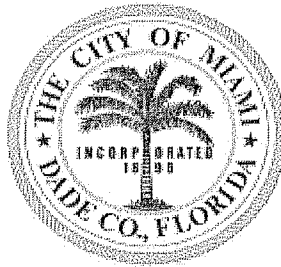


City of Miami

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



Meeting Minutes

Tuesday, January 11, 2011

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 10:14 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 December 14, 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**C. MILITARY LEAVES OF ABSENCE****D. DISCIPLINARY MATTERS**

- D.1** Copy of a letter from Chief Miguel Exposito, Director, Department of Police, notifying Raul Valdes, Police Officer, of his 10-hr forfeiture, effective December 15, 2010. (NOTIFICATION)

NOTIFIED

- D.2** Copy of a letter from Chief Miguel Exposito, Director, Department of Police, notifying Terrel Cheever, Communications Assistant, of his 80-hour suspension, effective January 4, 2011. (NOTIFICATION)

NOTIFIED

E. GENERAL ITEMS**F. REPORTS**

- F.1** The 2010 Annual Board Report to the City Commission. (DISCUSSION)

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, Dames and Moy

- F.2** The 2010 Annual Report reflecting Board action on Hearings, Administrative Activities, and Outstanding Judgments. (NOTIFICATION)

PRESENTED

- F.3** Pending Hearings as of January 11, 2011. (NOTIFICATION)

PRESENTED

G. REQUESTS FOR HEARINGS

H. TODAY'S HEARINGS

- H.1 Hearing of appeal on behalf of Greicy Lovin, Crime Prevention Specialist, relative to her 5-hour forfeiture, effective March 5, 2009.

Stella Chu, Attorney at Law on behalf of Greicy Lovin, informed the Board that the parties reached a settlement of this case and that they will be in communication to finalize the settlement in writing.

NO ACTION TAKEN : Case will be closed and removed from the Board's docket upon receipt of written agreement or rescheduled in accordance with the Board's Continuance Policy.

Following the Board's motion, Member Dames stated that he had seen settlements reflected on the agenda in the past, but since his tenure on the Board he has never been provided with a copy; therefore, when the settlement in the matter of Greicy Lovin has been reduced to writing, he would like to have a copy provided to the Board.

Chairman de la O stated that the settlements are public record so he did not think there was a big secret. He went on to say that once both attorneys have agreed to the language, it will be submitted to the Executive Secretary, and the Board would have an opportunity to review the settlement.

Member Dames asked if he could make a motion to ensure that Board Members receive a copy of the settlement. Chairman de la O responded in the affirmative. Following discussion, the Board entered a motion instructing the Executive Secretary to provide the Board with a copy of the settlement between Greicy Lovin and City of Miami upon its execution which resulted as follows:

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

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

- H.2 Grievance hearing on behalf of Richard Brioso, former Assistant to the Director of GSA, pursuant to Rule 16.2 Complaint by Employee, alleging a violation of 8.13.

The Board entered into the scheduled grievance hearing on behalf of Richard Brioso, the Grievant.

Michael Pizzi, Attorney at Law, represented the Grievant.

Janeen Richard, Assistant City Attorney, represented the Department.

Opening statements were made by Attorney Pizzi and ACA Richard reserved opening statements.

All witnesses were sworn in individually. Witnesses for the Grievant appeared in the following order:

- 1. Richard Brioso, former Assistant to the Director, Department of General Services Administration, testified on his own behalf.*

Questions were posed by Board Member Moy during the testimony of Richard Brioso.

The Grievant rested his case.

Witnesses for the Department appeared in the following order:

1. Joni Harris, Employee Relations Manager, City of Miami, Department of Employee Relations.

Questions were posed by Board Members de la O, Dames, and Moy during the testimony of Joni Harris.

2. Milton Mizell, Superintendent, City of Miami, Department of General Services Administration.

Questions were posed by Members Kaplan, Dames, and Moy during the testimony of Milton Mizell.

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

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

The Department rested its case, the Grievant waived rebuttal, and the Board proceeded with closing arguments by both attorneys. Following final argument, the Board entered a motion to return Richard Brioso to any Civil Service position of similar authority that he had prior to being appointed to the classification of Assistant to the Director.

Under discussion, Member Kaplan stated it is his position that the operative phrase is "he shall be returned to the rank from which he was promoted" and it (Rule 8.13) does not say that the employee would be returned to the same position or classification. He went on to say that the best definition he received from one of the City's witnesses was that the word rank essentially meant a position of the same authority. Member Kaplan further stated that he felt the City failed Mr. Brioso by not conducting a search and as one witness stated, "They are not allowed to conduct a search of similar positions." He stated that this Board needs to require that Mr. Brioso be returned to a position of similar authority and that type of search be mandatory.

Member Silverman stated that the Rules require that Mr. Brioso be returned to his former classification, but there was no such classification (he could return to). He went on to say that Mr. Brioso does not have a vested right to any job and this is evident based upon the number of employees who were laid off some months ago. Member Silverman further stated that there is no guarantee that individuals would have a lifetime job when they become City employees and what happened to Mr. Brioso was unfortunate, and on its face it did not seem fair that an employee of five years was suddenly out of work. He stated that the City Manager would ultimately make the decision on what to do in this case, but he did not see Mr. Brioso returning to work because there was no (former) classification for him to return to and he did not think the Board should recommend that Management find him a job.

Chairman de la O stated that he will echo what [Member Silverman] stated as well as additional comments. He went on to say that it was unfortunate what happened to Mr. Brioso but at the end of the day these Rules in general and in this case specifically, are about whose ox is going to get goaded because someone is going to lose their job.

Chairman de la O further stated the question is: Who is it that should lose their job? He stated that the point of the Civil Service Rules is to try to have a system in place without knowing who is affected by it, what position a person would have when the Rules are written or who was going to have more seniority or be laid off. Chairman de la O went on to say that if the Board was to accept the motion on the floor, he was not sure where Management would place Mr. Briosio, and would it matter which department he would be assigned as a supervisor? He further stated that it has to matter which department Mr. Briosio is placed because he needs to be qualified to do the job which is why the Rule (8.13) says that the employee gets returned to a classification in which he previously held status. Chairman de la O stated that the Rule could have said that the employee gets returned to the classified service, but it does not, it specifically states the employees gets returned to their previous classification or rank so he saw no reason to interpret the words rank and classification differently. He went on to say that he understood Mr. Pizzi's position that this rule could be used as a loophole, but that was not the case in this matter because there was a 2 1/2 year gap between Mr. Briosio's appointment and termination. Chairman de la O further stated if there was a case of someone promoted one day and the next day the audit eliminates the job and the employee was terminated, he thinks that the employee could then file a complaint pursuant to Rule 16.1 and the Board could have a hearing as to whether the City acted in bad faith to get rid of a classified employee, but that was not the case in this matter although he thinks the Board should be aware of it. He stated that the bottom line is that when he asked Ms. Harris (department's witness) what would have happened if the audit occurred while Mr. Briosio was in the position, her response was that Mr. Briosio would have had the choice of competing for the lower ranked job or leaving his employment with the City of Miami. Chairman de la O went on to say that what is now being asked in the form of the motion on the floor is to give Mr. Briosio special rights because he was promoted, so he now gets a guaranteed job with the City. He further stated that he agreed with Member Silverman that Mr. Briosio did not have a right to a job, he did not see where Mr. Briosio's rights were violated, and the Rules are very clear that Mr. Briosio gets to return to the previous classification where he held status (however in this case his position was downgraded to a lower position so he had no position to return to).

Member Kaplan stated that both the Chairman and Member Silverman stated that Rule 8.13 says that the employee shall be returned to a former classification, but the Rule does not use the word "classification" instead it uses the term "rank". He went on to say that he did not know the definition of the word rank and he did not think there could be found a definition in the dictionary that would necessarily apply. Member Kaplan further stated that a witness defined rank as the same level of authority, which was the only definition that came from the City that had meaning. He stated that if rank is defined as a certain level of authority, where is the evidence that the City did in fact search to find a job of the same level of authority. Member Kaplan went on to say that this was not done and one witness testified that he was not obligated to conduct a search for another job (since Mr. Briosio held only one classified position to which he could return, but could not since it was downgraded to a different classification.) He further stated that the Board needs to mandate that Mr. Briosio be returned to the same rank that he had before, which is a position and not the same classification, but any classification for which he can perform the job duties. Member Kaplan stated that the same level of authority does not mean Management would place Mr. Briosio as a supervisor in the Fire Department because some intelligence has to be applied.

Following discussion, the motion on the floor was amended to find in favor of the Grievant and to recommend to the City Manager that Mr. Briosio be returned to the classified service in any position of similar authority which resulted as follows:

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

Aye: Kaplan

No: Silverman, de la O, Dames and Moy

The motion having failed, the Board entered a motion to find that after investigation and hearing, the Board DENIES the Grievant's claim and pursuant to Rule 16.2(d) recommends that the City Manager take no further action in this matter, which resulted as follows:

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

Aye: Silverman, de la O, Dames and Moy

Absent: Kaplan

Member Kaplan left the meeting prior to the Board's vote on this motion.

ADJOURNMENT:

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

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

Aye: Silverman, de la O, Dames and Moy

Absent: Kaplan

The meeting adjourned at 12:22 p.m. Breaks were taken at 10:28 - 10:37 a.m and 11:38 - 11:46 a.m.

SIGNATURE:

Miguel M. de la O, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary