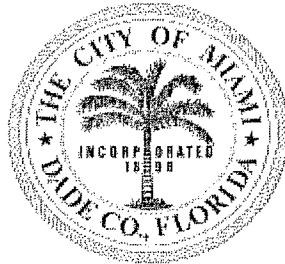


# **City of Miami**

*City Hall  
3500 Pan American Drive  
Miami, FL 33133  
[www.miamigov.com](http://www.miamigov.com)*



## **Meeting Minutes**

**Tuesday, May 31, 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 10:02 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, Member Silverman and Member Moy

**A. APPROVING THE MINUTES OF:**

Regular Meeting of May 17, 2011.

**Motion by Member Silverman, 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 David Carpenter, Police Officer, of his 10-hour forfeiture of earned time, effective May 25, 2011. (NOTIFICATION)

**NOTIFIED**

- D.2** Copy of a Judgment from the City Manager, concurring with the Board's Findings concerning Osmel Martinez, former Maintenance Mechanic Supervisor, relative to his termination, effective February 17, 2010. It is ordered and adjudged that the Department's Director to terminate Osmel Martinez is hereby sustained. (NOTIFICATION)

**NOTIFIED**

- D.3** Copy of a Judgment from the City Manager, concurring with the Board's Findings concerning Osmel Martinez, former Maintenance Mechanic Supervisor, relative to his 2-day suspension, effective January 26, 2010. It is ordered and adjudged that the Department's Director to suspend Osmel Martinez for 2-days is hereby reversed. (NOTIFICATION)

**NOTIFIED**

**E. GENERAL ITEMS**

- E.1** Copy of a Settlement Agreement between the City of Miami and Rameses Rengifo, Police Officer, relative to his 10-hour suspension, effective April 25, 2009.

Case will be closed and removed from the Board's docket.

**NOTIFIED**

**E.2**

Copy of Findings of Fact in the hearing of appeal on behalf of Daylet Diaz, Litigation Assistant, relative to her termination, effective August 17, 2010.  
(DISCUSSION)

Tabled from the meeting of May 17, 2011.

*Following discussion, Chairman de la O called for a motion to approve the Findings of Fact and Recommendations, as amended.*

**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 Moy

**No:** Dames

**F. REPORTS**

**F.1**

Pending Hearings as of May 31, 2011. (NOTIFICATION)

**PRESENTED**

**G. REQUESTS FOR HEARINGS**

**H. TODAY'S HEARINGS**

**H.1**

Hearing of appeal on behalf of Manuel Lucena, Heavy Equipment Mechanic, relative to his 3-day suspension, effective February 9, 2009.

*The Board entered into the scheduled hearing of appeal on behalf of Manuel Lucena, the Appellant.*

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

*Teri Guttman-Valdes, Attorney at Law, represented the Appellant.*

*The Rule of Witnesses was invoked and both attorneys presented opening statements.*

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

*1. Jose Davila, Superintendent, City of Miami, Department of General Services Administration. Questions were posed by Board Members Kaplan, Moy, and Dames during the testimony of Jose Davila.*

*The Department rested its case. The Appellant's attorney called witnesses and they appeared in the following order:*

*1. Lazaro Chappoten, Automotive Mechanic, City of Miami, Department of General Services Administration.*

*2. Manuel Lucena, Heavy Equipment Mechanic, City of Miami, Department of General Services Administration. Questions were posed by Board Members Dames and Kaplan*

during the testimony of Manuel Lucena.

There being no other witnesses to call, the Appellant rested his case. The Department waived rebuttal and the Board proceeded to closing arguments that were presented by both attorneys. Following final argument, Member Silverman moved for a finding of GUILTY on the first charge, but the motion died for lack of a second. Due to the failed motion, the Board entered a motion to find the Appellant NOT GUILTY of charge #1, Civil Service Rule 14.2(e)(1) Insubordination and (2) Serious Breach of Proper Discipline.

Under discussion on the motion, Member Silverman stated that this is a very simple case. He went on to say that if the Board believed Mr. Davila, the Appellant should be found guilty and if not, he should be found not guilty.

Member Dames stated that he found it suspicious that the person who wrote the reprimand was not present to testify so it seemed to him that the supervisor did not want to get involved in this case. He went on to say that due to the absence of the supervisor's testimony, he would vote in favor of the employee.

Member Moy stated that he also felt that the supervisor should have been present since his testimony was instrumental to this case. He went on to say that if the supervisor was present, he could have cleared up questions posed by the Board; however, since he was not present, he would have to vote in favor of the employee.

Following discussion, the motion on the floor to find the Appellant NOT GUILTY of Charge #1 resulted as follows:

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

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

**No:** Silverman

Member Silverman made a motion to find the Appellant GUILTY on Charge #2. The motion died for lack of a second. Following the failed motion, the Board entered a motion to find the Appellant NOT GUILTY of Charge #2, Civil Service Rule 14.2(h) - "Actions which amount to insubordination or disgraceful conduct."

Under discussion on the motion, Member Kaplan stated that he did not think there was sufficient weight of the evidence to find the Appellant guilty of this charge. Following discussion, the motion on the floor to find the Appellant NOT GUILTY of Charge #2 resulted as follows:

**Motion by Chief Examiner Kaplan, seconded by Member Dames, that this matter be 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(i) - "Wantonly offensive in conduct or language toward the public or City Officers or employees." 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, de la O, Dames and Moy

**No:** Silverman

*The Board entered a motion to find the Appellant NOT GUILTY of Charge #4 - Civil Service Rule 14.2(r) - "Antagonistic toward superiors and fellow employees, criticizing orders, rules and policies, and whose conduct interferes with the proper cooperation of employees and impairs the efficiency of the public service." 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, de la O, Dames and Moy

**No:** Silverman

*The Appellant having been found NOT GUILTY of all of the charges, this concluded the hearing.*

**HEARD AND CONCLUDED HEARING: Findings of Fact will be prepared for the Board's review and submission to the City Manager.**

## H.2

Hearing of appeal on behalf of Manuel Lucena, Heavy Equipment Mechanic, relative to his 5-day suspension, effective August 20, 2009.

*The Board entered into the scheduled hearing of appeal on behalf of Manuel Lucena, the Appellant.*

*Janeen Richard, Assistant City Attorney, represented the Department.*

*Teri Guttman-Valdes, Attorney at Law, represented the Appellant.*

*The Rule of Witnesses was invoked and all witnesses were sworn in individually. Both attorneys presented opening statements. Witnesses for the Department appeared in the following order:*

- 1. Jesus Martinez, Auto Mechanic, City of Miami, Department of General Services Administration. Questions were posed by Board Members Moy and Dames during the testimony of Jesus Martinez.*
- 2. Yanier Madiedo, Auto Mechanic, City of Miami, Department of General Services Administration. Questions were posed by Board Members Dames and Kaplan during the testimony of Yanier Madiedo.*
- 3. John Babos, Superintendent, City of Miami, Department of General Services Administration. Questions were posed by Board Members Moy, Kaplan, and Dames during the testimony of John Babos.*

*The Department rested its case. Witnesses for the Appellant appeared in the following order:*

- 1. Jesus Sancho, Heavy Equipment Mechanic Helper, City of Miami, Department of General Services Administration.*
- 2. Lazaro Chappoten, Heavy Equipment Mechanic, City of Miami, Department of General Services Administration. Questions were posed by Board Members de la O and Kaplan during the testimony of Lazaro Chappoten.*

3. Manuel Lucena, Heavy Equipment Mechanic, City of Miami, Department of General Services Administration. There being no cross-examination of the Appellant or questions from Board Members, the Appellant rested his case and the Board proceeded to closing arguments.

Following final argument, Member Moy stated that the Board heard testimony from at least two supervisors and it appeared that Mr. Lucena has a problem with supervisors. He went on to say that it appeared the culture in the GSA mechanic shop is that profanity is used in the workplace; however, profanity can lead to violence. Member Moy further stated that he felt it was terrible that Mr. Lucena would make comments about a co-worker's wife so he could understand why the co-worker became upset with Mr. Lucena. He stated that employees should not go around making allegations about other employees, so he suggests that if an employee has something negative to say about another employee, perhaps it should be kept to one's self so as not to offend others.

Following discussion, the Board entered a motion to find the Appellant GUILTY of Charge #1 - Civil Service Rule 14.2(e)(2) - Breach of proper discipline. The motion resulted as follows:

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

**Aye:** Silverman, Dames and Moy

**No:** Kaplan and de la O

The Board entered a motion to find the Appellant GUILTY of Charge #2 - Civil Service Rule 14.2(h) - Insubordination / Disgraceful Conduct, on or off duty. The motion resulted as follows:

**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

The Board entered a motion to find the Appellant GUILTY of Charge #3 - Civil Service Rule 14.2(i) - Wantonly offensive in language or conduct. The motion 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

The Board entered a motion to find the Appellant GUILTY of Charge #4 - Civil Service Rule 14.2(r) - Antagonistic toward superiors and fellow employees. The motion 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

Having found the Appellant guilty of all of the charges, the Board proceeded to the Penalty portion of the hearing. The Board reviewed the Appellant's personnel file which revealed the Appellant having received one reprimand and one suspension; however, the Board heard the Appellant's case today which involved his 3-day suspension and found him not guilty of the charges. ACA Richard offered no additional testimony or

witnesses during the penalty phase. Attorney Guttman-Valdes offered no additional witnesses but did present closing arguments.

Following closing arguments, Member Dames stated that he could understand working in an environment where you might get criticized by anything you say; so he really did not think Mr. Lucena had malicious intent if he did call a co-worker a Cuban spy or talked about a co-worker's wife being unfaithful given the culture of the employees' working environment. He went on to say that he really wants to believe that Mr. Lucena has a lot of respect and admiration for his co-workers although at times it might not seem as though he does. Member Dames further stated that he does not personally know Mr. Lucena so he is trying to give him the benefit of the doubt. He stated that many of us have encountered people who know how to push another person's button and Mr. Lucena knows that he has this skill and he does it to get his co-workers upset. Member Dames went on to say that to push someone's button does not make it right, but that is what Mr. Lucena does. He reiterated that he did not think Mr. Lucena had malicious intent towards his co-workers and if he did, he would have voted in favor of the 5-day suspension, but this was not the case. Member Dames went on to say that two employees supported Mr. Lucena so that tells him that he could not be a totally bad person, but at the same time he believed the witnesses who testified against Mr. Lucena because they spoke from the heart. There being no other discussion from Board Members, the Board entered a motion to recommend to the City Manager that Mr. Lucena serve a 2-day suspension in lieu of the 5-day suspension imposed by the department director.

Under discussion on the motion, Chairman de la O (in response to Member Dames' comments about there being no malicious intent on the part of Mr. Lucena) stated that he did not see how a man could accuse another man's wife of being unfaithful and not have malicious intent. He went on to say that he did not recall any testimony about the work environment being a place where the workers joshed around, just being one of the boys, rather he believes that Mr. Lucena is making his own environment. Chairman de la O further stated that it sounded to him that Mr. Lucena was an emotional bully, he hid behind the fact that he is older and no one would want to hit him. He stated that he is not sure how management ever wins in this situation because whenever a fight breaks out, one of the accusations made is that management knew about [a conflict] and they should have separated the affected employees. Chairman de la O went on to say that in this case, management is trying to nip the matter in the bud so he did not see any reason to deviate from the discipline (imposed by the department) especially since it is proportionate given Mr. Lucena's disciplinary history. He further stated that this is not Mr. Lucena's first disciplinary action and he is glad that the department got his attention (and there were no more incidents). Chairman de la O stated that he worries about what message the Board is sending (by being lenient) to the other employees because he is afraid of sending a message that if you appeal to the Civil Service Board, hope that there are sufficient delays (from the time of the last incident), then the employee could show that nothing further had happened, that he/she has been good ever since then, so the discipline should be taken away. He went on to say that this is not the message he wants to send; however, he thinks the message that should be sent is that management took care of the situation and that he is glad Mr. Lucena had no more (disciplinary) problems, but that does not change the fact that it was a proper discipline for what he did.

Member Dames stated that he was in agreement with the Chairman's comments. He went on to say that each time he thinks about the cultural environment at the GSA mechanic shop, he knows that the employees freely "drop F-Bombs" on a regular basis.

Chairman de la O stated that he understands that the General Services mechanic shop is not a place for sensitive ears, but there is a difference between going around cursing

*and verbally provoking people.*

*Following discussion, the motion on the floor to recommend a 2-day suspension in lieu of the 5-day suspension imposed by the department director, resulted as follows:*

**Motion by Chief Examiner Kaplan, seconded by Member Dames, 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 another motion to uphold the 5-day suspension imposed by the department director 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:** Silverman, de la O, Dames and Moy

**No:** Kaplan

### H.3

Grievance hearing on behalf of Louis A. Brennan, Firefighter, pursuant to Civil Service Rule 16.2- Complaint by Employee, alleging a violation of Civil Service Rule 6.4.

*Chairman de la O stated that in the matter of Luis Brennan, the case will be continued. He asked opposing counsel if she had an objection to charging the continuance to the Board. ACA Richard responded in the negative. She went on to say that it appeared that Fire Fighter Brennan's hearing would be rescheduled to June 28th of which she is in agreement.*

*Following discussion, the Board entered a motion to CONTINUE Fire Fighter Brennan's hearing and charge the continuance to the Board which resulted as follows:*

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

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



**ADJOURNMENT:**

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

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

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

*Breaks were taken at 10:57-11:09 am; 11:54-1:19 pm (LUNCH); 2:17-2:25 pm; and  
3:22-3:32 pm. The meeting adjourned at 3:33 p.m.*

**SIGNATURE:**

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

**ATTEST:**

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**Tishria L. Mindingall, Executive Secretary**

