

City of Miami

*City Hall
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Meeting Minutes

Tuesday, May 18, 2010

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

Present: Chief Examiner Kaplan, Member Dames and Member Moy

Absent: Chairperson de la O and Member Silverman

NOTE: Member Silverman arrived at 10:13 A.M. and Chairman de la O arrived at 11:48 A.M. and new roll calls took place which identified all Members as being present.

A. APPROVING THE MINUTES OF:

Regular Meeting of May 11, 2010.

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

Aye: Kaplan and Moy

No: Dames

Absent: Silverman and de la O

B. PERSONNEL MATTERS**C. MILITARY LEAVES OF ABSENCE****D. DISCIPLINARY MATTERS****E. GENERAL ITEMS****E.1**

Notice of a Request for a continuance from Osnat K. Rind, Attorney, on behalf of Gerardo Quinones, Police Officer, relative to his 20-hour suspension, effective December 19, 2008. Barnaby Min, Assistant City Attorney, expressed no objection to the continuance. (DISCUSSION)

Attorney Rind stated that she requested to continue Officer Quinones' hearing today on the basis that tomorrow she will be officially retained as his counsel.

Acting Chairman Kaplan asked the department's attorney if he had an objection to the continuance request. Assistant City Attorney (ACA) Min responded in the negative.

Following discussion, the Board entered a motion to APPROVE the employee's request for a continuance of his appeal hearing which resulted as follows:

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

Aye: Kaplan, Dames and Moy

Absent: Silverman and de la O

E.2

Copy of Findings of Fact concerning the Appeal hearing of Marc Marcelin,

Police Officer, relative to his 20-hour suspension, effective February 9, 2009.
(DISCUSSION)

The Board entered a motion to APPROVE the findings of fact as amended, which resulted as follows:

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

Aye: Kaplan, Dames and Moy

Absent: Silverman and de la O

E.3

Copy of Findings of Fact concerning the Grievance Hearing of Cornelius Pierre, Code Enforcement Inspector, regarding violation of Civil Service Rule 12.
(DISCUSSION)

Deferred from the meeting of May 11, 2010.

ACA Min stated that he made changes (to the Findings), including significant changes to the actual recommendations which he believes will benefit Mr. Pierre; however, he would recommend tabling this item until Member Silverman was present since it was originally his motion (regarding how a month should be defined with regards to layoffs) and because he has made these changes, he would assume there would be discussion by the Board on this matter.

Acting Chairman Kaplan asked Attorney Rind if she had an objection to tabling this item for discussion. Attorney Rind responded that she had no objection, but she would like to have Chairman de la O present when the matter is discussed.

ACA Min stated that he did not have a problem waiting for the Chairman, but he wanted to know if Attorney Rind wished to defer this item to the Board's next meeting due to her scheduling conflict. Attorney Rind responded that she did not object to deferring the matter, but that was at the pleasure of the department. She went on to say that it was her understanding that the Chairman might be arriving in approximately 15 minutes so she did not mind waiting.

Following Member Silverman's arrival, a second roll call took place, which resulted as follows:

Present: Chief Examiner Kaplan, Member Dames, Member Silverman and Member Moy

Absent: Chairperson de la O

Prior to continued discussion on this matter, the Board received notice that the Chairman would be later than expected and Attorney Rind had to leave due to scheduling issues; therefore, the Board entered a motion to DEFER this matter to the meeting of June 1, 2010 which resulted as follows:

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

Aye: Kaplan, Dames, Moy and Silverman

Absent: de la O

- E.4 Copy of a letter from Carlos A. Migoya, City Manager, notifying Humberto Mijares, Building Inspector III, of his relief of duty without pay until further notice, effective May 11, 2010. (NOTIFICATION)

NOTIFIED

F. REPORTS

- F.1 Pending Hearings as of May 18, 2010. (NOTIFICATION)

PRESENTED

G. REQUESTS FOR HEARINGS

- G.1 A copy of a Request for Grievance Hearing from Osnat K. Rind, Attorney on behalf of Melanie Ortiz, Typist Clerk II, of her layoff, pursuant to Civil Service Rule 12. (DISCUSSION)

Deferred from the meeting of May 11, 2010.

Attorney Rind stated that she did not think this matter was supposed to be on today's agenda.

The Executive Secretary responded that she was told there may be a settlement of this case; however, [for the record to be clear] she would need for the Board to allow her to continue this matter to the June 15 meeting.

ACA Min stated that this matter has not been withdrawn, but should have reflected a deferral to the June 1 Agenda instead of today's meeting.

The Executive Secretary asked ACA Min if he wished to have this item deferred to the June 1 or June 15 meeting. ACA Min responded that there is a strong possibility that this matter will be resolved because there is a current vacancy for which to place Ms. Ortiz.

Attorney Rind suggested that this item be deferred to the June 1 meeting for Board consideration.

Following discussion, the Board entered a motion to DEFER this matter to the June 1 meeting which resulted as follows:

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

Aye: Kaplan, Dames, Moy and Silverman

Absent: de la O

H. TODAY'S HEARINGS

- H.1 Continuation of the Grievance Hearing on behalf of Neal A. Muhammad, Fire Lieutenant, pursuant to Civil Service Rule 4.2, concerning the 2008 Fire Captain's Oral Board Exam.

Prior to entering into the grievance hearing of Lt. Neal Muhammad, Chairman de la O

arrived and a third roll call took place which resulted as follows:

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

The Board reconvened today to hear the conclusion of Lt. Neal Muhammad's hearing which began on May 11, 2010. Member Dames did not participate in Board discussion or voted on the issues because he was not present when this case began on May 11.

Leslie Holland, Attorney at Law, represented the Grievant.

Barnaby Min, Assistant City Attorney, represented the Department.

The Rule of Witnesses continued to be invoked and witnesses for the Department continued in the following order:

3. Frank Giallorenzo, Senior Labor Relations Specialist, City of Miami, Department of Employee Relations.

Questions were posed by Member Kaplan during the testimony of Frank Giallorenzo.

4. William Scarola, Sergeant of Police (former Chief Examiner), City of Miami, Department of Police.

Questions were posed by Board Members de la O, Kaplan, and Moy during the testimony of William Scarola.

The Department rested its case.

Neal Muhammad, Fire Lieutenant, was recalled as a rebuttal witness on his own behalf.

The Grievant rested on rebuttal and the Department waived rebuttal.

Following final argument by the attorneys, Member Silverman stated that he did not think the the burden was met based upon the testimony presented on behalf of the Grievant's claim.

Chairman de la O called for motions and/or discussion on the matter of Lt. Muhammad's case. Member Silverman made a motion to DENY Lt. Muhammad's claim, but it died for lack of a second.

Chairman de la O called for further discussion from Board Members. Hearing none, Chairman de la O stated his view was that had this been the department's burden, he would have rule against the department. He went on to say that he thought the department went out of its way not to put this issue to rest and he did not know why. Chairman de la O further stated that he thought something troubling happened at the exam site because he found it very hard to believe that five test takers did not see a diagram on a two-page document, [and it] was inexplicable and seriously troubling to him. He stated that when Dr. Kraus and the five test takers were in the holding room and they were telling Dr. Kraus that there was no diagram attached, what was more troubling was the reaction of Dr. Kraus at the Testing Center because it would have taken less than a minute just to pull the test the employee had just completed and the show the diagram to them, which would have put an end to the matter, but instead what the department has done by its inaction in some of these instances was create fodder for this conspiracy theory. Chairman de la O went on to say there was the issue of whether the letters "IC" appeared on diagram and he thought Sgt. Scarola's testimony

would put an end to this issue, but unfortunately his testimony raised more questions because [Sgt. Scarola] was not sure if he saw "IC" imprint on the document. He further stated that if Sgt. Scarola could not testify that he saw the "IC" on the document, the Board cannot be sure if that was the narrative given to Lt. Muhammad. Chairman de la O stated that when the Board heard Mr. Giallorenzo's testimony, he indicated that the "IC" and underlined markings were on the document, but when Sgt. Scarola testified he stated that the "IC" was not on the first page, but the underlined markings were so for some reason, the "IC" imprint did not appear on the diagram. He went on to say that he has all sorts of questions but at the end of the day, it was the employee's burden to prove his case. Chairman de la O further stated that he was extremely unhappy about how the department proceeded because all they had to do was present the document to the Board which would have taken all of five seconds. He stated that the explanations Dr. Kraus gave to the Board as to why he could not present the document were completely insufficient because if Mr. Giallorenzo, Sgt. Scarola, and Lt. Muhammad could see the document why could the Board not sign disclosures [as well, see the document,] and end this matter. Chairman de la O went on to say that the Board spent almost two days on Lt. Muhammad's case for no reason.

Chairman de la O went on to say that if the imprints are on the document, the document should be reviewed to end this matter; nevertheless, the Board had what was presented [in the form of testimony and evidence] and he could not say that the preponderance of the evidence supported the Grievant. He further stated that the truth of the matter is if the Grievant's claim was he did not have the second sheet (diagram) maybe there would be enough evidence for support since there were five other employees who claimed they did not receive the two-page document, but because the Grievant's claim was that he received a [sheet with boxes, but no detailed markings], he agreed with the department that it was very hard to imagine that happening short of an act of conspiracy to give him a different test. Chairman de la O stated that he was not saying that conspiracies do not sometimes exist, but he did not know if there was enough evidence in the record to find that the department went out of its way to give the Grievant a different test than everyone else. He went on to say that it would have been easier to believe that there was some negligence in that a number of the candidates did not get the diagram. Chairman de la O further stated that the department's reluctance to clear up [this alleged conspiracy theory is troubling, because it] would have been all too easy to do, but he would have to rule against the Grievant because the burden was on the employee to prove his case.

Member Moy stated that the Board heard testimony from several Fire Lieutenants who claimed they did not receive a copy of the diagram so he found it hard not to believe them. He went on to say that Dr. Kraus testified that there was an "IC" imprint on the second sheet of the two-page document, but Sgt. Scarola testified that he did not see the "IC" imprint on the second page rather he saw underline markings so he is of the belief that something happened and he was also of the belief that the Grievant met his burden because he was able to prove that something was not right. Member Moy further stated that this matter could have been put to rest if the document was provided to the Board for review, but it was not and the Board can only make a decision based upon what has been presented.

Member Kaplan stated that he concurred with everything the Chairman related about the deficiency of the department's case. He went on to say that with regards to the Chairman's conclusion that if the burden was on the department he would have ruled against the department, the Board must remember two things: (1) The Board had the sworn testimony of Lt. Muhammad which was not rebutted by anything the department presented so if the burden is on Lt. Muhammad, his burden could be carried by his sworn testimony; and (2) Lt. Muhammad's swore as to what the circumstances were and they were not rebutted by the department. Member Kaplan stated that indeed what

the department did was obfuscate the matter and acted in a very questionable manner. He went on to say what he thought the Board found as a case which was wanton by the department was actually a failure on its part to rebut the sworn testimony of Lt. Muhammad and for that reason he would support the claim made by Lt. Muhammad.

Chairman de la O stated that he respectfully disagreed with Member Kaplan only because he certainly did agree that Lt. Muhammad's testimony could be sufficient, being that the staples were intact and that the diagram was blank as opposed to being missing meant there had to have been a conspiracy to do this to Lt. Muhammad and he could not imagine why there would be this conspiracy to do this to him, and if the department was going to do this to Lt. Muhammad why not do it to him the same way they allegedly did it to the five other Fire Lieutenants, which was not give him a diagram at all. He went on to say that he was having a hard time accepting that the department would go out of its way to harm Lt. Muhammad and at the same time he was not willing to call Lt. Muhammad a liar either because he was troubled by this entire fact pattern and he thinks the department could have quickly resolved the matter, but chose not to.

Following discussion, the Board entered a motion to deny the employee's claim on the basis that the employee did not meet his burden which resulted as follows:

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

Aye: Silverman and de la O

No: Kaplan and Moy

Abstain: Dames

Following the failed motion, the Board entered a motion to support the claim filed by the Grievant which resulted as follows:

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

Aye: Kaplan and Moy

No: Silverman and de la O

Abstain: Dames

The motion having failed, Chairman de la O asked Special Counsel Everett for guidance on the tie vote.

Special Counsel Everett responded that if the Board felt further discussion would result in a change of opinion by any Board Member she would suggest discussion take place. She went on to say that this is a grievance filed pursuant to Rule 16 and the Board's role is to make findings and recommendations to the City Manager if it so desires regarding the employee's complaint. Special Counsel Everett further stated that if it is not likely that the tie vote would be changed, it could be reflected in the findings and if there are any recommendations the Board wishes to make regardless of the divergent viewpoint, there may be some consensus to be made on the recommendations to the City Manager.

Chairman de la O stated that regardless of what the Board does next, one recommendation he would make is to require candidates sign documents that are provided to them during promotional exams and a second recommendation would be that whenever the Chief Examiner conducts investigations to include the employee in the process whenever documents are to be reviewed. He went on to say that he felt this

practice would have helped if Lt. Muhammad was directing Sgt. Scarola [as they reviewed the document together] and he may have pointed out the "IC" marking which could have been a give and take situation, instead it was chopped up and everyone was examining the document at different times. Chairman de la O further stated that if everyone was in the room when the document was being examined, maybe the issue could have been avoided, and then again, maybe not. He stated that his vote was not a strong one rather it was quasi-wavering but he did not think he was going to change his mind.

Member Kaplan asked the Chairman what it would take to convince him to change his mind. Chairman de la O stated that he was considering deferring a final vote until next week so that he could think about it some more, but he was not going to change his mind so he thought the Board should set out what the individual findings were, consider what each of the Members have said on the record, and let the City Manager know that the Board was split in a (2-2) vote and the City Manager could do whatever he wished with the non-recommendation and report of recommendations submitted by the Board. Member Kaplan stated that he was troubled that the Board did not see the actual documents involved in this case so to that extent, the Board might want to recommend that a hearing be held for which the department changes its mind and produces the documents.

Chairman de la O stated that another recommendation would be that the City Manager look at the document since the Board could not, but maybe he can to resolve the issue.

Member Silverman stated that he thought when the Rule talked about recommendations, it was talking about what remedy if any this Board would recommend to the City Manager, but he did not think it was talking about a recommendation as to how to run a promotional examination. He went on to say that he thought the intent of the Rule was if the Board were to find in supporting the allegation of the employee, then a recommendation (i.e. promotion, add points to the score, etc.) would be made by the Board to remedy the complaint. Member Silverman further stated that since the Board was not able to reach a determination on the first part [of determining whether or not the employee met his burden], he did not see where any recommendation would be submitted to the City Manager.

Chairman de la O stated that he thought the Board had an overall charge that it could make recommendations from time to time to improve the City's employee Civil Service System so he thought under that grant of authority the Board should make these recommendations. He asked if there were any recommendations to be included in the report.

Special Counsel Everett suggested that the Board vote on the three recommendations that were suggested by the Chairman to be included in the report.

Following discussion, the Board entered a motion to include in the findings of fact the following recommendations: (1) Require candidates to sign documents that are provided during a promotional exam; (2) During investigations conducted by the Chief Examiner, the candidate shall be present whenever the Chief Examiner is reviewing evidence; and (3) The City Manager conduct a review and require the department to produce the two-page document that pertains to Lt. Muhammad's Fire Captain promotional examination.

The motion 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, Moy, Silverman and de la O

Abstain: Dames

H.2 Hearing of appeal on behalf of Stephon McGill, Police Officer, relative to his 120-hour suspension, effective August 3, 2009.

The Executive Secretary informed the Board that Officer McGill submitted a letter withdrawing his appeal request.

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

H.3 Hearing of appeal on behalf of Manuel Lucena, Heavy Equipment Mechanic, relative to his 5-day suspension, effective August 20, 2009.

The Executive Secretary informed the Board that she received a letter from Mr. Lucena requesting that his hearing be continued. ACA Min expressed no objection to the continuance request.

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

Aye: Kaplan, Dames, Moy and Silverman

Absent: de la O

H.4 Hearings of appeal on behalf of Gerardo Quinones, Police Officer, relative to his 20-hour suspension, effective December 19, 2008.

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

CONTINUED

ADJOURNMENT:

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

Motion by Member Silverman, seconded by Chairperson de la O, to APPROVE. PASSED by the following vote.

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

The meeting adjourned at 12:46 P.M. Breaks were taken at 10:39-11:31 a.m. and 11:37-11:48 a.m.

SIGNATURE:

Miguel M. de la O, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary

