

City of Miami

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

Tuesday, June 1, 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 10:18 A.M. The roll call for Board Members at the commencement of the meeting was as follows:

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

Absent: Chairperson de la O

A. APPROVING THE MINUTES OF:

Regular Meeting of May 18, 2010.

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

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

Absent: Chairperson de la O

B. PERSONNEL MATTERS

- B.1** Copy of a memorandum from Chief Miguel Exposito, Director, Department of Police, notifying Brenda S. Williams, Police Major, of her return to former classification. Brenda S. Williams is being rolled back to Police Lieutenant. (NOTIFICATION)

NOTIFIED

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

- D.1** Copy of a letter from Chief Miguel Exposito, Director, Department of Police, notifying Lillie Harris, of her demotion from Lieutenant to Sergeant, effective May 19, 2010 and a copy of a request from Sgt. Harris requesting a hearing of appeal relative to her demotion. A hearing will be scheduled in accordance with Civil Service Rules and Regulations. (NOTIFICATION)

NOTIFIED

E. GENERAL ITEMS

- E.1** 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 18, 2010.

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

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

Aye: Member Silverman, Member Dames and Member Moy

No: Chief Examiner Kaplan

Absent: Chairperson de la O

E.2

Copy of a Report concerning the Grievance Hearing of Neal A. Muhammad, Fire Lieutenant, pursuant to Civil Service Rule 16.2, concerning the 2008 Fire Captain's Oral Board Exam. (DISCUSSION)

The Executive Secretary informed the Board that the employee's attorney is not available to attend today's meeting; therefore, she would defer this matter to the Board's next meeting.

DEFERRED

E.3

Copy of a Request to Consolidate hearings, from Michael Pancier, Attorney, on behalf of Osmel Martinez, Maintenance Mechanic Supervisor, relative to his 2-day suspension, effective January 26, 2010. (DISCUSSION)

The Board entered a motion to APPROVE Attorney Pancier's request to consolidate the appeal hearings of Osmel Martinez relative to his 2-day suspension effective January 26, 2010, and his dismissal effective February 17, 2010 which resulted as follows:

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

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

Absent: Chairperson de la O

E.4

Copy of a Request to Consolidate hearings, from Michael Pancier, Attorney, on behalf of Osmel Martinez, Maintenance Mechanic Supervisor, relative to his dismissal, effective February 17, 2010. (DISCUSSION)

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

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

Absent: Chairperson de la O

F. REPORTS

F.1

Pending Hearings as of June 1, 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 18, 2010.

Barnaby Min, Assistant City Attorney (ACA) Min stated that this hearing request relates to an alleged violation of the miscalculation of layoff scores. He went on to say that the matter has been deferred twice; however, he is asking that it be deferred again because he is representing today that the matter will be settled some time this week.

Attorney Rind stated that the case is pending settlement, but at this point she thinks the least the Board could do is grant her client's request for a hearing.

ACA Min responded that he has no problem if the Board grants the employee's request today, but he was trying to resolve the issue before having a hearing.

Member Dames asked for an overview of what Ms. Ortiz' case entailed. Attorney Rind responded that her client held the position of Typist Clerk II and had unpaid leave for the months of September (8 hours), November (11.4 hours), March (8 hours) and May (12 hours); seniority credit was denied for each of these months and she was therefore laid off. She went on to say that this case involves the same issue that the Board decided in the Cornelius Pierre case [and the grievance] is based upon the Board's current interpretation (of Rule 12.1(3)(c) which defined a full month to mean an employee must work at least 150 hours to receive seniority credit.)

Acting Chairman Kaplan asked how close [the parties] were to reaching an agreement. ACA Min responded that it was just a matter of getting some papers signed so hopefully it will be done today.

Member Dames stated that this case and the case of Cornelius Pierre are similar; however, he did not understand why Ms. Ortiz' case could be settled, but not Mr. Pierre's case.

ACA Min stated that the reason Mr. Pierre's case could not have been settled was because there was no vacant position in which to place him whereas in Ms. Ortiz' case there is a vacant position and by placing her in this position no one else would have to be laid off.

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

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

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

Absent: Chairperson de la O

H. TODAY'S HEARINGS**H.1**

Investigation hearing on behalf of Teresa Borkowski, Police Sergeant, pursuant to Rule 16.1, Abuse of Power.

Attorney Rind stated that she asked for a continuance of this hearing because her witnesses are not available.

Acting Chairman Kaplan asked for ACA Min's position on the employee's request. ACA Min responded that Attorney Rind's explanation is good cause for a continuance so he would not object to the request; however, the representation made by Attorney Rind is

that the hearing should take a number of days to complete so in his opinion, the Board could start the hearing today with the available witnesses which includes Sgt. Borkowski.

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

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

Absent: Chairperson de la O

H.2

Hearing of appeal on behalf of Vincent James, Heavy Equipment Specialist, relative to his 3-day suspension, effective September 11, 2009.

ACA Min stated that he spoke with Mr. James and they both agreed to request a joint continuance for the possibility of resolving the matter.

Member Dames asked for an overview of Mr. James' case. ACA Min responded that Mr. James received a 3-day suspension for a workplace violence incident. He went on to say that he will be meeting with the new director of Solid Waste and Mr. James to see if this discipline can be resolved.

Following discussion, the Board entered a motion to grant a JOINT CONTINUANCE concerning the hearing of Vincent James which resulted as follows:

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

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

Absent: Chairperson de la O

H.3

Grievance hearing on behalf of Suzann E. Nicholson, Customer Service Representative III, pursuant to 16.2 to examine the audit results for the Customer Service Representative III position.

The Board entered into the scheduled grievance hearing of Suzann Nicholson, the Grievant.

Suzann Nicholson, Customer Service Representative III, represented herself.

Barnaby Min, Assistant City Attorney, represented the Department.

The Grievant and ACA Min presented opening statements.

Prior to the calling of witnesses, Member Silverman asked permission to cut to the chase of this hearing. The Acting Chairman having agreed, Member Silverman read into the record Civil Service Rule 16.2(d) which states, "The Board shall consider the matter and promptly present its findings and recommendations to the City Manager for his/her consideration of a proper remedy, if a remedy is necessary." He went on to say that according to this rule, Ms. Nicholson needs to tell the Board what recommendation(s) she wants the Board to submit to the City Manager albeit more money, more personnel, elimination of positions, etc., the Board needs to know.

Ms. Nicholson responded that she is asking for fair and impartial treatment. She went on to say that since the City is experiencing a financial crisis, she would not expect a pay raise; however, if offered she would accept it.

The Board proceeded with the calling of witnesses and all witnesses were sworn in individually. Witnesses for the Grievant appeared in the following order:

Suzann Nicholson, Customer Service Representative III, City of Miami, Department of Finance, testified on her own behalf.

Questions were posed by Board Members Kaplan, Moy, and Dames during the testimony of Suzann Nicholson.

The Grievant rested her case. Member Silverman stated that he was prepared to make a motion.

ACA Min stated that the Department is ready to call witnesses and present exhibits, but he is not here to waste the Board's time. He went on to say that since Member Silverman was ready to make a motion, there would be no need for him to call witnesses if his motion resolved the issue; however, if it was not going to resolve the issue, he would go forward with his case.

Acting Chairman Kaplan asked Member Silverman to state his motion.

Member Silverman stated that he does not mean to be a "Smart Aleck", but what he heard was Ms. Nicholson is being overworked, underpaid and under-appreciated, which he understands, but he thinks that many City employees can say the same thing. He went on to say that the practical situation is the City is not going to give Ms. Nicholson more money because it has no money nor is the City going to hire more employees (due to the hiring freeze). Member Silverman further stated that the Board can recommend whatever it (deems appropriate in this case), but the bottom line is nothing is going to happen (with respect to money). He stated that the department prepared the audit (pertaining to the Customer Service Representative III position) and arguably, Ms. Nicholson disagreed with the audit. Member Silverman went on to say that he was not trying to defend the audit, but the way he sees it, this is a practical matter and he just did not see where the Board had any authority to do anything since the Board cannot get more money for Ms. Nicholson, ask the City to hire more employees (into the Customer Service Section), or change her workload.

Following discussion, Member Silverman made a motion that the Board make no findings on Ms. Nicholson's complaint and close the matter. The motion DIED FOR LACK OF A SECOND.

The motion having died, Acting Chairman Kaplan asked if there were any other motions or discussion from Board Members.

Under discussion, Member Dames stated that he really believed that the (Finance) Department's budget was cut before the City faced financial problems because the [Customer Service Section of the Finance Department] lost six of its nine employees and they were not replaced. He went on to say that the Customer Service Section is the first line of defense for the City when the public makes calls for assistance (regarding bills), so he did not see why arrangements were not made to replace those individuals.

Member Dames stated that the Board had to beg, plead, and fight for the audit to be conducted and it was finally done which was the reason for today's hearing. He went on to say that in his estimation, the three employees currently holding the position of

Customer Service Representative III were worked out of classification and should have been compensated an additional 5%. Member Dames further stated that he understands the burden is on Ms. Nicholson to prove her case and he thinks she did. He stated that due to the resignation, promotion, and retirement of personnel, the Customer Service Department currently has three Customer Service Representative III positions, and less positions of Customer Service Representative I and II which the department was originally budgeted for. Member Dames went on to say that the City is now saying it has no funds when it systematically gutted the Customer Service Section so in his opinion, the City has to pay because the department did not replace those six employees.

Acting Chairman Kaplan stated that he was proposing that Board Members understand that there is a difference between the Board making a recommendation to the City Manager that Ms. Nicholson be given a raise (in pay) because there is no money now, but maybe an increase in pay or position could be given in the future. He went on to say that if the ability of the City to pay is a criteria to be considered, then whether the job should be elevated in pay it should not make any difference whether there is no money because the Board is simply evaluating the position and determining what kind of pay should apply to that classification. Acting Chairman Kaplan further stated the point he is making is there are so many directions to take if all the Board would be doing is making a recommendation to the City Manager. He stated that if we are in an environment without money, that is one thing but making the recommendation truly on the basis of what the position should be paid is another calculation the Board needs to make. Acting Chairman Kaplan went on to say that at this point the Board does not have enough evidence to take a final position on what should be done since the Department has not presented its case so in the absence of any other motions to be made, he would ask ACA Min to proceed with his case. He further stated that he wanted everyone to understand that it is his position that the Board has two ways to go in this case which is: (1) The City Manager is not going to give Ms. Nicholson a (pay) raise because there is no money and (2) Forget about whether there is any money and decide what should this position of (Customer Service Representative III) be paid.

Hearing no other motions, the Department proceeded with the calling of witnesses.

Witnesses for the Department appeared in the following order:

Ricardo Martinez, Classification & Pay Supervisor, City of Miami, Department of Employee Relations.

Questions were posed by Board Members Kaplan and Dames during the testimony of Ricardo Martinez.

The Department rested its case.

In view of there being no closing arguments presented by either side, Acting Chairman Kaplan called for motions and/or discussion on the case.

Under discussion, Member Dames stated that there were originally 9 employees assigned to the Customer Service Section (consisting of Customer Service Representative I, II and III, but now there are only three Customer Service Representative IIIs remaining in the department who are also performing the duties of Customer Service Representatives I and II; therefore, he recommends that the Customer Service Representative IIIs receive a 5% increase for working out of classification.

Member Moy stated that with regards to the Customer Service Section, one employee

retired and two other employees were promoted, but nothing was done to replace those employees, instead the Customer Service Representative IIIs were in essence told to pick up the slack. He went on to say that in other departments he has seen that when things were good (financially) and more was required from that department, employees were hired to fill the vacancies, but that was not the case with the Customer Service Section when it lost employees. Member Moy further stated that the reason the employees left was due to the enormous workload and he can say personally that the Oracle system has created a tremendous workload for those assigned to the Customer Service Section. He stated that based upon the evidence presented, he agreed with Member Dames that the employees (Customer Service Representative III) are working out of classification.

Following discussion, the Board entered a motion to recommend to the City Manager that the employees holding the position of Customer Service Representative III be given a 5% increase due to their working out of classification. The motion resulted as follows:

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

Aye: Chief Examiner Kaplan, Member Dames and Member Moy

No: Member Silverman

Absent: Chairperson de la O

ADJOURNMENT:

The meeting adjourned at 1:16 p.m. Breaks were taken at 11:00-11:12 a.m. and 12:12-12:20 p.m.

SIGNATURE:

Miguel M. de la O, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary