

City of Miami

*City Hall
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Miami, FL 33133
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Meeting Minutes

Tuesday, August 25, 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 10:18 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 August 11, 2009.

Chairman de la O called for a motion to approve the minutes of August 11, 2009.

Member Cruz stated that the location of NW 7 Street and 22 Avenue that appeared on page 10 of the minutes needed to be changed to reflect the correct location of NW 7 Avenue and 20 Street.

Chairman de la O stated that he recalled the NET Office being near the Solid Waste Department; therefore, he agreed with Member Cruz that the location cited in the minutes was incorrect and should be corrected.

Following discussion, the Board entered a motion to APPROVE the minutes of the regular meeting of August 11, 2009 as amended, 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 Copy of a Judgment from the City Manager concurring with the Board in finding Angela Glass, Communications Operator, not guilty of all the charges as set forth in 40-hr disciplinary letter, effective September 11, 2006, thereby reversing the Police Chief's decision. (NOTIFICATION)

NOTIFIED

D.2 Copy of a Judgment from the City Manager concurring with the Board, in finding Osian Cruz, AEO II, guilty of violation #1 as set forth in his disciplinary letter, effective August 6, 2008. The decision of the Department Director that employee be terminated is hereby substantiated. (NOTIFICATION)

NOTIFIED

D.3 Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Roger Jackson, Police Officer, of his 10-hour suspension, effective August 22, 2009. (NOTIFICATION)

NOTIFIED

- D.4** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Greicy Lovin, Crime Prevention Specialist, of her 8-hour suspension, effective August 17, 2009 and a copy of a request to appeal from Osnat K. Rind, Attorney on behalf of Ms. Lovin. A hearing will be scheduled in accordance with the Civil Service Rules and Regulations. (NOTIFICATION)

RECEIVED AND FILED

- D.5** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Roberto Asanza, Police Officer, of his 10-hour suspension, effective August 25, 2009. (NOTIFICATION)

NOTIFIED

- D.6** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Eric Smith, Police Officer, of his 10-hour suspension, effective August 20, 2009. (NOTIFICATION)

NOTIFIED**E. GENERAL ITEMS**

- E.1** Notice of a Request to Continue from Osnat K. Rind, Attorney, on behalf of Manuel Lucena, Heavy Equipment Mechanic. (DISCUSSION)
Hearing of appeal is scheduled for today.

Chairman de la O asked for the department's position on Attorney Rind's request to continue the hearing of Manuel Lucena. Barnaby Min, Assistant City Attorney (ACA), responded that he had no objection to the continuance.

Chairman de la O asked for the scheduling history of Mr. Lucena's case. Attorney Rind responded that this is the first time that her client's case was scheduled and her first request for a continuance.

Following discussion, the Board entered a motion to APPROVE the employee's request for a continuance, which 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, Member Dames, Member Angel-Capo, Chief Examiner Scarola and Member Cruz

- E.2** Copy of Findings of Fact concerning the appeal hearing of Teresa Borkowski, Police Sergeant, relative to her 10-hour suspension, effective May 24, 2006. (DISCUSSION)

DEFERRED : The Executive Secretary received a request from the employee's attorney to carry this matter over to the Board's next meeting.

- E.3** Copy of a "Motion for Consolidation" filed by Barnaby Min, Assistant City Attorney, on behalf of the City of Miami, concerning the hearing of appeal on

behalf of Shekita Johnson, Communications Operator, (Osnat K. Rind, Attorney) regarding her 8-hour suspension. (DISCUSSION)
Hearing of appeal is scheduled for today.

Barnaby Min, Assistant City Attorney (ACA) stated that the Motions for Consolidation of the cases of Shekita Johnson (Item H.1) and Sylvia Benitez (Item H.2) were filed in order to expedite the proceedings, because the cases involve the same witnesses. Chairman de la O asked ACA Min if the department was going to call the same witnesses in both cases, and ACA Min responded in the affirmative.

Chairman de la O stated that without any prejudice to what ACA Min might present to the Board about the case, he would provide an overview of the issue since the Board had no knowledge of the cases.

Osnat K. Rind, Attorney at Law on behalf of Shekita Johnson stated that she would be asking for a continuance of Ms. Johnson's case. She went on to say that she did not have her case file because she was unable to get to her office yesterday; however, she was not prepared to go forward with this case today.

Chairman de la O stated that the Board would still go forward with the Motion and asked ACA Min to give him a brief overview of what the cases entailed.

ACA Min responded that the allegations involved an argument between Communications Operators Shekita Johnson and Sylvia Benitez in the Communications Unit of the Police Department. He went on to say that there were witnesses who saw the (verbal) fight and there were also witnesses who tried to break up the fight; therefore, the witnesses would be the same for the department because it was only one incident. ACA Min further stated that the department's witnesses work the midnight shift so he would prefer that his witnesses testify once rather than have them present all day when they could be home sleeping.

Attorney Rind stated that she was in opposition to the department's Motion for Consolidation because there is no provision in the Civil Service Rules for consolidating hearings. She went on to say that each employee has the right to defend himself/herself in a case requested to be heard before the Board and that it would be inappropriate to subject her client to cross-examination potentially by two attorneys and vice-versa. Attorney Rind further stated that she read in the Motion something about common defense but there was no common defense among the two employees. She stated that she did not personally represent both employees because it would have been a conflict to do so; therefore, she opposed the motion because each employee should be entitled to a defense in their own hearing.

Teri Guttman-Valdes, Attorney at Law on behalf of Sylvia Benitez, stated that there is no provision in the Civil Service Rules for consolidating disciplinary appeals. She went on to say that Florida Rules of Civil Procedures, Section 1.270 states that when a case involves common questions of law or fact that is when the cases would be consolidated. She went on to say that the issue in her case is whether her client is guilty of the charges cited in the reprimand and Attorney Rind's client has [different charges]; therefore, they are not common questions of law or fact, they should not be heard together, and she was prepared to go forward with her client's case today.

Chairman de la O stated that there may be different defenses, but if it was the same fight or two people were arguing with one another and they both were disciplined as a result of their actions, he did not understand how it would not be a common issue of fact.

Attorney Rind stated that the disciplines did arise out of a particular incident, but whether there are common issues of fact she could not say because she was not prepared to go

forward with her case. She went on to say that she would imagine that the witnesses would come forward and say what they saw and it might be the same or different when the witness is talking about one employee versus another. Attorney Rind further stated that when she used the term, "different", she was not talking about the witnesses having different testimony, rather [depending on the questioning] what was relevant in the hearing as to what they saw with one employee versus the other.

Chairman de la O stated that the Board could save a lot of time by having the department put on its case which is common to both attorneys' clients and both attorneys could cross-examine witnesses on parts that would be relevant to their individual case. He went on to say that he understood both attorneys would have to cross-examine each others' witnesses, but the department could at least put on its case one time.

Attorney Guttman-Valdes stated that to do as the Chairman suggested would cause confusion because there were certain [charges] that were made against Attorney Rind's client who received an 8-hour suspension. She went on to say that the reprimand indicated that the department found Shekita Johnson less culpable than her client and Ms Benitez' reprimand cited more violations than what was included in Ms. Johnson's reprimand. Attorney Guttman-Valdes further stated that if the cases are consolidated, the Board would hear a lot of testimony that would be irrelevant to her client's case so she could only imagine that it would be difficult for the Board to sort out the facts pertaining to each employee.

Chairman de la O responded that this happens all of the time in multi-defendant trials.

Attorney Rind stated that she looked up the rule that [pertains to multi-defendant trials] that the Chairman made reference to, but the problem is Ms. Johnson and Ms. Benitez are not co-defendants with charges brought against them. She went on to say that there was no common conspiracy because the two employees were not acting together the same as two people robbing a bank.

Chairman de la O stated that the same exact facts can result in different punishments and maybe different rule violations because each one acted differently within the same common facts, but they still are the same common facts.

Attorney Rind stated that while they are the same common facts, the common facts relevant to Attorney Guttman-Valdes' case might go beyond what is relevant to her case.

Chairman de la O stated that the Board might have to hear testimony that does not apply to one employee or the other.

Attorney Rind responded that she did not think it was fair to impose consolidating the cases against her client because as Attorney Guttman-Valdes stated, the Board would hear a lot of testimony that could influence the Board's decision with regards to one employee over the other.

Chairman de la O stated that if the cases are not consolidated, the attorney that presented their case last might be prejudiced because the Board would have already heard the testimony.

Attorney Rind stated that she would have to take that risk and the Board would have to rely on the evidence that it heard at the particular trial.

Chairman de la O asked Special Counsel Everett if she wished to weigh in on the

discussion as to whether the Board can consolidate the cases.

Cynthia A. Everett, Special Counsel to the Board, responded that the cases could be consolidated if the Board was able to consider all of the evidence and make a fair decision since this is the ultimate goal of the Board and what the Civil Service Rules require. She went on to say that although both counsels were not willing to concede, she was not aware and they did not produce any case law that would prevent the Board in this type of proceeding or in a court of law from consolidating the cases.

Chairman de la O asked ACA Min if there was anything he wished to add. ACA Min reiterated that they are the same facts and that it would be pointless to hear both cases individually when they could be heard at the same time.

Chairman de la O stated that whichever attorney presented their case last would have the opportunity to cross-examine the witnesses on their own. ACA Min stated that his point was that the testimony would be exactly the same.

Following discussion the Board entered a motion to DENY ACA Min's Motions for Consolidation.

Under discussion, Member Angel-Capo stated that everyone [coming before the Board] should have a fair opportunity and each case should be heard separately.

Chairman de la O stated that he certainly wanted everyone to have a fair trial and opportunity, but he did not think it would be ideal to have the department's witnesses testify twice and the Board hear the same testimony twice.

Member Angel-Capo asked if the discipline was the same for both employees. ACA Min responded that neither the charges nor the discipline were the same for both employees. He went on to say that he did not think the Board was going to prevent the employees from cross-examining witnesses, presenting their cases, or questioning evidence that has been presented against them. ACA Min further stated that his point for consolidating the hearings was so that the Board could hear testimony one time rather than have two separate hearings and by doing so, the employees could still have a fair hearing and a full opportunity to address any questions asked by the Board and/or attorneys.

Chairman de la O stated that [if the cases are consolidated], the department would call a witness to testify, the witness would be cross-examined by the other side, the Board would ask questions, and the hearing would be concluded. He went on to say that if the cases are not consolidated, the hearings would be heard individually, the same exact witness would take the stand, say the same exact thing and a different lawyer would cross-examine that witness. Chairman de la O further stated that what the Board could do is have a witness testify once, each attorney cross-examine the witness, the Board would have an opportunity to question the witness, and the next witness would be called to testify and the same process would follow for each witness. Chairman de la O further stated that having each witness testify only once would save the Board a lot of time.

Member Cruz stated that of the time he has served on the Board, he could not recall an attorney ever requesting two Motions on the same meeting date. He went on to say that Attorney Min's purpose for consolidating the cases was to save time, but he thinks everyone is entitled to have their day in court. Member Cruz further stated that if the cases are heard separately, there was the possibility that a witness could testify differently in both cases.

Following discussion, the motion on the floor to DENY the department's Motions for

Consolidation of the cases of Shekita Johnson and Sylvia Benitez resulted as follows:

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

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

No: Chairperson de la O

- E.4** Copy of a "Motion for Consolidation" filed by Barnaby Min, Assistant City Attorney, on behalf of the City of Miami, concerning the hearing of appeal on behalf of Silvia Benitez, Communications Operator, (Teri Guttman-Valdes, Attorney) regarding her 80-hour suspension. (DISCUSSION)
Hearing of appeal is scheduled for today.

This matter was DISCUSSED and the Board DENIED the Department's Motion for Consolidation of the hearings of Shekita Johnson and Sylvia Benitez. (See Item E.3 for Details). PASSED.

F. REPORTS

- F.1** Pending Hearings as of August 25, 2009. (NOTIFICATION)

G. REQUESTS FOR HEARINGS

- G.1** Request for hearing from Teri Guttman Valdes, Attorney, pursuant to Civil Service Rule 14, on behalf of Lazaro Cabezas, Telecommunications Technician. (DISCUSSION)
Tabled from the meeting of August 11, 2009.
- The Executive Secretary informed the Board that she placed a document at their seats for review that pertained to discussion that took place at the January 13, 2009 meeting concerning Telecommunications Technician Rodrigo Jimenez' request for a hearing. She went on to say that she thought the Board should review the discussion since Mr. Cabezas filed the same complaint as Mr. Jimenez.*
- Chairman de la O asked Attorney Guttman-Valdes for her position. Attorney Guttman-Valdes stated that it was her understanding that her client's request for a hearing was unopposed.*
- ACA Vizcaino stated that Attorney Guttman-Valdes requested a hearing on behalf of her client claiming that he was reduced in grade. She went on to say that she had no objection to the request because the employee was entitled to a Rule 14 hearing since he was reduced in grade. She went on to say that the request also included an allegation that Mr. Cabezas received a de facto demotion; however, the department objected to that statement because he was not demoted. She reiterated that the department did not object to Mr. Cabezas request for a hearing based upon the fact that he was reduced in grade, but objects to the allegation that he was demoted.*
- Chairman de la O asked Attorney Guttman-Valdes if she needed the Board to include the demotion allegation as a part of her request for a hearing. Attorney Guttman-Valdes responded that she did not care as long as the Board approved her client's request for a hearing pursuant to Rule 14.*

Following discussion, the Board entered a motion to APPROVE Lazaro Cabezas'

request for a hearing pursuant to Rule 14 due to a reduction in grade which resulted as follows:

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

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

H. TODAY'S HEARINGS

H.1 Hearings of appeal on behalf of Shekita Johnson, Communications Operator, relative to her 8-hour suspension, effective February 8, 2009.

Chairman de la O asked if this was the first continuance requested by the employee. Attorney Rind responded in the affirmative.

Chairman de la O asked the department's attorney if he had an objection to the continuance request. ACA Min responded in the negative.

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

Motion by Member Cruz, seconded by Chief Examiner Scarola, 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

H.2 Hearing of appeal on behalf of Silvia Benitez, Communications Operator, relative to her 80-hour suspension, effective February 9, 2009.

The Board entered into the scheduled hearing of Sylvia Benitez, the Appellant.

Barnaby Min, Assistant City Attorney, represented the Department.

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

Chairman de la O called for the presentation of opening statements by both attorneys.

ACA Min made opening statements and Attorney Guttman-Valdes reserved opening statements.

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

1. *Chris Griffin, Lieutenant, City of Miami, Department of Police.*

Questions were posed by Board Members Cruz, Angel-Capo, Scarola, and Dames during the testimony of witness Chris Griffin.

The Department rested its case.

Attorney Guttman-Valdes presented opening statements and afterwards called witnesses to testify on behalf of the Appellant. Witnesses for the Appellant appeared in the following order:

1. *Christy Mitchell, Communications Operator, City of Miami, Department of Police.*

Questions were posed by Board Members Angel-Capo, Dames, and de la O during the testimony of witness Christy Mitchell.

2. Sandra Garcia, Communications Operator, City of Miami, Department of Police.

Questions were posed by Board Members Cruz and Angel-Capo during the testimony of witness Sandra Garcia.

The Appellant rested her case.

Following final argument by both attorneys on the fact-finding portion of Sylvia Benitez' appeal hearing, Member Angel-Capo read into the record a portion of Ms. Benitez' reprimand which indicated, "At this point, Ms. Benitez stopped training the new dispatcher assigned to her and stopped monitoring the police channel she was working and started loudly questioning the chair request." She stated that according to the testimony presented, Ms. Benitez never stopped training Ms. Garcia because she was already on her last stage [of training] and Ms. Benitez was working the channel while Ms. Garcia listened to the radio. Member Angel-Capo read another portion of the reprimand into the record which indicated, "Ms. Benitez escalated the argument and became the primary aggressor when Ms. Johnson finally told her to "Mind your own freaking business." She went on to say that based upon the testimony of Lt. Griffin and Communications Operator Mitchell, it was Ms. Johnson's comment that started the argument since Ms. Benitez was speaking with the Supervisor, Elaine Navarro; therefore, she did not think the portion of the reprimand dealing with this issue was well written.

Member Dames stated that he was somewhat disappointed that Ms. Benitez did not testify especially since the reason she received the reprimand was not about a chair, but something deeper and he really wanted to know what went on. He went on to say that he now had to speculate about what happened since Ms. Benitez did not testify, which would have helped him to understand the issue [involving her and Ms. Johnson].

Member Cruz stated that he wondered why Elaine Navarro was not present at the hearing since she was the one who gave the order about the chair. He went on to say that he would have liked to check her credibility to know what was going on since it could have been possible that Ms. Navarro baited Ms. Benitez, she accepted the bait, and the problems followed. Member Cruz further stated that if his boss were to give him an order, he would obey it and then take action [if he felt the boss abused his power]. He stated that employees who complain usually are the best employees because they know what they are doing and they care.

Chairman de la O stated that whatever anyone may think of the penalty, the Board needed to determine if Ms. Benitez violated any of the departmental or Civil Service rules. He went on to say that Attorney Guttman-Valdes stated that Ms. Benitez did not testify because the facts are what they are, which he thought was profound considering the only facts the Board had was testimony from Lt. Griffin and Christie Mitchell since Ms. Garcia only testified that she did not stop dispatching. Chairman de la O further stated that Ms. Mitchell said a lot of things that he thought were not helpful to Ms. Benitez such as "the argument was not appropriate; it was fairly heated; it was 10 minutes long; it was the worst argument she had seen in 12 years", and she corroborated Lt. Griffin's testimony that Ms. Benitez was using the "F" word and Ms. Johnson was not. He stated that Ms. Mitchell said another interesting thing, which was she and her trainee had to take over Ms. Benitez' channel. Chairman de la O went on to say that whatever rules the department had in place at the time, Ms. Garcia was not allowed to be on the channel by herself even though she was to report to the "B" Shift

the following day. He further stated that at the end of the day, the only fact that Ms. Mitchell contradicted with regards to Lt. Griffin's testimony was whether Ms. Benitez walked over to Ms. Johnson. Chairman de la O stated that according to Ms. Mitchell's testimony, the only time Ms. Benitez stood up was when Ms. Navarro asked her to do so, which was a different picture than what Lt. Griffin painted with regards to Ms. Benitez standing up. He stated that in terms of all of the other facts, there was an argument, there was cursing, Lt. Griffin and Ms. Navarro were being ignored (when they tried to get Ms. Benitez' attention to calm down), so there was not much of a factual dispute.

Following discussion, the Board entered a motion to find the Appellant NOT GUILTY of violating Charge #1, Conduct Unbecoming - Departmental Order 1.11.6.13.8 which resulted as follows:

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

Aye: Member Angel-Capo and Member Cruz

No: Chairperson de la O, Member Dames and Chief Examiner Scarola

The motion having failed, the Board entered a motion to find the Appellant GUILTY of Charge #1 which resulted as follows:

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

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

No: Member Angel-Capo and Member Cruz

The Board entered a motion to find the Appellant NOT GUILTY of violating Charge #2 - Insubordination - Departmental Order 1.11.6.17.8.

Under discussion, Member Dames stated that the testimony was that Ms. Benitez was ordered to report to Lt. Griffin's office and she complied by getting up and the only other order was when Lt. Griffin screamed Ms. Benitez' name for her to calm down. He went on to say that as far as he was concerned, he did not see that Ms. Benitez was insubordinate.

Chairman de la O stated that he agreed with Member Dames. He went on to say that his guess was if the Board were to quiz Lt. Griffin again, it would find that he did not just scream her name, but he believed the testimony was that Lt. Griffin was telling Ms. Benitez to calm down. Chairman de la O further stated that he thought the problem with those orders was, in reality, they're somewhat vague as to whether someone could objectively look at an employee to see whether or not the employee obeyed the order. He stated that in the case of Ms. Garcia who was given an order to give up the chair and she did; it would have been this type of order that the Board could objectively gauge whether the order was followed or not. Chairman de la O went on to say that despite being unable to gauge whether or not Ms. Benitez was insubordinate, there certainly was enough other charges cited that covered her conduct, so he did not think the Board needed to pile it on with a charge that seemed nebulous.

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

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

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

Neglect/Inattention to Duty - Departmental Order 1.11.6.17.9.

Under discussion, Member Dames stated that according to the testimony, Trainee Garcia was sitting at the console mainly taking calls, which would have meant that Ms. Benitez' headphone was plugged in the console while she monitored Trainee Garcia. He went on to say that if this was the case, he did not feel Ms. Benitez neglected her duties.

Member Angel-Capo stated that the Board heard testimony from Ms. Mitchell that it was customary for a person to train a new employee while doing other things, which included walking away from the console.

Chairman de la O stated that the trainer (Ms. Benitez) would have had to pay attention to the trainee; however, he did not see how she could have done so at the same time she was involved in a heated argument. He went on to say that Ms. Benitez could have been paying attention to a lot of things, but it was not only that Ms. Benitez had to listen to Trainee Garcia but she also needed to listen to what was being said over the radio and making sure the trainee's response was appropriate

Member Dames stated that he agreed with the Chairman.

Member Cruz stated that [despite what went on between Communications Operators Benitez and Johnson], he was certain no emergency calls went unanswered.

Member Angel-Capo stated that after 18 years of service in the Communications Unit, the dispatchers develop a trained ear where they can listen to their radio and talk at the same time.

Following discussion, the motion on the floor to find the Appellant NOT GUILTY of the Neglect/Inattention to Duty violation resulted as follows:

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

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

No: Chairperson de la O

The Board entered a motion to find the Appellant NOT GUILTY of violating Charge #4 - Obeying/Executing Orders - Departmental Order 1.11.6.13.12 - which resulted as follows:

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

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

No: Chief Examiner Scarola

The Board entered a motion to find the Appellant GUILTY of violating Charge #5, Discourteous Language - Departmental Order 1.11.6.17.15.

Under discussion, Member Cruz stated that he did not hear any testimony about discourteous language being used (by the Appellant).

Chairman de la O stated that neither the Appellant nor her attorney presented evidence to rebut the charge of using discourteous language.

Following discussion, the motion on the floor to find the Appellant GUILTY of using discourteous language resulted as follows:

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

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

No: Member Angel-Capo and Member Cruz

The Board entered a motion to find the Appellant GUILTY of violating Charge #6, Courtesy - Departmental Order 1.11.6.13.3, which resulted as follows:

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

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

No: Member Cruz

The Board entered a motion to find the Appellant NOT GUILTY of violating Charge #7, Act of Insubordination - Civil Service Rule 14.2(e)1

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

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

The Board entered a motion to find the Appellant NOT GUILTY of violating Charge #8 - Breach of Proper Discipline - Civil Service Rule 14.2(e)(2).

Under discussion, Member Dames asked if using the "F" word constituted a serious breach of proper discipline.

Chairman de la O responded that there was no doubt Ms. Benitez violated a regulation or an order which was the first thing that had to be determined. He went on to say that there clearly were regulations about what Ms. Benitez did, but the question is, did her actions amount to a serious breach of proper discipline. Chairman de la O further stated that the Board had already found Ms. Benitez guilty of being discourteous, using profane language, and conduct unbecoming so each Member needed to determine if those violations amounted to a serious breach of proper discipline. He stated that because the Rule did not provide a definition, he could only suggest that Member Dames look into his heart and decide whether Ms. Benitez' actions constituted a serious breach of proper discipline.

Following discussion, the motion on the floor to find the Appellant NOT GUILTY of violating Charge #8, Breach of Proper Discipline resulted as follows:

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

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

The Board entered a motion to find the Appellant NOT GUILTY of violating Charge #9 - Disgraceful Conduct - Civil Service Rules 14.2(h).

Under discussion, Member Cruz stated that he did not think the Appellant was insubordinate because Ms. Johnson received the chair.

Member Dames stated that the Rule was not limited to the charge of insubordination but

it also included disgraceful conduct. He went on to say that he did not think the Board could dismiss the fact that the Appellant's actions amounted to disgraceful conduct.

Following discussion, the motion on the floor to find the Appellant NOT GUILTY of Charge #9, Insubordinate and/or disgraceful resulted as follows:

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

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

No: Chairperson de la O and Member Dames

The Board entered a motion to find the Appellant GUILTY of violating Charge #10 - Offensive in Conduct/Language which resulted as follows:

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

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

No: Member Cruz

The Board proceeded to the Penalty Portion of Sylvia Benitez' appeal hearing and reviewed her official personnel file which revealed she had 32 commendations and 29 disciplinary actions which consisted of 21 reprimands only, 2 forfeitures of overtime and 6 suspensions.

Chris Griffin was recalled as a rebuttal witness on behalf of the department during the penalty portion of Ms. Benitez' appeal hearing.

Questions were posed by Board Members Dames and Scarola during the testimony of witness Chris Griffin.

The Department rested on rebuttal.

Sylvia Benitez was called as a rebuttal witness to testify on her own behalf.

The Appellant rested on rebuttal.

Following closing argument by both attorneys on the penalty portion, Chairman de la O stated that during her opening statement and closing argument of the fact-finding phase of Ms. Benitez' hearing, Attorney Guttman-Valdes made the point that her client's actions could have been satisfied by Lt. Griffin verbally counselling her and nothing more. He went on to say that if Lt. Griffin would have left the discipline at just a counselling, the next time another employee committed the same violation, that employee would have used the outcome of Ms. Benitez' actions as a justification for leniency. Chairman de la O further stated that if Lt. Griffin had issued Ms. Benitez a reprimand only, then another employee committing the same violation, but with a disciplinary profile unlike Ms. Benitez' would have sought leniency by complaining that Ms. Benitez who has a 5-page disciplinary profile received only a reprimand. He stated that the Members needed to think about this as they make a decision because another employee committing the same violation would be looking to justify leniency. Chairman de la O went on to say that frankly he thought the punishment (of an 80-hour suspension) was balanced for the type of disciplinary history Ms. Benitez possessed. Chairman de la O went on to say that if the department had used the standard 24-month disciplinary profile, it would have revealed that Ms. Benitez received 8 reprimands in 8 months, 9 reprimands in one year, and 11 reprimands in 15 months and the department did not terminate her, so he thought Ms. Benitez should thank her lucky stars since the

80-hour suspension she received for the matter before the Board today was not the longest suspension she had served in her career. He further stated that he would have to say that Lt. Griffin did take into account [Ms. Benitez' commendations and the time period for which she received no disciplinary actions] and also that Lt. Griffin took into account that for approximately 7 years, Ms. Benitez had tardy issues only, which included no reprimands, and that when he did issue this penalty (of an 80-hour suspension), it was not for the longest suspension she suffered before, which was a 160-hour suspension. Chairman de la O stated that it certainly seemed as though Ms. Benitez was facing a bad period of time because all of her disciplinary actions seemed to cluster around the period of 1999 to 2001 so he did not see any reason why the Board should second guess the discipline.

Member Cruz stated that according to the disciplinary profile he reviewed, it contained duplicate disciplinary actions.

Chairman de la O stated that the time to bring up questions about the duplicate disciplinary actions would have been when Lt. Griffin testified so that he could have explained the [disciplinary] report. He went on to say that the punishments were different [for the duplicate dates] so he would guess that they were different incidents that occurred on the same day. Chairman de la O further stated that the employee had an opportunity to rebut the report, but she did not.

Member Cruz stated that Ms. Benitez received 32 commendations which was 4 times the number of reprimands she received. He went on to say that Ms. Benitez is behaving so he will vote in favor of a reprimand only, but not the 80-hour suspension imposed by the department. Member Cruz further stated that with the economy the way it is, no one wants to lose their job and that is why he looked at the person and not a piece of paper.

Member Scarola stated that he and Member Angel-Capo have worked in the Complaint Room (Communications Unit) so they know what goes on there. He went on to say that a communications operator's job is probably more stressful than being a police officer and when he worked in the Complaint Room that had to be the worst 9 months of his life; but it was a job that had to be done. Member Scarola further stated that in the past, the Communications Operators were allowed to read books, etc., to relieve stress, but those things were done away with. He stated that despite how stressful the dispatcher job can be, many of the operators are able to take control of a scene and assist the police officers. Member Scarola went on to say that he knows Ms. Benitez and he would admit that she had one or two arguments while he worked in the Complaint Room, but she always admitted that she messed up, took her punishment, and moved on. He further stated that with all the people housed in the Complaint Room, all it takes is for one person to have an issue during the day and that can affect everyone on the channels. Member Scarola stated that Ms. Benitez was ordered to serve a two-week suspension, which she has already satisfied, but it is very hard for anyone to go without pay for two weeks. Member Scarola further stated that Ms. Benitez did have disciplinary problems in the past, but it appeared that she got her act together so he could not agree with the 80-hour suspension.

Following discussion, the Board entered a motion to recommend to the City Manager that the Appellant serve a 40-hour suspension in lieu of the department's imposed penalty of an 80-hour suspension.

Under discussion, Member Angel-Capo stated that she felt the 80-hour suspension was harsh given the fact that Ms. Benitez did not receive disciplinary action for the preceding 7 years so she could not vote in favor of upholding the 80-hour suspension especially when Ms. Benitez made a positive turn around.

Member Dames stated that he has been employed by the City of Miami for over 25 years and anyone working on a job for that length of time would run into some hardships. He went on to say that he was in agreement with Member Scarola that Ms. Benitez should be given the benefit of the doubt because [Member Dames] faced some hardships during his career, but was able to change his course for the better.

Following discussion, the motion on the floor recommending that Ms. Benitez serve a 40-hour suspension in lieu of an 80-hour suspension resulted as follows:

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

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

No: Member Angel-Capo and Member Cruz

H.3

Hearing of appeal on behalf of Manuel Lucena, Heavy Equipment Mechanic, relative to his 3-day suspension, effective February 9, 2009.

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

This matter was CONTINUED. PASSED.

ADJOURNMENT:

The Chairman called for a motion to ADJOURN 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

The meeting adjourned at 2:05 p.m. Breaks were taken at: 10:36-10:58 a.m.; 12:25-12:38 p.m.; and 1:34-1:40 p.m.

SIGNATURE:

Miguel M. de la O, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary