

City of Miami

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



Meeting Minutes

Tuesday, February 24, 2009

10:00 AM

Commission Chambers

Civil Service Board

*Miguel M. de la O, Chairperson
William J. Scarola, Chief Examiner
Jessica Angel-Capo, Board Member
Mariano Cruz, Board Member
Michael T. Dames, Board Member*

PLEDGE OF ALLEGIANCE

The meeting was called to order at 10:17 A.M. The roll call for Board Members at the commencement of the meeting was as follows:

Present: Chief Examiner Scarola, Chairperson de la O, Member Dames, Member Angel-Capo and Member Cruz

A. APPROVING THE MINUTES OF:

Regular Meeting of February 10, 2009.

The Board entered a motion to APPROVE the minutes of the regular meeting of February 10, 2009 which resulted as follows:

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

Aye: Chairperson de la O, Member Dames, Member Angel-Capo, Chief Examiner Scarola and Member Cruz

Special Meeting of February 17, 2009.

The Board entered a motion to APPROVE the minutes of the special meeting of February 17, 2009 which resulted as follows:

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

Aye: Chairperson de la O, Member Dames, Member Angel-Capo, Chief Examiner Scarola and Member Cruz

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

- D.1 09-00198** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Katrise Smith, Administrative Aide I, of her termination, effective January 27, 2009. No appeal to date. (NOTIFICATION)

NOTIFIED

E. GENERAL ITEMS

- E.1 07-01190** Copy of a Report relative to the Investigation hearing on behalf of Stanley Jean-Poix and Andre Paul-Noel, Police Officers, pursuant to Civil Service Rule 16.1, Investigation by the Board concerning the Abuse of Power complaint against Sergeant Juan Casiano, Department of Police. (DISCUSSION)

Chairman de la O stated that he received notice from the Executive Secretary to defer Agenda Items E.1 (Officers Stanley Jean-Poix and Andre Paul-Noel Findings) and E.2 (Lt. Miguel Hervis Findings) to the meeting of March 10, 2009 because the attorney for the grievants in both cases is not present.

Assistant City Attorney Vizcaino stated that she received an e-mail from Assistant City Attorney Iliana Forte yesterday wherein Ms. Forte indicated that she would be arriving at approximately 11:30 a.m. to discuss the proposed findings of fact and that she asked Sgt. Juan Casiano to arrive around the same time. The Executive Secretary stated that she would contact Assistant City Attorney Forte and advise her not to appear. Following discussion, the Board entered a motion to DEFER these items to the March 10, 2009 meeting which resulted as follows:

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

Aye: Chairperson de la O, Member Dames, Member Angel-Capo, Chief Examiner Scarola and Member Cruz

- E.2 07-00354** Copy of Findings of Fact concerning the Grievance hearing of Miguel Hervis, Police Lieutenant, pursuant to Civil Service Rule 16.2, Complaint by Employee, concerning a violation of Civil Service Rule 17.1, Practices, Penalties. (DISCUSSION)

DEFERRED TO THE MARCH 10, 2009 MEETING FOR BOARD DISCUSSION.

F. REPORTS

- F.1 09-00002** Pending Hearings as of February 24, 2009. (NOTIFICATION)

G. REQUESTS FOR HEARINGS

H. TODAY'S HEARINGS

- H.1 08-00892** Hearing of appeal on behalf of Osian Cruz, Automotive Equipment Operator II, relative to his termination, effective August 6, 2008.
- The Board initially convened on February 10, 2009 to hear Mr. Osian Cruz' case, but did not have sufficient time to complete it. At that time, Assistant City Attorney Vizcaino advised that there was a possibility that she might call two other witnesses to testify before resting the department's case. The Board reconvened today to hear the conclusion of Mr. Cruz' hearing.*
- Diana Vizcaino, Assistant City Attorney, represented the Department.*
- Isaac J. Mitrani, Attorney at Law, represented the Appellant.*
- The Rule of Witnesses continued to be invoked and witnesses for the Department continued in the following order:*
- 8. LeeAnn Brehm, Director, City of Miami, Department of Risk Management.*
- Questions were posed by Board Members Angel-Capo, Cruz and Scarola during the testimony of Witness LeeAnn Brehm.*
- The Department rested its case.*
- Attorney Mitrani presented opening statements and afterwards, called witnesses to testify on behalf of the Appellant.*

Witnesses for the Appellant appeared in the following order:

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

Questions were posed by Board Members Dames, Cruz, and Scarola during the testimony of witness Marlon Chavez.

2. Linda Dawkins, Automotive Equipment Mechanic II, City of Miami, Department of Public Works.

Questions were posed by Board Members Dames, Scarola and Angel-Capo during the testimony of Witness Linda Dawkins.

3. Rommel Viera, Mason, City of Miami, Department of Public Works.

4. Osian Cruz, Automotive Equipment Operator II, City of Miami, Department of Public Works, testified on his own behalf.

Questions were posed by Board Members Cruz, Dames, and Scarola during the testimony of Witness Osian Cruz.

5. Cornelius Bridges, Mason, City of Miami, Department of Public Works.

Questions were posed by Board Members Angel-Capo and Scarola during the testimony of Witness Cornelius Bridges.

The Appellant rested his case and the Board proceeded to closing argument.

Following final argument by both attorneys on the fact-finding phase of the hearing, Chairman de la O stated that he made a list of things discussed during the hearing that he thought were irrelevant in this case and he could say there were many. He went on to say that it seemed obvious to him that Ms. Grindell (Public Works Director) wanted to deny Mr. Cruz workers' compensation claim based upon the e-mails she sent to the Risk Management Director and that it was also obvious to him that she reached a conclusion very quickly that Mr. Cruz was the aggressor and whether that was right or wrong or whether it was based on a complete knowledge of the facts, he did not know, but the truth is it did not matter because this issue was not before the Board. Chairman de la O further stated that it was also irrelevant whether the Department of Employee Relations in preparing its report (on the work place violence incident) prejudged whether Mr. Cruz was guilty or not because the Board is not bound by that report. He further stated that even if the Employee Relations Department were to prepare the worst report ever or failed to interview all of the witnesses involved in that case, it really would not have mattered because the Board is not bound by investigations conducted by Employee Relations staff. Chairman de la O stated that he thought it was irrelevant that Mr. Vega did not prepare a report on the day of the incident (involving Mr. Cruz and Mr. Munizaga) and maybe he should have been written up for not following the Workplace Violence Policy if it applied because there was a question about whether this requirement applies to an acting supervisor or not, but again that is not why the Board is here. He went on to say that the criminal case (involving Mr. Cruz) was irrelevant because even if Mr. Cruz had gone to trial and was acquitted, [the outcome] would not have been binding on the City, the Board would not have to vote to put him back to work unless the reverse was also true, and the fact Mr. Cruz accepted an offer of a promise to appear (PTA) does not mean the Board has to give that any weight.

Chairman de la O stated that the real issue is whether self-defense as a defense is

written into or implied in the Workplace Violence Policy and he agreed with the example Attorney Mitrani used of a police officer [when speaking about self-defense] especially since the Workplace Violence Policy indicates that the City has zero tolerance of workplace violence be it a police officer, fire fighter, or general employee. He went on to say that it would be a ridiculous result to apply this rule against police officers [tending to police-related matters] and the reason the City does not is because of the statutory construction principle that one does not read a statute in a way that leads to an absurd result. Chairman de la O further stated that as an example, if the Board were to read the policy to mean that an employee is supposed to take blows from another employee carrying a 2 X 4 (board) without defending himself in any way because that would be an act of violence, this would be a result that cannot stand because it would be a ridiculous result and a way of reading the statute that is not reasonable. He stated that all statutes and rules must be read reasonably.

Chairman de la O stated that the real question in this case is did Mr. Cruz act in self-defense. He went on to say that one of the things that is relevant is the prior acts involving Mr. Munizaga and the reason this would be relevant is because the Florida Law on self-defense says that if the person who is being charged as the aggressor knows of a history of violent acts by the person they thought was attacking them, that is relevant to whether Mr. Cruz acted reasonably. Chairman de la O further stated that if Mr. Cruz knew that Mr. Munizaga had violent encounters with other City or non-City employees, it would be relevant as to how he interpreted Mr. Munizaga coming towards him, but his interpretation would be perceived differently if on the other hand, it was someone who was docile, never lost their temper, or ever had an argument with anyone. Chairman de la O went on to say that the fact that Mr. Cruz testified about Mr. Munizaga's past encounter with others, which is important, and the testimony given by Mr. Chavez and Ms. Dawkins is relevant testimony, at the end of the day, he thinks Attorney Mitrani is right (about the self-defense issue). He further stated that the difference in the testimony between the department's witnesses and Mr. Cruz is minimal and the only real issue is did Mr. Munizaga raise his hand as he headed towards the door. Chairman de la O stated that Mr. Cruz testified that Mr. Munizaga raised his hand and there was testimony of one of the witnesses who said that she was at the desk talking to someone and she could see what was happening in the room, but later on as he looked at the diagram of the room that was introduced into evidence, it was almost impossible for her to have been at an angle and look into the room and testify competently as to whether Mr. Munizaga raised his hand. He went on to say that Mr. Munizaga testified that he went to open the door presumably with his hand so he cannot say that he is convinced by a preponderance of the evidence that Mr. Cruz did not act reasonably in believing that Mr. Munizaga was going to hit him. Chairman de la O further stated he does not know if Mr. Cruz was right in believing that Mr. Munizaga was going to hit him, but he thinks Mr. Cruz' belief is reasonable given the past history between him and Mr. Munizaga and given the dynamics of that room and Mr. Cruz' belief that Mr. Munizaga came at him very quickly; so the question remains, is it a reasonable belief. He stated that he cannot say it was unreasonable for Mr. Cruz to believe that [Mr. Munizaga was going to hit him] and it does not mean that he was right because maybe Mr. Munizaga was not going to hit Mr. Cruz, but the Board will never know.

Chairman de la O stated that he thinks Mr. Cruz violated the Workplace Violence Policy by inviting Mr. Munizaga to step outside (to fight) because that was an act of intimidation or a threat to do harm, but the Board is bound by the charges cited in the charging document, which is that Mr. Cruz was terminated because he engaged in a physical altercation. He further stated that he thought the altercation was justified by the law of self-defense which is Florida Law and he does not think the Workplace Violence Policy could trump Florida Law. Chairman de la O stated that if Mr. Cruz was charged with only violating the Workplace Violence Policy, he would say that Mr. Cruz was guilty the

same as Mr. Munizaga was guilty and should be punished just as Mr. Munizaga was punished. He went on to say that one of the things he is going to regret is if the Board finds Mr. Cruz not guilty of the charges, he would receive no punishment whereas Mr. Munizaga did, which would not be a fair result.

Member Scarola stated that workplace violence as defined in the Policy is very clear when it states that it is violence or threats of violence by any employee against another employee. He went on to say that this language is clearly talking about in-house incidents and not of police officers on the street trying to arrest a bad guy because a police officer does not have to retreat. Member Scarola further that a police officer is probably the only employee who can move forward on any incident and take aggressive action to effect an arrest as long as the actions are not unreasonably above what the resistance is. He reiterated that police officers do not have to retreat but under the self-defense law, there may be a small window where an officer may have to take reasonable action to avoid an altercation. Member Scarola went on to say that Mr. Munizaga is a supervisor and how he got the job is irrelevant and from the testimony of some of the witnesses, they did not like Mr. Munizaga's management style, but he is the supervisor and for employees not to comply with his instructions would be wrong. He further stated that with regards to the Workplace Violence Policy, while there were no weapons used except for a fist, he finds it hard to believe that if someone were to come at him with a hammer that he could not take steps to defend himself from serious injury. Member Scarola stated that no employee has the right to place their hand on another employee for any reason at all so with regards to self-defense, he was having a problem because even if there was a way to retreat, he thinks the employee still may have had the right to defend himself.

Member Cruz stated that some employees are treated with a draconian measure, but everyone should be treated the same in that if the decision is to terminate one employee, the other employee should also be terminated if it is for the same offense. Member Cruz further stated that he is a taxpayer and a member of society so everyone should be treated equally regardless of their skin color, ethnic background, or religion. He stated that a lot of people have died to have equality so when people come before the Board, he wants to treat them fairly. He stated that there was talk about workplace violence, but for things to escalate between Mr. Cruz and Mr. Munizaga tells him that things have happened in the past between the two of them.

Member Dames stated that he understands that Mr. Cruz would be upset that Mr. Munizaga threw dust on him, but the reason he continued to harp on Mr. Cruz was because of his anger; he remained upset for 4 hours and just could not put the matter behind him. He went on to say that Mr. Cruz testified that he was standing by the doorway, which was ajar, and that Mr. Munizaga reached for the door to open it fully, but in Mr. Cruz' rage he mistook Mr. Munizaga's action as an aggression and punched Mr. Munizaga in the nose and broke it. Member Dames further stated that no matter how much he tried to give Mr. Cruz the benefit of the doubt with regards to his self-defense claim, he could not because Mr. Cruz had time to cool down; but he did not for 4 hours. He reiterated that he could not support the self-defense claim because Mr. Cruz was too enraged and he was saying threatening things in the workplace such as "I'm going to kill you."

Prior to voting on the charges, Assistant City Attorney Vizcaino brought to the Chairman's attention that the reprimand not only contained a violation of the Workplace Violence Policy, but it also contained violations of Civil Service Rules.

Attorney Mitrani argued that the only thing his client was charged with was involving himself in a physical altercation, which led to his dismissal from employment.

Following argument by both counsels and Board discussion, the Board entered a motion to find the Appellant GUILTY of Charge #1, violation of APM 1-99 - Workplace Violence.

Under discussion, Chairman de la O stated that the allegation is contained in the first indented paragraph (of Mr. Cruz' dismissal letter) which is the reason Mr. Cruz was terminated. He went on to say that Mr. Cruz was terminated because he engaged in a physical altercation, but [the reprimand] did not say that he was terminated because of intimidation or threats. Chairman de la O further stated that he could see if the charges themselves were obvious or the threats were the reason Mr. Cruz was being punished, but as he read through the charges he did not see that and the closest charge to this offense that is cited in the reprimand would be Civil Service Rule 14.2(j), which says that the employee "has been wantonly offensive in conduct or language toward the public or City officers or employees." He stated that the problem is with the word "or" so he thinks Attorney Mitrani is correct when he said he needs to be on notice of what charges he is supposed to defend against. Chairman de la O went on to say that if the charging document read, "Mr. Cruz has been wantonly offensive in language, the City would have a good argument so at the end of the day, he cannot say in good conscience that Mr. Cruz was put on notice that the word exchange between he and Mr. Munizaga was the basis for his termination. He further stated that he would only vote to find Mr. Cruz guilty if he felt that Mr. Cruz violated the Workplace Violence Policy based upon the physical acts he took against Mr. Munizaga, but he feels there was self-defense used by Mr. Cruz during the incident.

Member Angel-Capo stated that Mr. Cruz testified that he did punch Mr. Munizaga because he was in fear of his life so this was an admission made by Mr. Cruz so she would have to find him guilty of this charge. She went on to say that while she agrees that Mr. Cruz violated the Workplace Violence policy, she does not agree with the penalty.

Member Cruz stated that he could not vote in favor of the motion because Mr. Osvaldo Munizaga was not present and he was not charged with anything although he was a part of the problem.

Chairman de la O reminded Member Cruz that Mr. Munizaga was charged and punished for his involvement in the workplace violence incident with Mr. Cruz.

Following discussion, the motion on the floor to find the Appellant GUILTY of the Workplace Violence Policy resulted as follows:

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

Aye: Member Dames, Member Angel-Capo and Chief Examiner Scarola

No: Chairperson de la O and Member Cruz

The Board entered a motion to find the Appellant GUILTY of Charge #2 - Civil Service Rule 14.2(e)(2) which resulted as follows:

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

Aye: Member Dames and Chief Examiner Scarola

No: Chairperson de la O, Member Angel-Capo and Member Cruz

The motion having failed, the Board entered a motion to find the Appellant NOT GUILTY of Charge #2 - Civil Service Rule 14.2(e)(2).

Under discussion, Member Scarola stated that since the Board found Mr. Cruz in violation of the Workplace Violence Policy, then this would be the lawful order for the Civil Service Rule violation; therefore, the Board should find him guilty of this charge.

Following discussion, the motion on the floor resulted as follows:

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

Aye: Chairperson de la O, Member Angel-Capo and Member Cruz

No: Member Dames and Chief Examiner Scarola

The Board entered a motion to find the Appellant GUILTY of Charge #3 - Civil Service Rule 14.2(h) which resulted as follows:

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

Aye: Member Dames and Chief Examiner Scarola

No: Chairperson de la O, Member Angel-Capo and Member Cruz

The motion having failed, the Board entered a motion to find the Appellant NOT GUILTY of Charge #3 which resulted as follows:

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

Aye: Chairperson de la O, Member Angel-Capo and Member Cruz

No: Member Dames and Chief Examiner Scarola

The Board entered a motion to find the Appellant NOT GUILTY of Charge #4 - Civil Service Rule 14.2(i) which resulted as follows:

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

Aye: Chairperson de la O, Member Angel-Capo and Member Cruz

No: Member Dames and Chief Examiner Scarola

The Board entered into the Penalty Phase of Mr. Cruz' appeal hearing and reviewed Mr. Cruz' official personnel file which revealed he had been employed with the City of Miami since August 2, 1999, and had received one reprimand. No other disciplinary actions or commendations were included in his personnel file. The department called no rebuttal witnesses or entered any exhibits into evidence.

Marlon Chavez, Automotive Equipment Operator III, was recalled as a rebuttal witness on behalf of the Appellant and Attorney Mitrani entered reprimands of other employees as evidence into the record during the penalty portion of Mr. Cruz' hearing. The Appellant rested on rebuttal.

Following argument by both attorneys on the penalty portion, Chairman de la O stated that he usually feels compelled to uphold the department's discipline unless there is a good reason not to. He went on to say that in a vacuum, if nothing was presented to him by Attorney Mitrani and the department presented the facts to him, and he is now bound by what the Board has found, which is there was no self-defense applicable by either law or the facts and if the facts found by the Board showed that Mr. Munizaga was sucker-punched by Mr. Cruz, he would say to terminate Mr. Cruz and he would uphold the department's punishment; except that he cannot in light of the Torres versus Torres

case. He stated that Assistant City Attorney Vizcaino was correct when she said every case is different and not every case gets the same punishment, but there was not a sufficient difference between the two cases (Torres vs. Torres and Cruz vs. Munizaga) to justify the gap in the punishment. Chairman de la O reiterated that he would normally agree that if someone sucker-punched another person at work that person should be fired. Chairman de la O went on to say that he was not sure if it was clear from the record yet, but these (Torres vs Torres) were also two Public Works employees; therefore, the same department director issued the punishment. He went on to say that it would have been a good explanation if he was told that it was different directors, using different standards who issued the punishment in both cases, but it is the same director issuing a very different punishment within less than six months. He further stated that he does not see the justification by the record; therefore, he could not uphold the termination under these circumstances.

Member Cruz stated that he would bet there are many cases of this magnitude that have occurred, but never made it in front of the Civil Service Board. He went on to say that whenever there are people in offices with problems, there will be confrontations.

Member Dames stated that he agrees that fighting should not be tolerated and that he voted to find Mr. Cruz guilty of the charges because of his actions. He went on to say that he believes in progressive discipline and he thinks termination is too harsh.

Following discussion, Member Dames made a motion to recommend to the City Manager that Mr. Cruz serve a one-week suspension in lieu of termination; however, the motion DIED FOR LACK OF A SECOND.

The motion having died, the Board entered a motion to recommend that Mr. Cruz serve a one-day suspension in lieu of termination.

Under discussion, Member Dames stated that the Board looked at other incidents and one person received a one-week suspension; however, he could not vote in favor of a one-day suspension because it is too light for the actions demonstrated by Mr. Cruz.

Chairman de la O stated that the one-day suspension that is being recommended is less than what Mr. Munizaga received.

Following discussion, the motion on the floor resulted as follows:

Motion by Member Angel-Capo, seconded by Member Cruz, that this matter be APPROVED. FAILED by the following vote.

No: Chairperson de la O, Member Dames, Member Angel-Capo, Chief Examiner Scarola and Member Cruz

The motion having failed, the Board entered a motion to recommend that Mr. Cruz serve a one-week suspension in lieu of termination which resulted as follows:

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

Aye: Member Dames and Member Cruz

No: Chairperson de la O, Member Angel-Capo and Chief Examiner Scarola

The motion having failed, Chairman de la O stated that although he cannot sustain the termination based upon the Torres versus Torres case; and he voted to find Mr. Cruz not guilty, he thinks the recommended punishments proposed by the Board thus far were too light especially since it was found by the majority of the Board that Mr. Cruz sucker-punched another employee at work. Chairman de la O further stated that he

found Mr. Cruz not guilty because of self-defense, but once he was found guilty, the appropriate penalty needs to be applied.

Member Cruz stated that Mr. Cruz should receive the same punishment that the other employees received who violated the Workplace Violence Policy.

Chairman de la O stated that he agrees that what appears to have happened in the Grove (fighting incident) was aggrevious, but because a very light punishment was given in that case did not mean that the Board would, in the end, uphold it because the Board could very well increase the punishment, but the main thing is the Board should do what is right (by applying the appropriate penalty).

Member Scarola stated that he is sort of torn the same as the Chairman because this is a serious breach of conduct when one employee strikes another. He went on to say that the department recommended that Mr. Cruz be terminated and it is obvious that the Board is not going to uphold the termination. Member Scarola further stated that the Board may be spinning its wheels on deciding what is the appropriate penalty because the Board's recommendation has to go to the City Manager and he might not agree with the Board's recommendation.

Following discussion, the Board entered a motion to recommend to the City Manager that Mr. Cruz be suspened from the time he was terminated to date (August 6, 2008 through February 24, 2009 = 6 months, 2 weeks, 3 days). The motion resulted as follows:

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

Aye: Chairperson de la O, Chief Examiner Scarola and Member Cruz

No: Member Dames and Member Angel-Capo

H.2 05-00587

Hearing of appeal on behalf of Edward Lugo, Police Officer, relative to his 80-hour suspension, effective June 15, 2005.

Chairman de la O asked Officer Lugo if he was represented by counsel and if they were ready to proceed with his case. Edward Lugo, Police Officer, responded in the affirmative.

Member Scarola stated that he received a message from his secretary that Attorney Rind, Counsel on behalf of Officer Lugo, will be delayed until approximately 11:30 a.m.

Chairman de la O stated that he did not see a problem with Attorney Rind arriving at approximately 11:30 a.m. because he doubts the Board would be finished with the first case that is scheduled for today.

Attorney Rind arrived at 12:00 noon and stated that she was prepared to go forward with Officer Lugo's case; however, just before the lunch break at 1:25 p.m., Attorney Rind advised the Board that Officer Lugo was withdrawing his appeal request.

The Executive Secretary advised Attorney Rind that since her client has verbally withdrawn his request for a hearing that she needed to follow up with a written notice of withdrawal and forward this information to the Civil Service Board Office.

WITHDRAWN ---Case will be closed and removed from the Board's Docket

H.3 06-01096

Hearing of appeal on behalf of Javier Gonzalez, Police Officer, relative to his

20-hour suspension, effective June 1, 2006.

Assistant City Attorney Vizcaino stated that Attorney Rind requested that this matter be continued; however, the Board might want to wait before voting because Attorney Rind was hoping that the continuance would be charged to the Board since she did not feel the Board would have sufficient time to hear this case based upon the cases scheduled.

Chairman de la O asked Assistant City Attorney Vizcaino if she had an objection to charging the continuance to the Board or did she want the continuance charged to the employee. Assistant City Attorney Vizcaino stated that she had no objection to continuing this case.

Chairman de la O asked for the scheduling history of Officer Gonzalez' hearing. The Executive Secretary responded that the Board granted two continuances on behalf of the employee and two were charged to the Board.

Chairman de la O stated that the fundamental point is that the Board will not have time to hear Officer Gonzalez' case today. Assistant City Attorney Vizcaino stated that she was not prepared to go forward with Officer Gonzalez' case because Attorney Rind sent an e-mail advising that she would be requesting a continuance.

Following discussion, the Board entered a motion to CONTINUE Officer Javier Gonzalez' appeal hearing and charged the continuance to the Board which resulted as follows:

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

Aye: Chairperson de la O, Member Dames, Member Angel-Capo, Chief Examiner Scarola and Member Cruz

ADJOURNMENT:

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

Motion by Chief Examiner Scarola, seconded by Member Angel-Capo, to APPROVE. PASSED by the following vote.

Aye: Chairperson de la O, Member Dames, Member Angel-Capo, Chief Examiner Scarola and Member Cruz

The meeting adjourned at 4:56 p.m. Breaks were taken at 11:25-11:44 a.m., 1:24-2:14 p.m. (LUNCH), and 4:09-4:22 p.m.

SIGNATURE:

Miguel M. de la O, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary