 14.2(r) - Antagonistic Toward Superiors.

Chairman Silverman stated that he did not believe the employee was guilty of any of the charges.

Following discussion, the Board entered a motion to find the Appellant NOT GUILTY of Charge #1- Departmental Order 1.11.6.13.3 - Courtesy. The motion resulted as follows:

Motion by Member Baños, seconded by Member Harris, that this matter be APPROVED. PASSED by the following vote.

Aye: Silverman, Moy, Baños and Harris

The Board entered a motion to find the Appellant NOT GUILTY of Charge #2 - Departmental Order 1.11.6.13.8 - Conduct Unbecoming. The motion resulted as follows:

Motion by Member Baños, seconded by Member Harris, that this matter be APPROVED. PASSED by the following vote.

Aye: Silverman, Moy, Baños and Harris

Member Baños made a motion to find the Appellant GUILTY of Charge #3 but it died for lack of a second. The motion having died, the Board entered a motion to find the Appellant NOT GUILTY of Charge #3 - Departmental Order 1.11.6.17.8 - Insubordination. The motion resulted as follows:

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

Aye: Silverman, Moy and Harris

No: Baños

Member Baños made a motion to find the Appellant GUILTY of Charge #4 but it died for lack of a second. The motion having died, the Board entered a motion to find the Appellant NOT GUILTY of Charge #4 - Departmental Order 1.11.6.17.15 - Discourteous Language. The motion resulted as follows:

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

Aye: Silverman, Moy and Harris

No: Baños

The Board entered a motion to find the Appellant NOT GUILTY of Charge #5 - Civil Service Rule 14.2(e) 1 - Act of Insubordination. The motion resulted as follows:

Motion by Member Baños, seconded by Member Harris, that this matter be APPROVED. PASSED by the following vote.

Aye: Silverman, Moy, Baños and Harris

The Board entered a motion to find the Appellant NOT GUILTY of Charge #6 - Civil Service Rule 14.2(e) 2 - Breach of Proper Discipline. The motion resulted as follows:

Motion by Member Baños, seconded by Member Harris, that this matter be APPROVED. PASSED by the following vote.

Aye: Silverman, Moy, Baños and Harris

The Board entered a motion to find the Appellant NOT GUILTY of Charge #7 - Civil Service Rule 14.2(e) 3 - Loss/Injury to the City. The motion resulted as follows:

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

Aye: Silverman, Moy, Baños and Harris

Member Baños made a motion to find the Appellant GUILTY of Charge #8, which died for lack of a second. The motion having died, the Board entered a motion to find the Appellant NOT GUILTY of Charge #8 - Civil Service Rule 14.2(d) - Willfully Violated Rules. The motion resulted as follows:

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

Aye: Silverman, Moy, Baños and Harris

The Board entered a motion to find the Appellant NOT GUILTY of Charge #9 - Civil Service Rule 14.2(h) - Insubordination. The motion resulted as follows:

Motion by Member Baños, seconded by Member Harris, that this matter be APPROVED. PASSED by the following vote.

Aye: Silverman, Moy, Baños and Harris

The Board entered a motion to find the Appellant NOT GUILTY of Charge #10 - Civil Service Rule 14.2(i) - Offensive in Conduct/Language. The motion resulted as follows:

Motion by Member Baños, seconded by Member Harris, that this matter be APPROVED. PASSED by the following vote.

Aye: Silverman, Moy, Baños and Harris

The Board entered a motion to find the Appellant GUILTY of Charge #11 - Civil Service Rule 14.2(r) - Antagonistic Toward Superiors. The motion resulted as follows:

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

Aye: Moy and Baños

No: Silverman and Harris

The motion having failed in a tie vote, Special Counsel asked the Board Members to give a reason for their position in an effort to reach a consensus. Following discussion, the Board entered a motion to find the Appellant NOT GUILTY of Charge #11 which resulted as follows:

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

Aye: Silverman, Moy and Harris

No: Baños

The Board having found the Appellant NOT GUILTY of all the charges ended this case.

H.3

Hearing of Appeal on behalf of Osmar Martinez, Police Officer, relative to his 40-hr suspension, effective October 25, 2012.

The Board entered into the scheduled hearing of appeal on behalf of Osmar Martinez, the Appellant.

Janeen Richard, Assistant City Attorney, represented the Department.

Eugene G. Gibbons, Attorney at Law, represented the Appellant.

ACA Richard presented opening statements and Attorney Gibbons reserved opening statements. All witnesses were sworn in individually. Witnesses for the department appeared in the following order:

- 1. Jose Gonzalez, Sergeant, City of Miami, Department of Police.*
- 2. Rolando Padron, Sergeant, City of Miami, Department of Police. Questions were posed by Member Harris during the testimony of Sgt. Padron.*
- 3. Osmar Martinez, Police Officer, City of Miami, Department of Police. Questions were posed by Board Members Harris and Silverman during the testimony of Officer Martinez.*

The Department rested its case and Attorney Gibbons moved for a Motion to Dismiss the department's case. Chairman Silverman called for Board discussion on the motion. Member Baños stated that he was in favor of the motion until Officer Martinez admitted based upon a question asked by Chairman Silverman that he had made travel reservations (to be on vacation) from June 11-20, 2012. He went on to say that Officer Martinez' admission countered some of the testimony he presented to the Board earlier.

Member Harris stated it still was not clear from the testimony whether Officer Martinez requested to be carried "I" (Illness) or "IF" (Illness in the family) on the payroll, but Officer Martinez contended he requested "IF". Prior to Member Harris finishing her position on the motion, Chairman Silverman respectfully interrupted her and stated that normally the Chairman rules on Motions for Directed Verdict, which this is not exactly a Directed Verdict. He went on to say that if the Chairman denies the motion, the Board would then move to the Penalty Portion of the hearing. Chairman Silverman further stated the issue before the Board was not on the merits of the case but whether the department made a prima facie case. He ruled that the department did make a prima facie case and stated the floor was opened for any Board Member to overrule his decision. Hearing none, Chairman Silverman asked Attorney Gibbons if he wished to make opening statements, make witness testimony, or if he wished to rest his case. Given the options by the Chairman, Attorney Gibbons rested his case and the department waived rebuttal.

The Board proceeded to closing arguments, which was presented by both attorneys. Following final argument, Member Harris stated she wished Officer Martinez and Sgt. Padron would have had a better rapport and that Officer Martinez would have let Sgt. Padron know the length of days he needed off. She went on to say that based upon Sgt. Padron's testimony and the [evidentiary] documents, she believed that Sgt. Padron would have done his best to accommodate Officer Martinez by obtaining approval for his request for time off. Member Harris further stated there was a lot of conflicting

information but she was leaning more towards the department's side [in terms of proving its case.] She stated that Officer Martinez testified that it was routine for Sgt. Padron to stop by whenever he called out "I" so she thought it would be bizarre for Sgt. Padron to go to Officer Martinez' home if he told Sgt. Padron that he would be out due to an illness in the family (IF). Member Harris went on to say that according to the weight of the case and the witness testimony, she was leaning more towards Sgt. Padron's testimony that Officer Martinez was out ill ("I"). She further stated although she felt shaky about the case, she also felt the department proved a portion of its case.

Member Baños stated that he did not think the department proved its case because it was a question of who to believe concerning whether Officer Martinez called out "I" or "IF". He went on to say that with all due respect to Sgt. Padron, he thought he went out of his way and used significant resources to investigate a very small personnel matter. Member Baños further stated Sgt. Padron went all the way to the airport to obtain information so he questioned whether that was a good use of City resources. He stated what was damning in his mind was the response Officer Martinez provided to the Chairman's question because at the very least if he did not lie to his sergeant, did he lie to the Board? Member Baños went on to say that from his prospective, Officer Martinez made the City's case [based upon his response.] Member Baños went on to say that if Officer Martinez booked his flight from June 11-20, 2012 with the intent of maybe returning on June 16, 2012, this just did not make any sense, especially when the airlines charge a fee for changes to a booked flight.

Chairman Silverman stated it seemed clear to him that Officer Martinez planned on returning on June 20, 2012 because that is what his documentation and testimony showed. He went on to say that everything else was disingenuous.

Following discussion, the Board entered a motion to find the Appellant GUILTY of Charge #1 - Departmental Order 1.11.6.17.17 - Making a False Statement. The motion resulted as follows:

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

Aye: Silverman and Baños

No: Moy and Harris

The motion having failed, the Board entered a motion to find the Appellant NOT GUILTY of Charge #1, which resulted as follows:

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

Aye: Moy and Harris

No: Silverman and Baños

The Board entered a motion to find the Appellant GUILTY of Charge #2 - False Report to a Superior. The motion resulted as follows:

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

Aye: Silverman and Baños

No: Moy and Harris

The motion having failed, the Board entered a motion to find the Appellant NOT GUILTY of Charge #2, which resulted as follows:

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

Aye: Moy and Harris

No: Silverman and Baños

The Board entered a motion to find the Appellant GUILTY of Charge #3 - Departmental Order 1.11.6.46.3 - Member Feigning Illness. The motion resulted as follows:

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

Aye: Silverman, Baños and Harris

No: Moy

The Board entered a motion to find the Appellant GUILTY of Charge #4 - Departmental Order 1.4.19.5 - Confinement During Sick Leave. The motion resulted as follows:

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

Aye: Silverman and Harris

No: Moy and Baños

The motion having failed, the Board entered a motion to find the Appellant NOT GUILTY of Charge #4, which resulted as follows:

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

Aye: Moy and Baños

No: Silverman and Harris

The Board entered a motion to find the Appellant NOT GUILTY of Charge #5 - Civil Service Rule 14.2(e) 2 - Breach of Proper Discipline. The motion resulted as follows:

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

Aye: Moy, Baños and Harris

No: Silverman

Member Moy made a motion to find the Appellant NOT GUILTY of Charge #6 Civil Service Rule 14.2(e) 3 - Loss/Injury to the City. The motion died for lack of a second. The motion having died, the Board entered a motion to find the Appellant GUILTY of Charge #6, which resulted as follows:

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

Aye: Silverman and Baños

No: Moy and Harris

The motion having failed, the Board entered a motion to find the Appellant NOT GUILTY of Charge #6, which resulted as follows:

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

Aye: Moy and Harris

No: Silverman and Baños

The Board entered a motion to find the Appellant GUILTY of Charge #7 - Civil Service Rule 14.2(b) - Misuse of Sick Leave Privilege. The motion resulted as follows:

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

Aye: Silverman, Moy, Baños and Harris

The Board having been unable to reach a passing vote on some of the charges, Chairman Silverman asked if any Board Member wished to discuss the tie votes or consider another motion. Member Harris responded in the affirmative. She went on to say that the Board reached a tie (2-2) when voting on Charge #4, Confinement During Sick Leave and found the Appellant guilty of Charge #3, Feigning Illness by a vote of (3-1). She went on to say that in her opinion, for the purpose of being consistent with the guilty finding, the Appellant would have had to violate [Charge #4] which are the conditions by which employees are to conduct themselves when calling out "I". Member Harris further stated that the provision in Charge #4 requires that employees calling out "I" are to be either confined to their home or in the hospital, but Officer Martinez was not, he was in Columbia.

Member Baños stated that Departmental Order 1.4.19.5 does not allow for the circumstances or facts in place because if Officer Martinez was out of the country, by definition he was not at home and unless he could provide evidence that he was in the hospital in Columbia, he would be in violation of the order.

Member Harris responded if the Board found that Officer Martinez feigned illness when he called out sick, he was supposed to be either at home or in the hospital according to the departmental order. She went on to say that Officer Martinez admitted that he was not aware of the departmental order as it relates to "IF" time usage. Having heard Member Harris' position, Member Baños stated that he was willing to change his vote on Charge #4.

Following discussion, the Board reconsidered its vote on Charge #4. The Board entered a motion to find the Appellant GUILTY of Charge #4 - Departmental Order 1.4.19.5 - Confinement During Sick Leave. The motion resulted as follows:

Motion by Member Harris, seconded by Member Baños, that this matter be APPROVED. PASSED by the following vote.

Aye: Silverman, Baños and Harris

No: Moy

The Appellant having been found guilty of some of the charges, the Board entered into the Penalty Portion of the Appellant's hearing. The Chairman read into the record the Appellant's personnel file which revealed no disciplinary actions since his employment with the City of Miami Police Department.

Chairman Silverman asked both attorneys if they had rebuttal testimony they wished to offer. Both attorneys responded in the negative. The Board then proceeded to closing arguments which was presented by both attorneys. Following final argument, Member Harris stated she would be making a recommendation for a lower penalty and she wanted Attorney Gibbons to know that her decision was not based on his argument but due to his client's willingness to testify and offer information he did not have to reveal to the Board. She went on to say that she did not think the Board was confused about its

decision (as stated by Attorney Gibbons), but she thought it was Officer Martinez that was confused about the departmental orders concerning the use of "IF" time and how he should have responded when Sgt. Padron spoke to him on the phone about how he was being carried on the payroll for the days he would be out. Member Harris further stated if Officer Martinez would have simply communicated to Sgt. Padron that he was being carried "IF" because his girlfriend in Columbia was sick, he would have been fine even if he had planned to be in Columbia through the 20th of June. She stated that she believed Officer Martinez told Sgt. Padron that he was out "I" when asked about his status over the phone, so Officer Martinez was required to follow the procedures stated in Departmental Order 6.1.4.19.5. Member Harris went on to say the departmental order might not be perfect, but it must be followed. She further stated she believes in progressive discipline and therefore would be making a recommendation for a lesser penalty because according to Officer Martinez' employment profile, he had no history of disciplinary action and he received four commendations during his employ with the City of Miami Police Department.

Following discussion, the Board entered a motion to recommend to the City Manager that Officer Martinez receive a reprimand only in lieu of the 40-hour suspension imposed by the Police Chief.

Under discussion, Member Baños stated the recommended penalty was too light of a sentence so if the majority of the Board agreed, he would be willing to reduce the penalty to a 20-hour suspension.

Chairman Silverman stated he had no problem reducing the penalty but he did not see giving Officer Martinez a pass [for the committed violations.]

Following discussion, the motion on the floor recommending that Officer Martinez receive a reprimand only resulted as follows:

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

Aye: Moy and Harris

No: Silverman and Baños

The motion having failed, the Board entered a motion to recommend to the City Manager that the Appellant receive a 20-hour suspension in lieu of a 40-hour suspension, which resulted as follows:

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

Aye: Silverman and Baños

No: Moy and Harris

The motion having failed, the Board entered a motion to recommend to the City Manager that the Appellant receive a 10-hour suspension in lieu of a 40-hour suspension, which resulted as follows:

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

Aye: Silverman, Moy and Harris

No: Baños

H.4

Hearing of Appeal on behalf of Ivelisse Medel, Typist Clerk II, relative to her 16-hour suspension, effective January 10, 2013.

Chairman Silverman asked Attorney Braverman if he was prepared to go forward with Ms. Medel's case today. Attorney Braverman responded in the negative. He proceeded to read into the record Ms. Medel's memo which stated, "This is to request my hearing with the Civil Service Board for Tuesday, 04/16/13 be cancelled. Thank you for the time you spent assisting me in my case." He went on to say that it was his understanding that Ms. Medel wanted to withdraw her appeal at this time.

Chairman Silverman asked Special Counsel Everett if any action was required by the Board since the employee withdrew her case. Cynthia A. Everett, Special Counsel to the Board, responded no action was required since the employee's attorney represented that his client withdrew her case.

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

ADJOURNMENT:

The meeting ADJOURNED at 5:26 p.m. Breaks were taken at 10:18 - 10:26 a.m., 12:14 - 12:20 p.m., 1:03 - 2:05 p.m. (LUNCH), 2:54 - 3:01 p.m., and 3:47 - 3:51 p.m.

SIGNATURE:

Gerald Silverman, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary