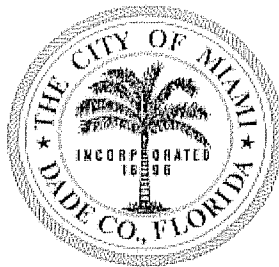


City of Miami

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



Meeting Minutes

Tuesday, September 21, 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 10:05 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 September 7, 2010.

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

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

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

- D.1 Copy of a letter from Chief Miguel Exposito, Director, Department of Police, notifying Carlos Deschamps, Police Officer, of his 10-hour forfeiture, effective September 15, 2010. (NOTIFICATION)

NOTIFIED

- D.2 Copy of a letter from Chief Miguel Exposito, Director, Department of Police, notifying Gertrude Gauguette, Police Officer, of her 10-hour forfeiture and 1 month suspension of take home vehicle privileges, effective September 15, 2010. (NOTIFICATION)

NOTIFIED

- D.3 Copy of a letter from Chief Miguel Exposito, Director, Department of Police, notifying Reynaldo Martinez, Police Officer, of his 10-hour forfeiture, effective September 10, 2010. (NOTIFICATION)

NOTIFIED

E. GENERAL ITEMS

- E.1 Copy of Findings of Fact concerning the Appeal Hearing of Marcel Jackson, Police Officer, relative to his 40-hour suspension, effective May 16, 2009. (DISCUSSION)

Deferred from the meeting of August 24, 2010.

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

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

E.2

Notice of a Request for a continuance from Osnat K. Rind, Attorney, on behalf of Jacqueline Mesidor, Police Officer, relative to her 10-hour suspension, effective December 7, 2008. Iliana Forte, Assistant City Attorney expressed no objection to the the continuance. (DISCUSSION)

Hearing of appeal is scheduled for today.

Chairman de la O stated that opposing counsel expressed no objection to the employee's continuance request and therefore called for a motion. The Board entered a motion to grant the employee's request for a CONTINUANCE.

Under discussion, Member Dames asked for the scheduling history of this case. The Executive Secretary responded that only one continuance was granted and it was on behalf of the employee.

Following discussion, the motion on the floor was APPROVED as follows:

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

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

E.3

Notice of a Request for a continuance from Osnat K. Rind, Attorney, on behalf of Shekita Johnson, Communications Operator, relative to her 8-hour suspension, effective February 8, 2009. Iliana Forte, Assistant City Attorney, expressed no objection to opposing Counsel's request. (DISCUSSION)

Hearing of appeal is scheduled for today.

Chairman de la O stated that Assistant City Attorney Forte expressed no objection to the employee's request for a continuance and therefore called for a motion. The Board entered a motion to grant the employee's request for a CONTINUANCE.

Under discussion, Member Dames asked for the scheduling history of Shekita Johnson's case. The Executive Secretary responded that the Board granted three (3) continuances, all on behalf of the employee. Member Dames responded that Ms. Johnson's case has been pending some time and it is only an 8-hour penalty. He went on to say that as far as he was concerned, no more continuances should be granted in this case.

Following discussion, the motion on the floor to grant the employee's request for a CONTINUANCE resulted as follows:

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

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

E.4

Notice of a Request for a continuance from Catherine Grieve, Attorney, on behalf of her client Olatunbosun "Ola" Aluko, former Director of Capital Improvement Programs, relative to his Whistleblower hearing, pursuant to Florida Statute 112.3187. Iliana Forte, Assistant City Attorney, expressed no objection to opposing Counsel's request. (DISCUSSION)

Hearing of appeal is scheduled for October 5, 2010.

Chairman de la O asked if this case has already been scheduled for a hearing because it appeared to him that the Board had recently granted the employee's request for a hearing. The Executive Secretary responded in the affirmative. She went on to say that the hearing is actually scheduled for October 5, 2010; however, Attorney Grieve knew ahead of time that she would not be ready and asked for the continuance.

Member Kaplan stated that besides the attorney's request for a continuance, he would like to know the current status of Mr. Aluko's case before the Board and whether there was an outside proceeding going on with this case. The Executive Secretary responded that she was not privy to information concerning any external proceedings; however, as regards this case before the Board, this is the first time the hearing was scheduled and the first continuance requested by the employee.

For clarification purposes, Chairman de la O stated that Member Kaplan asked if there were any investigations or proceedings going on outside of the Civil Service Board. Both the Executive Secretary and Assistant City Attorney Forte responded that they were not aware of any outside investigations or proceedings going on with this case.

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 APPROVED. PASSED by the following vote.

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

E.5

Notice of a Request for a continuance from Iliana Forte, Assistant City Attorney, relative to the Appeal hearing of Osmel Martinez, former Maintenance Mechanic Supervisor, concerning his 2-day suspension, effective January 26, 2009. Michael Pancier, Attorney, expressed no objection to opposing Counsel's request. (DISCUSSION)

Hearing scheduled October 19, 2010.

Michael Pancier, Attorney at Law on behalf of Osmel Martinez, stated that he had no objection to the department's request for a continuance. He went on to say that he will be out of town the last week of October through the first week of November; therefore, he would ask that the Executive Secretary schedule his client's hearing after his return to the office.

Member Moy asked for the scheduling history of Mr. Martinez' appeal hearing concerning his 2-day suspension. Attorney Pancier responded that he requested a continuance two weeks ago for the purpose of consolidating his client's three cases (Whistleblower, termination, 2-day suspension) and it was granted by the Board. He went on to say that the City has a new attorney, Iliana Forte, assigned to handle this case, which is the reason she asked for a continuance and he has no objection.

Chairman de la O asked if this is the department's first request for a continuance. ACA Forte responded in the affirmative. She went on to say that she requested the continuance because this is a complex case, she will be out of the office a week prior to the hearing as currently scheduled so she needs more time to prepare for the case.

Following discussion, the Board entered a motion to grant the department's request for a CONTINUANCE which 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

E.6

Notice of a Request for a continuance from Iliana Forte, Assistant City Attorney, relative to the Appeal hearing of Osmel Martinez, former Maintenance Mechanic Supervisor, concerning his termination, effective February 17, 2010. Michael Pancier, Attorney, expressed no objection to opposing Counsel's request. (DISCUSSION)

Hearing is scheduled for October 19, 2010.

The Executive Secretary informed the Chairman that Items E.5 through E.7 are cases pertaining to Osmel Martinez and have been consolidated. Chairman de la O stated that since the the Board had already approved a motion on Item E.5, the Board would vote on Items E.6 and E.7 together.

Following discussion, the Board entered a motion to grant the department's request for a CONTINUANCE, which 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

E.7

Notice of a Request for a continuance from Iliana Forte, Assistant City Attorney, relative to the Whistleblower hearing of Osmel Martinez, former Maintenance Mechanic Supervisor, pursuant to Florida Statute 112.3187- Whistle-blower's Act. Michael Pancier, Attorney, expressed no objection to opposing Counsel's request. (DISCUSSION)

Hearing is scheduled for October 19, 2010.

The Board entered a motion to grant the department's request for a CONTINUANCE which 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

F. REPORTS

F.1 Pending Hearings as of September 21, 2010. (NOTIFICATION)

PRESENTED

G. REQUESTS FOR HEARINGS

H. TODAY'S HEARINGS

H.1 Hearing of appeal on behalf of Maurice Brighthaupt, Fire Fighter, relative to his 24-hour suspension, effective November 19, 2008.

The Board entered into the scheduled hearing of Maurice Brighthaupt, the Appellant.

Iliana Forte, Assistant City Attorney, represented the Department.

Stella Chu, Attorney, represented the Appellant.

Both attorneys made opening statements which was followed by the calling of witnesses. All witnesses were sworn in individually. Witnesses for the Department appeared in the following order:

1. (Charles) Danny Maree, Assistant Fire Chief - Emergency Response Division, City of Miami, Department of Fire-Rescue.

Questions were posed by Board Members de la O, Kaplan, Dames, and Moy during the testimony of witness Danny Maree.

2. Craig Dunn, Assistant Fire Chief - Management Services Division, City of Miami, Department of Fire-Rescue.

Questions were posed by Board Members Kaplan, Dames, and Moy during the testimony of witness Craig Dunn.

The Department rested its case.

Witnesses for the Appellant appeared in the following order:

Maurice Brighthaupt, Fire Fighter, City of Miami, Department of Fire-Rescue testified on his own behalf.

Questions were posed by Board Members de la O, Kaplan, and Dames during the testimony of Maurice Brighthaupt.

The Appellant rested his case.

Prior to closing arguments, Chairman de la O stated that he thought he could speak on behalf of the Board concerning the charges, but he wanted to make sure that everyone was of the same thought. He went on to say that this case is not about Fire Fighter Brighthaupt's failure to change his home address since the department's witness testified that he would not have disciplined Fire Fighter Brighthaupt concerning the address change. Chairman de la O further stated that since the department was not going to punish the Appellant for failing to update his address information, he thought the Board and attorneys needed to focus on the real issue, which was whether the Appellant lied to Chief Maree.

The Board proceeded to closing arguments and both attorneys presented exhibits supporting their arguments. Following final argument, Chairman de la O stated that he agreed with Attorney Chu that speaking to someone is truly different than reading a statement. He went on to say that upon listening to the testimony of the department's witnesses, he really thought the case would result in a tie because he did not know who was telling the truth and since it was the department's burden of proof, his thought at that time was to find in favor of the Appellant. Chairman de la O further stated that as Fire Fighter Brighthaupt testified, the more he spoke the more he believed Chief Maree. Chairman de la O further stated that he did not see any motivation for Chief Maree to make the statement up and what helped him to reach that conclusion was when Fire Fighter Brighthaupt testified that he actually thought Chief Maree was trying to help him out by giving him a heads up on the address change. He stated that the whole motivation of the conversation was looking out for Fire Fighter Brighthaupt's best interest so he had a hard time reconciling that Chief Maree would lie about two conversations

they had and an email he requested from the Appellant when it was Fire Fighter Brighthaupt who felt that Chief Maree came to him with his best interest at heart. Chairman de la O further stated that in order for him to accept Fire Fighter Brighthaupt's testimony, he would have to believe that Chief Maree lied about both conversations and the email, that it was just a big coincidence that Chief Maree called the office the next day to find out the reason he did not receive the email from Fire Fighter Brighthaupt and at the moment Chief Maree telephoned, Fire Fighter Brighthaupt was entering the change of address information into the computer. He stated there were too many coincidences and he did not have any reason to disbelieve Chief Maree. Chairman de la O went on to say that he felt there was some motivation for Fire Fighter Brighthaupt not to have told Chief Maree [the truth], but at the same time, he did not think Fire Fighter Brighthaupt was in any way being evil and that he was not really sure if he was trying to mislead Chief Maree, so the best he could think about the situation was Fire Fighter Brighthaupt was trying to protect his family, which he certainly understands and commends him. He further stated that Fire Fighter Brighthaupt probably thought that if he fluffed Chief Maree off, it would take a longer time before the department made him change his address, but fortunately Chief Maree called Fire Fighter Brighthaupt's bluff to put it in writing and of course he did not intend to put it in writing and so he thought he would fix the matter and he found himself in a bad situation. Chairman de la O went on to say he does not think what Fire Fighter Brighthaupt did makes him a bad person, but he did make a mistake.

Member Kaplan stated that he was in accord with the Chairman's position except that he thought there was confusion between the two people (Maree, Brighthaupt) that were having the conversation. He went on to say that Chief Maree obviously had no reason to lie, but Fire Fighter Brighthaupt's perception and understanding of what was said could have been distorted due to the passage of time. Member Kaplan further stated that most importantly, if one wanted to see the intention of Fire Fighter Brighthaupt (reference notification of his address change), that one would consider the eligibility card, which was submitted June 2008, which was three months prior to the alleged conversation he had with Chief Maree. He stated that it appeared to him that this (eligibility card) was pure, unrefuted evidence that there was no intention on the part of Fire Fighter Brighthaupt to give false information. Member Kaplan went on to say that the discipline letter signed by Fire Chief Bryson said that the nature of the offense was that Fire Fighter Brighthaupt gave false statements to Chief Maree when he allegedly told him that his address was current in the department's records. He further stated that since the address was not current, the Fire Chief was saying that Fire Fighter Brighthaupt should have said that the address he had prior to September 2007 when he moved to his current address was his current address. Member Kaplan stated that it was just so hard to believe that someone concocted a story that Fire Fighter Brighthaupt's current address was an address he had a year ago especially when three months earlier he gave his correct address when he completed the eligibility card. Member Kaplan stated that his position is there was confusion with the conversation between Chief Maree and Fire Fighter Brighthaupt, mistakes were made, memories failed, and that he thinks the department failed to establish that a lie, falsehood, or applied intention was made by the Appellant. He went on to say that with respect to the alleged falsehood, the Appellant is innocent and with respect to the allegation that the Appellant failed to update his address, which he admitted to, he should be found guilty and the penalty should therefore be a reprimand only.

Member Moy stated that he believed that the conversations did take place between Chief Maree and Fire Fighter Brighthaupt and that he also believed that he was trying to protect his family. He went on to say that a woman was able to get an address from Fire Fighter Brighthaupt's drivers license which made him wonder what would have happened if the driver's license contained accurate information. Member Moy further stated that he felt Fire Fighter Brighthaupt was wrong for lying to Chief Maree, but he felt

the punishment was too harsh.

Member Dames stated that he believed the pushing of getting Fire Fighter Brighthaupt to update his address came from the Deputy Chief and that he took this position based upon his cross-examination of Assistant Fire Chief Dunn. He went on to say that he has known Chief Maree for some time so he believed that Chief Maree was trying to give Fire Fighter Brighthaupt a heads up by asking him to change his address; however, at the same time due to the intense scrutiny Fire Fighter Brighthaupt was under with the media, etc., he could understand why he delayed updating his address information. Member Dames further stated that he felt the penalty was too harsh and while he understood Fire Fighter Brighthaupt's actions, he does not condone his actions.

Member Silverman stated that the hearing is conducted in two parts. He went on to say that the first part (Fact-finding Phase) is to determine whether the employee is guilty of the charges. He went on to say that he did not think the Board should complicate whether the employee is guilty of the charge with the penalty because the penalty is the second phase of the hearing. Member Silverman further stated that as he sees it, the employee is guilty of the charges; however, the Board could talk about the penalty only if it gets past the first stage of finding him guilty.

Following discussion, the Board entered a motion to find the Appellant NOT GUILTY of all three (3) charges.

Under discussion, Chairman de la O stated that if there had been only one conversation (between Chief Maree and the Appellant) and he was worried about what Fire Fighter Brighthaupt's intentions were, he would agree with Member Kaplan that the eligibility card showed what his intent was, but the eligibility card is not given to the Fire Department; and there were two conversations, and an email, so he could not say in good conscience that Chief Maree made all of this up. He reiterated if there was only one conversation, he could believe there might have been a miscommunication, but he found it hard to say there was a miscommunication when there were several conversations that took place about the same matter.

Member Kaplan stated that there was also unrebutted testimony that the Appellant told his supervisor that he moved. Chairman de la O responded that did not change the fact that he did not tell Chief Maree the truth. He went on to say that Fire Fighter Brighthaupt's motivation was that he did not trust the Fire Department because he alleged that the Fire Department gave out his address in the past so he was not about to put his new address in the computer system if he did not have to. Chairman de la O further stated that he understood why Fire Fighter Brighthaupt did not want to update his address information, but he just cannot believe that Chief Maree made up the facts and requested the email whereas the Appellant wants the Board to believe that Chief Maree did make those things up.

Following discussion, the motion on the floor to find the Appellant NOT GUILTY all three (3) charges 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, de la O and Dames

The motion having failed, the Board entered a motion to find the Appellant GUILTY of Charge #1- Fire-Rescue Rules of Conduct; Conduct Category: 4. No member shall knowingly make a false report. The motion resulted as follows:

Motion by Member Silverman, seconded by Member Dames, to APPROVED. PASSED by the following vote.

Aye: Silverman, de la O and Dames

No: Kaplan and Moy

The Board entered a motion to find the Appellant NOT GUILTY of Charge #2 - Civil Service Rule 14.2(e)(1) - An act of insubordination. The motion resulted as follows:

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

Aye: Kaplan, de la O, Dames and Moy

No: Silverman

The Board entered a motion to find the Appellant NOT GUILTY of Charge #3 - Civil Service Rule 14.2(e)(2), which resulted as follows:

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

Aye: Kaplan, Dames and Moy

No: Silverman and de la O

The Appellant having been found guilty, the Board entered into the Penalty Phase of the Appellant's hearing.

No additional witnesses were called, nor were any additional exhibits submitted relating to the penalty recommendation and the Board proceeded to closing arguments. Following final argument, the Board entered a motion to recommend to the City Manager that the Appellant receive a reprimand only in lieu of the 24-hour suspension ordered by the Department, which resulted as follows:

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

Aye: Kaplan, Dames and Moy

No: Silverman and de la O

H.2 Hearing of appeal on behalf of Jacqueline Mesidor, Police Sergeant, relative to her 10-hour suspension, effective December 7, 2008.

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

CONTINUED

H.3 Hearing of appeal on behalf of Shekita Johnson, Communications Operator, relative to her 8-hour suspension, effective February 8, 2009.

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

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

The meeting adjourned at 1:01 p.m. Breaks were taken at 10:15-10:26 a.m. and 11:32-11:38 a.m.

SIGNATURE:

Miguel M. de la O, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary