

City of Miami

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

Tuesday, January 10, 2012

10:00 AM

Commission Chambers

Civil Service Board

*Miguel M. de la O, Chairperson
Joseph Kaplan, Chief Examiner
Michael T. Dames, Board Member
Sean Moy, Board Member
Gerald Silverman, Board Member*

PLEDGE OF ALLEGIANCE

The meeting was called to order at 10:05 a.m. The roll call for the Board Members at the commencement of the meeting was as follows:

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

A. APPROVING THE MINUTES OF:

Regular Meeting of December 13, 2011.

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

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

B. PERSONNEL MATTERS

B.1 A copy of a memorandum from Haydee Wheeler, Director, Office of NET, notifying Susan Cambridge, Community Planner, of her return to her former classification of Planner I, effective October 1, 2011. (NOTIFICATION)

NOTIFIED

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

D.1 Copy of a Settlement Agreement between the City of Miami and Lillie Harris, Police Lieutenant, relative to her demotion effective May 19, 2010. (NOTIFICATION)

NOTIFIED

D.2 Copy of a letter from Ricardo Falero, Director, notifying Pedro Ascencio, Auto Mechanic, of his 5 day suspension, effective December 14, 2011. (NOTIFICATION)

NOTIFIED

D.3 Copy of a letter from Manuel Orosa, Interim Chief, Department of Police, notifying Andrew Mesa, Police Officer, of his 80-hour suspension, effective December 8, 2011. (NOTIFICATION)

NOTIFIED

E. GENERAL ITEMS

E.1 Hearing of appeal on behalf of Javier Gonzalez, Police Officer, relative to his 20-hour suspension, effective June 1, 2006. (DISCUSSION)
Rescheduled pursuant to continuance policy; pending settlement since July

26, 2011. Hearing is scheduled for February 7, 2012.

Chairman de la O asked for the status of the pending settlement in the matter of Javier Gonzalez. Assistant City Attorney (ACA) Richard responded she is certain the settlement agreement has been signed by the Chief of Police.

NO ACTION TAKEN : Case will be closed and removed from the Board's docket upon receipt of written settlement agreement, or rescheduled in accordance with the Board's Continuancy Policy.

E.2

Hearing of Appeal on behalf of Eddy Rodriguez Jr., Police Officer, concerning his 40-hour forfeiture, effective February 4, 2010. (DISCUSSION)

Rescheduled pursuant to continuance policy; pending settlement since August 24, 2010.

ACA Richard stated that the settlement agreement was forwarded to the Police Department to be signed by former Police Chief Miguel Exposito in August 2011 but unfortunately they have been unable to locate the original settlement agreement. She went on to say she has no reason to believe that the current Police Chief (Orosa) will not sign the settlement agreement.

NO ACTION TAKEN : Case will be closed and removed from the Board's docket upon receipt of written settlement agreement or rescheduled in accordance with the Board's Continuance Policy.

E.3

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

Deferred from the meeting of December 13, 2011 (Penalty Portion).

The penalty portion of Ms. Nation's appeal hearing was scheduled to today's meeting in accordance with instructions given by the Chairman at the December 13, 2011 meeting.

Janeen Richard, Assistant City Attorney (ACA), represented the Department.

Teri Guttman-Valdes, Attorney, represented Meredith Nation, the Appellant.

No witnesses were called by the department to testify during the penalty portion of Ms. Nation's hearing. The Department rested its case. The Appellant's attorney recalled Kenneth Robertson, Director, Purchasing Department to testify. Questions were posed by Board Member Dames during the testimony of Kenneth Robertson. The Appellant rested her case and the department waived rebuttal.

Both sides having rested, the Board proceeded to closing arguments. ACA Richard presented closing arguments followed by Attorney Guttman-Valdes who prior to presenting closing arguments, renewed her objection to the Board's December 13, 2011 rescission of votes on all of the charges made during her client's hearing held on November 1, 2011.

Following final argument, the Chairman opened the floor for Board discussion. Member Silverman stated that his problem with this case is Ms. Nation received \$107,000 (over a period of time) but was not entitled to it and yet he does not hear from her that the City made a mistake by paying her \$107,000, or that she made the mistake of accepting it and now that she realizes what happened, she would pay the money back and the City would reinstate her to her job. Rather, what he heard from Ms. Nation was that she is not guilty and she does not have to pay the money back. He stated if he heard an offer, he might consider the penalty differently. Member Silverman went on to say as he

mentioned before this is a case where the bank made a mistake and Ms. Nation kept the money.

Member Kaplan stated so far he believes everyone is agreement that the money has to be returned in some fashion.

Member Silverman responded the question concerning the penalty is: What penalty, if any, should be recommended to the City Manager, albeit a termination, suspension, etc? Member Kaplan asked if the money Ms. Nation received for 10 months was an issue with regards to the penalty. Chairman de la O responded that the Board could make whatever recommendation it wants and the City Manager will do whatever he has to do upon receipt of the Board's recommendation.

Member Moy stated his position is that he believes Ms. Nation did collect \$107,000 and the money should be repaid. Chairman de la O asked Member Moy if he was asking that Ms. Nation be reinstated. Member Moy responded that if Ms. Nation agrees to pay the money back, his motion is that she be reinstated. Following discussion, the Board entered a motion to reinstate Ms. Nation's employment and to offset her pay and emoluments by the amount she had been paid for the approximate period of March 2010 through March 2011. The motion DIED FOR LACK OF A SECOND.

Attorney Guttman-Valdes stated her client did mention at her initial hearing about repaying the money. Chairman de la O stated that he thinks he remembers hearing testimony to that fact. Member Silverman responded that he would like to know if Ms. Nation is willing to pay the money back or not and if so, how? Attorney Guttman- Valdes responded that in order to respond to Member Silverman's question, she would need to take a recess and discuss the matter with her client.

Following counsel's response to Member Silverman's question on whether Ms. Nation was willing to repay the \$107,000, the Board entered a motion to uphold Ms. Nation's termination. Under discussion on the motion, Member Dames stated it was his understanding that Ms. Nation had rollback rights to her former position but she was not rolled back when she separated from the Downtown Development Authority (DDA). He went on to say the City could not find a position for Ms. Nation and she was subsequently sent home which is why he believes someone had to know that she was at home. Member Dames further stated Ms. Nation received payroll checks for 10 months that she was not entitled to but he finds it hard to believe that no one in the City knew that Ms. Nation was receiving a paycheck every two weeks. He stated that some time in December 2010, the City stopped the checks to Ms. Nation and she sought a job that became available in the Purchasing Department. Member Dames went on to say the City did not conduct a recruitment and Ms. Nation was given the job. He further stated if Ms. Nation was such a horrible employee who took money from the City that she was not entitled to, why hire her back into a City position only to terminate her three weeks later? He further stated that he recalls Chairman de la O expressing at a previous meeting that this case rubbed him the wrong way but he did not think Ms. Nation's case warranted termination. Member Dames stated that he understands and agrees that it would irritate Board Members to know employees are sitting home and being paid (money they are not entitled to), but the City was also at fault.

Member Kaplan stated that he thinks Ms. Nation's March 23, 2011 discharge letter needs to be reversed; however, the Board needs to deal with the 10 months or so of payments that Ms. Nation took while she was at home because that was clearly wrong (of her to do). He went on to say the fact that he says it was wrong does not mean Ms. Nation did something wrong but that the payment to her was wrong. Member Kaplan further stated he cannot determine if the City or Ms. Nation was at fault, but it is probably a combination of both. Member Kaplan stated that he would like to make a motion to

reverse the discharge letter issued to Ms. Nation and that she be reinstated effective March 23, 2011 and regarding the money Ms. Nation took, that it be deducted from any back pay. Chairman de la O stated at this time Member Kaplan's motion is out of order because there is already a motion on the floor that has been seconded.

Member Moy stated that if an employee sits home for 10 months, that employee will be terminated unless that employee is on vacation, ill, etc. He went on to say he thinks the minute Ms. Nation found out that she was being released from the DDA, she should have found out about her rollback rights but she did not. Member Moy further stated he honestly believes Larry Spring (in charge of Human Resources at the time) protected Ms. Nation, but the City cannot be blamed for everything that happened in this case. He went on to say that rather than check on her rollback rights, Ms. Nation continued to mention that she was looking for the "perfect fit" (of being placed in a job comparable to the one she had while assigned to DDA.) He stated all he wants is that Ms. Nation agrees to pay back the money and then he would have no problem with her rolling back to her former position.

Following discussion, the motion on the floor to uphold the Appellant's termination of employment resulted as follows:

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

Aye: Silverman, de la O and Moy

No: Kaplan and Dames

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

E.4

Copy of Findings and Recommendations in the Grievance hearing on behalf of Olga M. Zamora, Sr. Project Representative, pursuant to Rule 16.2, alleging a violation of Rules 5.1, 6.1, 6.2 and 6.3, in connection with the recruitment process for Property Manager. (DISCUSSION)

Following discussion, the Board entered a motion to approve the Findings and Recommendations as amended which resulted as follows:

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

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

F. REPORTS

F.1

The 2011 Annual Board Report to the City Commission. (DISCUSSION)

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

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

F.2

The 2011 Annual Report reflecting Board action on Hearings, Administrative Activities, and Outstanding Judgments. (NOTIFICATION)

PRESENTED

F.3 Pending Hearings as of January 10, 2012. (NOTIFICATION)

PRESENTED

G. REQUESTS FOR HEARINGS

H. TODAY'S HEARINGS

H.1 Hearing of Appeal on behalf Jeffrey Locke, Police Lieutenant, relative to his 20-hour suspension, effective February 25, 2009. (DISCUSSION)

Teri Guttman-Valdes, Attorney on behalf of Jeffrey Locke stated that she never received notice of her client's hearing. She went on to say the first she heard of Lt. Locke's scheduled hearing was on last Friday via a telephone conversation.

Chairman de la O asked for the department's position. Assistant City Attorney (ACA) Richard responded her position is that she received notice and she believes the notice was mailed out in October 2011. She went on to say she did not know what more could be said than what has already been said for the last four times this case was continued. ACA Richard further stated her witnesses are present, this case has been dragging on for two years and the department is prejudiced as long as this case continues to drag on. She stated one of her witnesses is retired but he is willing to testify today but whether he would come the next time if this hearing is continued, she did not know. ACA Richard went on to say she opposes a continuance and is ready to go forward with her case today as she has always been ready to go forward.

Attorney Guttman-Valdes stated as an officer of the court she did not receive notice of her client's hearing and as the Board knows, she shows up at the meeting whenever she receives notice. She went on to say she was noticed for the three other cases scheduled today, but she did not receive notice for Lt. Locke's hearing so she was shocked when she learned her client's case was scheduled.

Following discussion, the Board entered a motion to deny the employee's request for a continuance. Under discussion on the motion, Member Silverman stated this case has been continued too many times.

Member Kaplan asked if Lt. Locke suffered the consequences of the 20-hour suspension. The Executive Secretary responded in the affirmative and added that the penalty is assessed at the effective date of the discipline which was two years ago.

Attorney Guttman-Valdes reiterated that she did not receive notice and that notices are not mailed from the Civil Service Board Office but are e-mailed to her. She went on to say she checked her e-mail and she was not noticed. The Executive Secretary responded that notices are sent according to the manner in which the employee or attorney request notice be sent. She went on to say notices are sent via e-mail to Attorney Guttman-Valdes per her request.

Member Silverman reiterated that this case has been continued so many times so he will vote in favor of a continuance this time, but the continuances have got to end. He went on to say it is not fair to go forward if Attorney Guttman-Valdes' client is not present.

Following discussion, the motion on the floor to go forward with Lt. Locke's case today resulted as follows:

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

Aye: Kaplan, Silverman, Dames and Moy

Abstain: de la O

The employee's request for a continuance of his hearing having failed, the Board entered into the scheduled hearing of appeal on behalf of Jeffrey Locke, Police Lieutenant. Chairman de la O recused himself and Member Kaplan chaired the hearing.

Janeen Richard, Assistant City Attorney, represented the Department.

Teri Guttman-Valdes, Attorney, represented the Appellant.

ACA Richard presented opening statements and opposing counsel reserved opening statements. All witnesses were sworn in individually. Witnesses for the Department appeared in the following order:

1. *David Magnusson, Police Major, City of Miami, Department of Police. Questions were posed by Board Members Kaplan and Dames during the testimony of David Magnusson.*
2. *Averill Johnson, Payroll Clerk, City of Miami, Department of Police. Questions were posed by Board Members Kaplan, Dames, and Moy during the testimony of Averill Johnson.*
3. *Luis M. Perez, Police Major (retired), City of Miami, Department of Police / Private Citizen. Questions were posed by Board Members Dames and Kaplan during the testimony of Luis M. Perez.*
4. *Anita Najiy, Police Lieutenant, City of Miami, Department of Police. Questions were posed by Board Members Dames and Kaplan during the testimony of Anita Najiy.*
5. *Jose Rodriguez, Police Commander, City of Miami, Department of Police. Questions were posed by Board Member Kaplan during the testimony of Jose Rodriguez.*

The Department rested its case. The Appellant's Attorney waived opening statements and proceeded with the calling of witnesses as follows:

1. *Jeffrey Locke, Police Lieutenant, City of Miami, Department of Police, testified on his own behalf. Questions were posed by Board Members Kaplan and Moy during the testimony of Jeffrey Locke.*

The Appellant rested his case and the Department waived rebuttal.

There being no further testimony, both attorneys presented closing arguments. Following final arguments, Member Silverman stated the facts are clear and there is no real dispute. He went on to say the legal question is: Is it a honest mistake or is it negligence? Member Silverman further stated if it is an honest mistake, the Board should find the Appellant not guilty, but if it is negligence, the Board should find the Appellant guilty on the negligent counts. He stated as far as he was concerned, the City overcharged the Appellant because the other violations listed in the charging document made no sense to him. Member Silverman went on to say that he personally feels the Appellant is guilty of the negligent charge and nothing else. Members Dames and Moy stated that they agreed with Member Silverman.

Following discussion, the Board entered a motion to find the Appellant NOT GUILTY of Charge #1 - Departmental Order 1, 11.6.1.2 - Members to Know Rules, which resulted as follows:

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

Aye: Kaplan, Silverman, Dames and Moy

Abstain: de la O

The Board entered a motion to find the Appellant NOT GUILTY of Charge #2 - Departmental Order 1, 11.6.17.7 - Conduct Unbecoming, which resulted as follows:

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

Aye: Kaplan, Silverman, Dames and Moy

Abstain: de la O

The Board entered a motion to find the Appellant GUILTY of Charge #3 - Departmental Order 1, 11.6.17.9 - Neglect or Inattention to Duty. Under discussion on the motion, Acting Chairman Kaplan stated he cannot find that the Appellant was negligent in any way. He went on to say he thinks if in fact the Appellant committed an offense, it was seven times out of 220 (overtime slips he received in one year). Acting Chairman Kaplan further stated if the Appellant's actions as a police lieutenant were negligent inheritably, it would have shown up more than seven times so it is clear the Appellant's actions were unintentional mistakes that are made by anybody. He stated that to mark up the Appellant's career by finding him guilty due to an act of negligence in that he did not follow the rules in the Police Department, he thinks is horrendous so he would ask the Board Members to reconsider their vote.

Member Silverman stated he did not want to get into a long debate but a person can be the best driver in the world and rear-end somebody. He went on to say the person becomes negligent once he rear-ends another person's vehicle even though the driver may have been driving for 30 years with a perfect driving record. Member Silverman further stated the fact that the Appellant had 220 overtime slips does not mitigate the fact that there were seven instances where he made a mistake. He stated the Appellant indicated that he paid the money back so he is not saying he should go to jail or be suspended for 20 hours but he is only saying the Appellant is guilty of the negligent charge. Acting Chairman Kaplan responded that for Member Silverman to suggest there is a similarity between a rear-end collision and someone collecting a few bucks in overtime when he should not have is not correct. He went on to say the Appellant clearly committed a wrongful act but the Board would have to consider who he was, what his position was, and whether there was in fact any intention for lack of attention on his part which caused the acts to be committed so he would ask the Board to reconsider its vote. Member Dames stated that Departmental Order 1.11.6.17.9 states neglect or inattention to duty so as far as he was concerned, the Appellant was inattentive.

Following discussion, the motion on the floor to find the Appellant GUILTY of Charge #3 resulted as follows:

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

Aye: Silverman, Dames and Moy

No: Kaplan

Abstain: de la O

The Board entered a motion to find the Appellant NOT GUILTY of Charge #4 - Civil Service Rule 14.2(e) 2 - Breach of Proper Discipline, which resulted as follows:

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

Aye: Kaplan, Silverman, Dames and Moy

Abstain: de la O

The Board entered a motion to find the Appellant NOT GUILTY of Charge #5 - Civil Service Rule 14.2(k) - Incompetent/Negligent, which resulted as follows:

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

Aye: Kaplan, Silverman, Dames and Moy

Abstain: de la O

The Appellant having been found guilty on one of the charges, the Board proceeded to the Penalty Phase of the Appellant's appeal hearing. The Board reviewed the Appellant's official personnel file which revealed the following history: 96 commendations, 6 reprimands, 1 suspension, and three forfeitures of earned overtime.

Neither the department attorney nor the employee's attorney offered witness testimony during the penalty portion and the Acting Chairman opened the floor for discussion by the Board. There being none, the Board entered a motion to recommend to the City Manager that the Appellant receive a reprimand with no loss of time.

Under discussion on the motion, Member Silverman said he thinks the penalty should be a reprimand and 10-hour forfeiture of earned overtime. Member Dames responded that the Appellant paid the money back so he did not favor a loss of time because this would penalize the Appellant twice since the time comes from the Appellant's bank. Member Moy stated he agreed with Member Dames because the Appellant is a good officer, he had 96 commendations, and what he likes about the Appellant is his honesty. He went on to say that the Appellant admitted he made a mistake and sometimes that all you are looking for is someone to admit their mistakes.

Following discussion, the motion on the floor to recommend that the Appellant receive a reprimand only which resulted as follows:

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

Aye: Kaplan, Silverman, Dames and Moy

Abstain: de la O

H.2

Grievance hearing on behalf of Ariel Coll, Sanitation Inspector (former), pursuant to Civil Service Rule 16.1 and 16.2, concerning a violation of Rule 12.1 and Rule 12.2, Layoff, Resignation, and Reinstatement, regarding his layoff.

Attorney Guttman-Valdes stated that she was unable to contact her client. She went on to say that since she has not been able to meet with Mr. Coll, he might be out of town

but she was not sure.

Chairman de la O asked for the department's position. ACA Richard responded that she is prepared to go forward with the case today. She went on to say this is an old case that has been pending since Mr. Coll's layoff in 2010 and that his Rule 16 grievance hearing has been continued numerous times over the department's objections. Attorney Guttman-Valdes stated that she would move to withdraw the case because she cannot get in contact with her client.

Chairman de la O asked for the scheduling history of Ariel Coll's case. The Executive Secretary responded that Mr. Coll's case was scheduled August 9, 2011.

Following discussion, the Board entered a motion to dismiss the case of Ariel Coll. Under discussion on the motion, Chairman de la O stated he does not oppose the motion if the Board got to Mr. Coll's case today but if the Board does not get to the case today, he does not think the Board should prejudice Mr. Coll any more than the Board would prejudice anyone else's case that the Board does not have sufficient time to hear. Following discussion, the motion on the floor to dismiss Mr. Coll's case resulted as follows:

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

Aye: Kaplan, Silverman and Dames

No: de la O and Moy

H.3

Hearing of Appeal on behalf of Vernell Reynolds, Police Officer (former), relative to her termination, effective July 25, 2011.

Attorney Guttman-Valdes stated that her client is still pending criminal charges in State Court and she now has pending criminal charges in Federal Court. She went on to say her client's State Court trial is set for the end of January 2012.

Chairman de la O asked for the department's position. ACA Richard responded she does not oppose the motion to continue; however, she would ask that the employee, who has been dismissed, follow the Board's procedures by signing a waiver of pay and emoluments form since she is requesting a continuance of her hearing. She went on to say that she spoke to the State Attorney and although there is a hearing for the end of January, it is unlikely that it will happen because there is discovery that needs to be taken. ACA Richard further stated that Officer Reynolds was charged with 16 counts of wire fraud on Friday in a Federal Court case, it may further delay her case before the Civil Service Board. She reiterated if Officer Reynolds wants a continuance of her case, she would ask that the Board require that she sign the waiver of pay and emoluments form. In support of her position, ACA Richard read into the record a portion of the Board's Manual of Procedures which states, "Any employee who is dismissed from employment and is seeking a continuance of his or her appeal under Rule 14 shall be required to complete and submit to the Civil Service Office in advance of the scheduled hearing date, the waiver of pay and emoluments for the duration of that continuance. Completion of the waiver by the employee's attorney is also acceptable."

Chairman de la O asked for the employee's position. Attorney Guttman-Valdes responded at the prior hearing the Board did not require her client to sign a waiver because of the pending criminal charges but if the form is required as a condition of obtaining a continuance her client will agree.

Following discussion, the Board entered a motion to grant Officer Reynolds request for a

continuance and that she be required to sign a waiver of pay and emoluments form. Under discussion on the motion, Member Dames asked if the employee is waiving her rights to pay. Chairman de la O responded that (by signing) Officer Reynolds would be waiving her rights to backpay in the event she is to be reinstated. He went on to say that Officer Reynolds asked for the continuance so that she does not have to come before the Board to waive her Fifth Amendment right to testify. Member Dames asked if two years from now Officer Reynolds won her case, would she not be entitled to two years of backpay. Chairman de la O responded in the affirmative. Member Silverman responded that the Board would also have to accept Officer Reynolds' appeal by voting favorably on the charges. Chairman de la O stated Officer Reynolds could have a hearing now but she does not want to because it could prejudice her criminal case.

Following discussion, the motion on the floor to grant Officer Reynolds' request for a continuance and require that she sign the waiver of pay and emoluments form resulted as follows:

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

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

H.4

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

The Executive Secretary stated she received notice that Attorney Guttman-Valdes is in the process of requesting documents needed for her client's hearing. Attorney Guttman-Valdes responded when she received the notice for Min-Li Nar's hearing approximately six weeks ago, the notice mentioned there was going to be a preliminary investigation so based upon that fact, she thought if the Board was going to conduct a preliminary investigation, she would want to have a copy of the report so that they are fully informed before going forward. She went on to say she is requesting a continuance because she also submitted a public records request to gather additional documents they need since this is a complex case. Attorney Guttman-Valdes further stated she was advised on last Friday that the information about the preliminary investigation was mistakenly included in the letter.

Chairman de la O asked for the department's position on the employee's request for a continuance. ACA Richard responded her recollection is that Ms. Nar did not want a preliminary investigation. She went on to say at the time this matter was discussed, Attorney Guttman-Valdes was called upon and unequivocally said she did not want a preliminary investigation and that she wanted to go forward with a hearing. ACA Richard further stated with regards to the motion for a continuance, she asked that a more definite statement be provided back in October 2011 because she has no idea what this case is about but she has yet to receive anything from opposing counsel although she asserted this information would be available before the Board met again. Chairman de la O asked the Executive Secretary if she received anything on this matter. The Executive Secretary responded in the negative. She went on to say that on Friday, January 6, 2012 she received notice that the employee would be adding a violation of Rule 14.1 to her complaint; however, there was no discussion as to why Rules 11.1, 11.2, 12, or 14.1 had been violated.

ACA Richard stated that Rule 16.2 requires that the complainant cite a rule violation and the employee has not done so; therefore, she would like to know which rules were allegedly violated by the department. Attorney Guttman-Valdes responded that on November 18, 2011 she sent the specifications based upon what she had at that time.

Chairman de la O asked the Executive Secretary if she received the specifications from Attorney Guttman-Valdes. The Executive Secretary 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 Silverman, seconded by Chairperson de la O, that this matter be CONTINUED. PASSED by the following vote.

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

ADJOURNMENT:

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

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

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

The meeting ADJOURNED at 4:05 p.m. Breaks were taken at 10:24-10:43 a.m.; 11:25-11:32 a.m; 1:29-2:14 p.m (LUNCH); and 3:05-3:12 p.m.

SIGNATURE:

Miguel M. de la O, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary