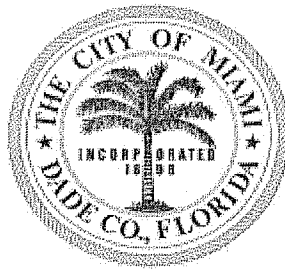


City of Miami

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Meeting Minutes

Tuesday, November 16, 2010

11:00 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

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

APPROVING THE MINUTES OF:

Regular Meeting of November 2, 2010.

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

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

B. PERSONNEL MATTERS

- B.1** Copy of a memorandum from Chief Maurice Kemp, Director, Department of Fire Rescue, requesting an extension of probationary period of Manuel Castro, Fire Fighter, for three (3) additional months beyond December 14, 2010. (DISCUSSION)

The department of Fire-Rescue asked that this matter be carried over to the Board's next meeting. Without objection, the Chairman asked that the matter appear on the November 30, 2010 agenda for Board consideration.

DEFERRED

- B.2** Copy of a memorandum from Chief Maurice Kemp, Director, Department of Fire Rescue, requesting an extension of probationary period of Kenneth Zapata, Fire Fighter, for three (3) additional months beyond December 14, 2010. (DISCUSSION)

The department of Fire-Rescue asked that this matter be carried over to the Board's next meeting. Without objection, the Chairman asked that the matter appear on the November 30, 2010 agenda for Board consideration.

DEFERRED

- B.3** Copy of a memorandum from Chief Maurice Kemp, Director, Department of Fire Rescue, requesting an extension of probationary period of Heather Perales, Fire Fighter, for six (6) additional months beyond December 14, 2010. (DISCUSSION)

The department of Fire-Rescue asked that this matter be carried over to the Board's next meeting. Without objection, the Chairman asked that the matter appear on the November 30, 2010 agenda for Board consideration.

DEFERRED

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

- D.1** Copy of a letter from Chief Miguel Exposito, Director, Department of Police, notifying David Valentin, Police Officer, of his termination, effective November

9, 2010 and a copy of a request from Officer Valentin requesting a hearing of appeal relative to his termination. A hearing will be scheduled in accordance with the Civil Service Rules and Regulations. (NOTIFICATION)

RECEIVED AND FILED

- D.2 Copy of a letter from Chief Miguel Exposito, Director, Department of Police, notifying Daniel Fernandez, Police Officer, of his termination, effective November 6, 2010 and a copy of a request from Officer Fernandez requesting a hearing of appeal relative to his termination. A hearing will be scheduled in accordance with the Civil Service Rules and Regulations. (NOTIFICATION)

RECEIVED AND FILED

E. GENERAL ITEMS

F. REPORTS

- F.1 Pending Hearings as of November 16, 2010. (NOTIFICATION)

PRESENTED

G. REQUESTS FOR HEARINGS

- G.1 A copy of a Request for a Grievance hearing from Teri Guttman-Valdes, Attorney, on behalf of Louis A. Brennan, Firefighter, pursuant to Civil Service Rule 16.1- Investigation by the Board and 16.2- Complaint by Employee, alleging a violation of Civil Service Rules 5, 6, 7, and 8. (DISCUSSION)
Item tabled from the meeting of November 2, 2010.

Attorney Guttman-Valdes stated that her client noticed that there was a Register Announcement for the classification of Fire Lieutenant, which was posted June 2, 2008. She went on to say that the announcement set forth the requirements for the granting of veteran's preference points, and her client complied with said requirements, by completing the application, checking the box requesting veteran's preference points, and submitting his Form DD-214. The documents were reviewed and accepted by Department of Employee Relations staff, and he was given a receipt for his application and documents. She went on to say that her client sat for the written examination, passed the examination, and then was later advised by the Department of Employee Relations that he did not receive veteran's preference points. She stated that Mr. Brennan filed a grievance with the Office of Labor Relations, with the support of his union; (however) the union decided not to go forward with that grievance as it was considered not a violation of the collective bargaining agreement. The parties later agreed not to take the matter to arbitration, unbeknownst to Mr. Brennan, and instead to follow the decision of the Florida Department of Veterans Affairs (DVA), which did not rule in Mr. Brennan's favor. Attorney Guttman-Valdes went on to say that they are requesting a hearing before the Civil Service Board as this is the proper venue.

Chairman de la O asked for the department's position on the matter.

Iliana Forte, Assistant City Attorney, responded that it is the department's view that Mr. Brennan is not entitled to a hearing before the Civil Service Board. She went on to say that while Mr. Brennan might have been entitled to a hearing at the outset, he chose his remedy (when he went through Labor Relations). She went on to say that Mr. Brennan

was represented by the union, elected to proceed with his grievance via the remedy afforded in the union contract, and later settled the grievance, presenting a document signed by the union president and the City's representative, wherein the parties agreed to abide by the decision of the DVA.

Member Silverman asked Assistant City Attorney Forte if the employee was required to sign a settlement agreement (as this one was signed by the president of the union). Assistant City Attorney Forte responded that Mr. Brennan gave the union the right to represent on his behalf, and knew what the settlement terms were. She went to explain that the ruling of Veteran's Affairs was that Mr. Brennan's grievance had no merit. She stated that what the employee is requesting now is a third "bite of the apple", and under the Statutes, section 447.401 he is precluded from doing that. She went on to read that section of the statute.

Chairman de la O asked Attorney Guttman-Valdes to explain the grounds for the ruling from Veteran's Affairs, and what her response is to the settlement agreement presented by Assistant City Attorney Forte.

Attorney Guttman-Valdes responded that the union retains the authority in the collective bargaining agreement as the only entity which can request arbitration; however, they do not have the authority to waive the employee's right to go to any other venue. She went on to say that her client was not aware of and was not a party to the settlement agreement.

Chairman de la O asked who would file for relief on behalf of her client. Attorney Guttman-Valdes responded that Mr. Brennan filed an inquiry, which turned into a preliminary investigation. She went on to say that her client's route to remedy would have been to take the matter to PERC (Public Employment Relations Commission), however, he chose not to do that.

Chairman de la O read from the Settlement Agreement that the parties agreed to abide by the final decision of the State of Florida DVA regarding whether Luis Brennan is entitled to receive Veteran's Preference points. Attorney Guttman-Valdes responded that she does not believe that the union had the authority to bind Mr. Brennan to such an agreement.

Chairman de la O asked whether a ruling was issued. Attorney Guttman-Valdes replied that there was an investigation and [the DVA] concluded that it was an invalid complaint. Chairman de la O asked whether (the ruling that) what was issued by the DVA was not contemplated in the Agreement. Attorney Guttman-Valdes responded that her client did not contemplate anything as he was not a participant in [the Agreement] and was not aware of it. She went on to say that the union's position is that Mr. Brennan can pursue whatever avenue he deems appropriate, but that they were not taking the matter to arbitration.

Chairman de la O asked whether the union has the power to bind Mr. Brennan to a Settlement Agreement when they are the ones who took the matter to grievance. Attorney Guttman-Valdes responded that they have the discretion not to take the matter to arbitration, but they cannot waive his rights or bind him otherwise.

Chairman de la O stated that it seemed to him that Mr. Brennan is attempting to get a couple of "bites at the apple", since he grieved the matter and the DVA did issue some sort of ruling so, he did receive some consideration of the matter; but he did not like the results. He went on to say that Attorney Guttman-Valdes would have to admit that it would be troubling if her client received the benefit of the Agreement, but still gets a hearing. Attorney Guttman-Valdes responded that their issue is under the Civil Service

Rules & Regulations and how the Department of Employee Relations is supposed to handle the complaint. She went on to say that the DVA did not get into how the Rules are to be interpreted.

Assistant City Attorney Forte stated that the matter has already been resolved. She went on to say that the employee selected his remedy, and the matter did not go to arbitration because there was a settlement, which was that the parties would abide by the DVA's ruling. She went on to say that as the Chairman said, Mr. Brennan did not like the results (of the ruling), and is now requesting a hearing before the Civil Service Board to grieve the same exact issue.

Attorney Guttman-Valdes stated that the key is that Mr. Brennan did not have a hearing; there has only been an investigation and gathering of information. Chairman de la O stated that the letter from DVA advises that Mr. Brennan could go to PERC for a hearing. Attorney Guttman-Valdes responded that Mr. Brennan realizes that [his grievances] are potential Rule violations, and therefore is requesting a hearing before the Civil Service Board as opposed to PERC.

Following further discussion and questions from the board members, Member Silverman stated that it troubled him that Mr. Brennan had not signed the Settlement Agreement, and it was not proper for the union settle a case without the employee involved signing the Settlement Agreement. He went on to say that had the employee signed the Agreement, we wouldn't be here today; and that it was especially troubling that the employee's testimony is that that he did not agree to the terms of the agreement, and had not seen it until recently. He went on to say that he believes that the Board could grant Mr. Brennan a hearing on the merits of whether or not he was entitled to the points or not. Member Silverman then made a motion, which was seconded by Member Dames, to grant a hearing.

Chairman de la O stated that he agrees with most of what Member Silverman said, however, he would add that at the hearing if the union testifies that Mr. Brennan knew about the settlement agreement, he would rule against him.

Member Kaplan stated that the issue is not whether Mr. Brennan signed the Agreement, since in the normal course of union affairs, the employee may not sign an Agreement, but they must know about it. He asked whether the Chairman was saying that if the hearing was granted, the issues of the union's representation, and the ruling of Veteran's Affairs would all come up. Chairman de la O responded that he believes they should; it would be an affirmative defense.

Member Dames asked Mr. Brennan to confirm that he understood what the Chairman said, to which Mr. Brennan responded in the affirmative. Member Dames asked Mr. Brennan again if he knew about the Settlement Agreement, to which he responded in the negative. Attorney Guttman-Valdes stated that she spoke with the union president who told her that in speaking with Mr. Brennan, he told him that "if Mr. Brennan opened up another can of worms" he would not take the matter to arbitration. She went on to say that Mr. Brennan had already made inquiry with the DVA regarding his rights, and they started an investigation, which upon notifying the City, the union backed down. She went on to say that they never conveyed to her client that they were settling the matter or signing any documents.

Following further discussion, Special Counsel Everett asked that the Board indicate the Rule under which the hearing would take place. Chairman de la O stated that he believes that the hearing, if granted should be under Rule 16.2, alleging a violation of Rule 6.4. Member Silverman amended his motion to include what the Chairman stated, and Member Dames seconded the motion. The motion on the floor resulted in the

following vote:

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

Aye: Kaplan, Silverman, Dames and Moy

No: de la O

H. TODAY'S HEARINGS

H.1

Hearing of appeal on behalf of Shellande Tropnas, Payroll Specialist, of her termination, effective April 23, 2010.

The Board entered into the scheduled hearing of appeal on behalf of Shellande Tropnas, the Appellant.

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

Osnat K. Rind, Attorney at Law, represented the Appellant.

ACA Richard presented opening statements and Attorney Rind deferred opening statements until after the department rested its case. The Rule of Witnesses was invoked and all witnesses were sworn in individually. Witnesses for the Department appeared in the following order:

1. Moralinda Altamirano, Assistant Payroll Supervisor, City of Miami, Department of Finance.

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

2. Larry Spring, Chief Financial Officer, City of Miami.

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

3. Diana Gomez, Director, City of Miami, Department of Finance.

Questions were posed by Board Member Silverman during the testimony of witness Gomez.

The Department rested its case and Attorney Rind presented opening statements on behalf of the Appellant, which was followed by the calling of witnesses. Witnesses for the Appellant appeared in the following order:

1. Cynthia Bennett, Payroll Aide, City of Miami, Department of Finance.

Questions were posed by Board Members Moy and Dames during the testimony of witness Bennett.

2. Shellande Tropnas, Appellant, testified on her on behalf.

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

The Appellant rested his case and the Department waived rebuttal. Subsequently, the Board proceeded to closing arguments that were presented by both attorneys.

During discussion, Chairman de la O stated that this strikes him as a classic "C-Y-A" case, and he considers it a failure of leadership that no one went to bat for this employee; because what appears to have happened here is there was a mistake at some level, but no one knew whose mistake it was, but they had to find a villain. He went on to say that Mr. Spring made it clear as to why they had to find a villain, and that is because there had been various problems in the Payroll division, and his guess is, if those problems had not been occurring, this employee would not have been terminated. He further stated that certainly if the Appellant had just hung up (the telephone, without trying to get the confirmation number), which is what the City Manager and the CFO were apparently led to believe, she deserved to be terminated; however, the evidence presented to the Board did not show that she did that. He went on to say that he doesn't believe that it is the Manager's or the CFO's job to do a direct investigation of what happened here; they have a right to rely on their underlings. He further reiterated that it was a failure of leadership that no one stood up for the employee; that no one spoke to her and said that it appears that the mistake was more on the IRS' side than on [the City's] side, and it wasn't her fault. He then stated to the Appellant that he was sorry that no one did that for her, because they should have, that is what real leadership is; and the irony is that [the Department of Employee Relations] is involved in this and Dr. Michelle Piña is not even asking what happened. He concluded by saying that he did not see any negligence; if there was negligence, she would deserve to be terminated, but he did not see any negligence at all.

Member Dames stated that he agreed with the Chairman, and noted that the City Manager signed the termination letter, so he strongly recommended that the Board speak with one voice, so that whatever is decided by the Board would not be overruled or challenged per the manager's issued Judgment. He went on to apologize to the Appellant, and stated that she was wronged in this instance, in that she was called in to a room and terminated when no one had heard her side of the story. He concluded by stating that the City has to do better and treat employees like human beings.

Member Moy stated that he agreed with the Chairman and Member Dames, and that what was done to the Appellant was very cruel. He went on to say that her contacting her supervisor and [trying to correct the problem] shows that she is intelligent and not incompetent, and he is embarrassed to even bring those things up. He went on to say that if the Appellant did not receive a good Judgment, he would recommend that she take the matter further. He went on to apologize to the Appellant as well.

Following discussion, the Board entered a motion to find the Appellant NOT GUILTY of the following four (4) charges:

Civil Service Rules & Regulations 14.2(e) - Violated lawful order amounting to a serious breach of proper discipline; or might be expected to result in loss or injury to the City.

Civil Service Rules & Regulations 14.2(h) - Insubordination or disgraceful conduct, on or off-duty.

Civil Service Rules & Regulations 14.2(k) - Incompetence, negligent or inefficient in the performance of duties.

Civil Service Rules & Regulations 14.2(l) - Careless or negligent of the property of the City of Miami.

The motion resulted as follows:

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

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

H.2

Hearing of Appeal on behalf of Daylet Diaz, Litigation Assistant, relative to her termination, effective August 17, 2010.

Due to the time constraints, the Board entered a motion to continue this hearing and charge the continuance to the Board.

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 and Moy

No: Dames

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

H.3

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

The Executive Secretary advised that a joint request for continuance had been requested in this matter. She further advised that a settlement agreement was pending.

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

Aye: Kaplan, Silverman and de la O

No: Dames and Moy

Hearing of appeal on behalf of Carlos Antunez, Police Officer, relative to his 40-hour suspension, effective June 1, 2009.

The Executive Secretary advised that a joint request for continuance had been requested in this matter. Osnat Rind, Attorney on behalf of Officer Antunez further advised that this continuance was being requested pending resolution of the officer's federal case, which should be in the Spring of 2011.

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 and Moy

No: Dames

ADJOURNMENT:

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

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

*The meeting adjourned at 2:34 PM. Breaks were taken from 11:41-11:46 AM, and
12:58-1:06 PM.*

SIGNATURE:

Miguel M. de la O, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary

