

# **City of Miami**

*City Hall  
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## **Meeting Minutes**

**Tuesday, October 19, 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 10:02 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 and Member Silverman

**Absent:** Member Moy

### A. APPROVING THE MINUTES OF:

Regular Meeting of October 5, 2010.

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

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

**Absent:** Moy

### B. PERSONNEL MATTERS

### C. MILITARY LEAVES OF ABSENCE

### D. DISCIPLINARY MATTERS

- D.1 Copy of a Judgment from the City Manager, concerning the Grievance Hearing of Neal A. Muhammad, Fire Lieutenant, accepting the Board's first recommendation and rejecting #2, #3, and #4. (NOTIFICATION)

NOTIFIED

- D.2 Copy of a Judgment from the City Manager, concerning the Grievance Hearing of Suzann E. Nicholson, rejecting the recommendations of the Civil Service Board. (NOTIFICATION)

NOTIFIED

### E. GENERAL ITEMS

- E.1 Notice of a Request for a continuance from Diana Vizcaino, Assistant City Attorney, on behalf of Iliana Forte, relative to the Appeal hearing of Dashon Yearby, Police Officer, concerning her 10-hour suspension, effective February 14, 2010. Osnat K. Rind, Attorney, expressed no objection to opposing Counsel's request. (DISCUSSION)

*Chairman de la O stated that opposing counsel expressed no objection to the department's request for a continuance and therefore asked if this was the first time this case was set for a hearing. The Executive Secretary responded in the affirmative.*

*Following discussion, the Board entered a motion to APPROVE 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 and Dames

**Absent:** Moy

**E.2**

Notice of a Request for a continuance from Diana Vizcaino, Assistant City Attorney, on behalf of Iliana Forte, relative to the Appeal hearing of Jeffrey Jans, Police officer, concerning hsi 80-hour suspension, effective April 13, 2010. Osnat K. Rind, Attorney, expressed no objection to opposing Counsel's request. (DISCUSSION)

*Chairman de la O stated that Attorney Rind expressed no objection to the department's request for a continuance and therefore asked the Executive Secretary if this was the first time this case was scheduled for a hearing. The Executive Secretary responded in the affirmative.*

*Following discussion, the Board entered a motion to APPROVE 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 and Dames

**Absent:** Moy

**E.3**

Copy of a Memorandum from Carlos Migoya, City Manager, relative to Raul Cabrera, Police Officer, concerning his 160-hour suspension, effective April 21, 2010, remanding the matter back to the Board to fully comply with Rule 14. (DISCUSSION)

*David Chonin, Attorney at Law on behalf of Raul Cabrera, stated that the Board may recall that in June 2010 it ruled in favor of his client's Motion to Dismiss after finding that the police department violated State Statute 112 of the Officers' Bill of Rights with regards to the 180-day rule. He went on to say that according to the City Manager's judgment, it appeared that he wants the Board to provide findings on the 160-hour suspension that was issued to his client.*

*Member Silverman asked Attorney Chonin if he could provide the Board with an overview of what happened in this case. Attorney Chonin responded that Officer Cabrera was issued a 160-hour suspension and he filed a Motion to dismiss the discipline. He went on to say that the basis for the Motion was that the department violated State Statute 112.532(6)(a) of the Officers' Bill of Rights which states that from the time a complaint is initiated against an officer, the department has 180 days to give notice to the officer.*

*Chairman de la O asked if the matter before the Board involved the issue of whether Officer Cabrera had resigned and after consideration of the case, the Board recommended that he be reinstated as a police officer. Attorney Chonin responded in the negative. He went on to say that Officer Cabrera was terminated some time later but this matter had nothing to do with the termination nor was this the reason they were before the Board. Attorney Chonin further stated that they are before the Board today regarding the 160-hour suspension which the Board considered some time in June of this year. He stated that arguments were presented (as to whether or not the department gave Officer Cabrera notice of the discipline within the 180-day window) and*

as a result, the Board ruled in his client's favor and granted the Motion to dismiss.

Chairman de la O asked the department's representative what she thought needed to happen (since the Board granted the Motion to Dismiss and the City Manager remanded Officer Cabrera's case back to the Board for a hearing.) Iliana Forte, Assistant City Attorney (ACA), responded that the difficulty is what was before the Board was an alleged violation of Rule 14; however, the Board did not make any findings but made a ruling based upon the Motion to Dismiss filed by the employee concerning a violation of the 180-day rule as cited in State Statute 112.532(6)(a). She went on to say that the 180-day rule violation was not before the Board when it rendered its decision and that the Board had no jurisdiction to make that determination particularly when no findings of fact or evidence was taken which is why the City Manager remanded the case back to the Board when he received the Executive Secretary's memo dated July 9, 2010. ACA Forte further stated that she had no information to prove that the Board made a determination and even if there was a violation of the State Statute, it was not before the Board. She stated the only jurisdiction the Board had at that time was to hear the Rule 14 appeal that was filed by Officer Cabrera. She reiterated that the Board made no findings and dismissed the discipline (160-hour suspension) without any findings of fact which was based on something that was not before the Board, and the Board essentially had no jurisdiction to entertain the Motion.

Attorney Chonin stated if the Board were to schedule a hearing, he could submit evidence as to the timing so that the Board could then make factual findings as to there being a violation of State Statute 112.

Chairman de la O stated if everyone is in agreement, the hearing just needs to be set. Member Silverman asked if he could hear from the Board's Special Counsel on this matter. Cynthia A. Everett, Special Counsel to the Board responded that she needed to know if at the time the Board made its decision (on the Motion to Dismiss as it related to a violation of the 180-day rule) was there an appeal hearing pending or was there only a Motion to Dismiss for consideration. Attorney Chonin responded that his client's hearing was pending at that time and he believed it was scheduled to be heard some time in August 2010. He went on to say that he filed a Motion to Dismiss on the basis that the facts were indisputable as to the timing of when his client received notice of his discipline, and therefore the Motion was heard prior to the hearing. Special Counsel Everett clarified that Attorney Chonin did request an appeal hearing but requested that the charges against his client be dismissed prior to the scheduled hearing. She went on to say that since the hearing did not take place, it would seem to her that the Board needs to hold the appeal hearing and make whatever decision it deems appropriate.

Member Silverman asked Special Counsel Everett if she was saying that the Board should proceed with the hearing. Special Counsel Everett responded that the Board should proceed with the hearing if that is what the employee wishes to do. Member Silverman stated that at the end of the City's case, the employee's attorney could make whatever Motion at that time. Attorney Chonin responded that he was agreeable to having a hearing.

Following discussion, the Board entered a motion to schedule Raul Cabrera's appeal hearing.

Under discussion, Chairman de la O stated as best he could recall, there was no disagreement as to the underlying facts, but there were two legal arguments raised by former ACA Min, so if both attorneys (Forte/Chonin) could enter some stipulations the Board does would not have to waste a lot of time on the dates. He went on to say that he also recalled ACA Min agreed that the 180 days had run, but argued there was either a waiver or this was not the right jurisdiction for consideration of this matter.

*Member Dames stated the Board voted in favor of the Motion to Dismiss due [passing of the 180-days allowed] which was clear to him; however, if Officer Cabrera wants to agree to setting a hearing date that was fine with him, but having a hearing does not change the time line of when Officer Cabrera received notice of his discipline.*

*Chairman de la O asked the Executive Secretary if there was any reason the Board could not hear Officer Cabrera's case at the Board's next meeting. The Executive Secretary responded that she would have to check the scheduling since it has been very tight; however, she could move cases around if that was the Board's pleasure. Chairman de la O responded that lately the cases have been continued so he would rather set the hearing for the next meeting and if his case has to be set off for another two weeks, that would be better than not setting it at all.*

*Following discussion, the motion on the floor to schedule Officer Raul Cabrera's appeal hearing for the November 2, 2010 meeting resulted as follows:*

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

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

**Absent:** Moy

## **F. REPORTS**

**F.1** Pending Hearings as of October 19, 2010. (NOTIFICATION)

**PRESENTED**

## **G. REQUESTS FOR HEARINGS**

**G.1** A copy of a Request for a Grievance hearing from Julianne Diaz, former Assistant to the Director of Public Works, pursuant to Civil Service Rule 2.7 Appearance Before the Board, concerning a request for hearing pursuant to Rule 16.1 Abuse of Power or 16.2 Complaint by Employee. (DISCUSSION) Deferred from the meeting of October 5, 2010.

*Kyle Smith, Attorney on behalf of Julianne Diaz, stated that at the last meeting, discussion took place on their request to proceed forward on a possible gender discrimination claim and the City's failure to give his client the reason(s) she was terminated. He went on to say that at the conclusion of that discussion, the Board requested he provide further explanation on whether the Board has jurisdiction to go forward on those two issues. Attorney Smith further stated that they have decided not to pursue those issues under Rule 17 and 14 although he would note that Title 7 and the Florida Civil Rights Act do apply to an unclassified worker even though Rule 17 and 14 do not. He stated that Rules 16.1 and 16.2 might give the Board jurisdiction to hear adverse actions taken against a City employee that are in violation of Title 7 and the Florida Civil Rights Act, but for the purposes of this juncture, they are (instead) requesting a hearing concerning Ms. Diaz' whistle-blower claim.*

*Chairman de la O asked for the department's position on this matter. ACA Forte responded that Ms. Diaz has a right to come before the Board regarding her whistle-blower claim. She went on to say that she believes the allegations presented on Ms. Diaz' behalf are sufficient to give her enough notice of what she is claiming.*

Chairman de la O asked ACA Forte if she believed Ms. Diaz was entitled to a hearing pursuant to Rules 16.1 and 16.2. ACA Forte responded in the negative. She went on to say that Attorney Smith clarified that he was only requesting a hearing pursuant to his client's whistle-blower claim. Chairman de la O implied that both the Rule 16.1 and 16.2 boxes are checked off on the (Request for Hearing Form) so he was trying to figure out under which rule was she requesting a hearing. ACA Forte responded that she did not think either rule applied. Special Counsel Everett stated that it is unfortunate that the Board does not have a provision for whistle-blower hearings so it is by judicial fiat that the Board can hear whistle-blower claims.

Following discussion, the Board entered a motion to APPROVE Julianne Diaz' request for a whistle-blower hearing pursuant to the judicial fiat rule.

Under discussion, Member Dames asked if he could have clarification on what is the judicial fiat rule. Special Counsel Everett responded that it means a determination by a court order was made to give the Board authority to hear whistle-blower claims as opposed to being created through the Civil Service Rules or by the City Commission.

Following discussion, the motion on the floor 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 and Dames

**Absent:** Moy

## H. TODAY'S HEARINGS

H.1 Hearing of Appeal on behalf of Dashon Yearby, Police Officer, relative her 10-hour suspension, effective February 14, 2010.

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

**CONTINUED**

H.2 Hearing of Appeal on behalf of Jeffrey Jans, Police officer, relative to his 80-hour suspension, effective April 13, 2010.

*The Board took no action on this case because a CONTINUANCE was approved 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 APPROVED. PASSED by the following vote.**

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

**Absent:** Moy

*The meeting adjourned at 10:15 a.m.*

**SIGNATURE:**

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**Miguel M. de la O, Chairperson**

**ATTEST:**

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**Tishria L. Mindingall, Executive Secretary**