

# **City of Miami**

*City Hall  
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## **Meeting Minutes**

**Tuesday, June 28, 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 10:09 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 31, 2011.

**Motion by Chief Examiner Kaplan, seconded by Member Silverman, 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 Roy Brown, Assistant Chief, Department of Police, requesting to extend the probationary period of Joseph Marin, Police Officer, for 12 additional months beyond August 19, 2011. (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

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

- D.1** Copy of a letter from Nzeribe (Zerry) Ihekweba, Director, Department of Public Works, notifying Tammy J. Heard, Automotive Equipment Operator I, of her 2-day suspension, effective June 8, 2011. (NOTIFICATION)

**NOTIFIED**

**E. GENERAL ITEMS**

- E.1** Notice of a Withdrawal of Appeal Hearing from Jeannie Martinez, Typist Clerk III, concerning her 8-hour suspension, effective September 10, 2008. (NOTIFICATION)

Case will be removed from the Board's docket.

**NOTIFIED**

- E.2** Copy of Findings of Fact in the Hearing of Appeal on behalf of Manuel Lucena, Heavy Equipment Mechanic, relative to his 3-day suspension, effective February 9, 2009. (DISCUSSION)

**Motion by Chief Examiner Kaplan, 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** Copy of Findings of Fact in the Hearing of Appeal on behalf of Manuel Lucena, Heavy Equipment Mechanic, relative to his 5-day suspension, effective August 20, 2009. (DISCUSSION)

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

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

- E.4** Copy of a Request for a continuance from Mark J. Berkowitz, Attorney, on behalf of Glenn Marcos, former Director of Purchasing, relative to his Whistleblower Hearing. (DISCUSSION)  
Grievance Hearing is scheduled for today.

*Attorney Mark Berkowitz stated that on May 25, 2011, he requested a continuance to defer his client's matter to mediation rather than going forward with a full-blown hearing (before the Board) and that he also suggested and provided the names of mediators in his request. He went on to say that he and his client feel that it would be constructive for both sides to try and resolve this matter through mediation rather than an adversarial proceeding before the Civil Service Board or at least give that mechanism a chance before they proceed with a full-blown hearing.*

*Chairman de la O asked for the department's position on Attorney Berkowitz' suggestion of settling his client's matter through mediation rather proceeding before the Civil Service Board. Janeen Richard, Assistant City Attorney (ACA), responded that the City is not interested in mediation at this time. Chairman de la O advised Attorney Berkowitz that the Board has no power to enforce the City to mediate and asked Attorney Berkowitz if he still wished to request a continuance. Attorney Berkowitz responded in the affirmative. Chairman de la O asked for the department's position on the continuance request. ACA Richard responded that she did not know if the Board recalled, but in October 2010 when Mr. Marcos filed his request for a whistleblower hearing, the Board at that time directed Mr. Marcos and his attorney to file a more definite statement to apprise the Board on exactly what their whistleblower allegations were. She went on to say that since that time both she and the Executive Secretary have written Attorney Berkowitz on several occasions asking for their definite statement of whistleblower allegations. She went on to say that she received something dated May 25, 2011, which she believes fell short of what the Board requested Attorney Berkowitz to provide. ACA Richard further stated that she obviously was not prepared to respond to a complaint that she deemed to be legally insufficient and would therefore ask the Board once again to direct Mr. Marcos and his attorney to file an appropriate document so that this Board can actually determine whether Mr. Marcos is in fact a true whistleblower.*

*Attorney Berkowitz stated that he did file a response on June 3, 2011 which was a more definite statement, but he would be more than happy to amend their complaint again and file a more definite statement. The Executive Secretary asked Attorney Berkowitz to forward a copy of his amended statement of allegations to her attention because she never received any of the referenced documents he mentioned he submitted.*

*ACA Richard asked if the Board could give a date certain as to when Attorney Berkowitz' definite statement needs to be filed because the last time it took eight months for Attorney Berkowitz to file. Chairman de la O responded by asking the Executive Secretary how soon would this matter likely be reset for placement on the Board's*

*agenda. The Executive Secretary responded some time in October. Chairman de la O asked Attorney Berkowitz how much time did he need to prepare his definite statement. Attorney Berkowitz responded that he needed 30 days.*

*Following discussion the Board entered a motion to APPROVE Mr. Marcos' 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.5** Investigation Hearing on behalf of Teresa Borkowski, Police Sergeant, pursuant to Rule 16.1, Abuse of Power.

Rescheduled pursuant to continuance policy; pending settlement since 11/16/10.

*ACA Richard stated that Attorney Cohen, who represents Sgt. Borkowski, could not be present today; however, they both have met and agreed on certain terms that now have to be approved again through the Police Department's chain of command, which she is currently working on.*

**DEFERRED : Chairman de la O instructed the Executive Secretary to reset this matter on the agenda 30 days from today for Board consideration.**

- E.6** Hearing of Appeal on behalf of Dashon Yearby, Police Officer, relative to her 10-hour suspension, effective February 14, 2010.  
Rescheduled pursuant to continuance policy; pending settlement since May 17, 2011.

*ACA Richard advised that she prepared the settlement, but she is waiting for signatures from the department and employee to finalize the settlement.*

**DEFERRED : Chairman de la O instructed the Executive Secretary to reset this matter on the agenda 30 days from today for Board consideration.**

- E.7** Hearing of Appeal on behalf of Eddy Rodriguez Jr., Police Officer, concerning his 40-hour forfeiture, effective February 4, 2010.  
Rescheduled pursuant to continuance policy; pending settlement since August 24, 2010.

*ACA Richard advised that she prepared the settlement, but she is waiting for signatures from the department and employee to finalize the settlement.*

**DEFERRED : Chairman de la O instructed the Executive Secretary to reset this matter on the agenda 30 days from today for Board consideration.**

- E.8** Hearing of Appeal on behalf of Jeffrey Jans, Police Officer, relative to his 80-hour suspension, effective April 13, 2010.

Rescheduled pursuant to continuance policy; pending settlement since April 19, 2011.

*ACA Richard advised that she prepared the settlement, but she is waiting for signatures from the department and employee to finalize the settlement.*

**DEFERRED :** Chairman de la O instructed the Executive Secretary to reset this matter on the agenda 30 days from today for Board consideration.

## **F. REPORTS**

**F.1** Pending Hearings as of June 28, 2011. (NOTIFICATION)

**PRESENTED**

## **G. REQUESTS FOR HEARINGS**

## **H. TODAY'S HEARINGS**

**H.1** Hearing of Appeal on behalf of Jeffrey Locke, Police Lieutenant, relative to his 20-hour suspension, effective February 25, 2009.

*Teri Guttman-Valdes, Attorney at Law on behalf of Jeffrey Locke, stated the Board may recall at the May 31, 2011 meeting she requested a continuance of her client's hearing that was scheduled for June 14, 2011 because her client had scheduled time off to attend the Police Olympics. She went on to say that the Board denied her request for a continuance. Attorney Guttman-Valdes further stated that since the continuance was denied, her client rescheduled his vacation to the week of June 27, 2011 so that he would be available on June 14. She stated that the June 14 meeting was cancelled and her client's hearing was then rescheduled to today; however, he is not available so she would ask that Lt. Locke's hearing be continued.*

*Following discussion, the Board entered a motion to approve the employee's request for a CONTINUANCE which resulted as follows:*

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

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

*Following the Board's approved motion on the vote to continue Lt. Jeffrey Locke's hearing, ACA Richard stated that her witnesses are present for Lt. Locke's hearing and that they have appeared time and again, but the case has not taken place. She went on to say that the incident occurred in 2008 and she would like to move forward on this case; therefore she would ask that the hearing be rolled over to the July 12 meeting.*

*Chairman de la O asked opposing counsel if she had an objection to ACA Richard's request to reschedule Lt. Locke's hearing to the next meeting date. Attorney Guttman-Valdes responded that according to her calendar she would be available; however she would have to check with her client. Chairman de la O stated that since he will be recusing himself from Lt. Locke's hearing, there would be no need for him to be present for the July 12th meeting.*

**Chairman de la O instructed the Executive Secretary to list Lt. Locke's hearing as the first case on the July 12, 2011 agenda to be heard by the Board**

**H.2** Grievance Hearing on behalf of Glenn Marcos, former Director of Purchasing, relative to his Whistleblower hearing, pursuant to Florida Statute 112.3187.

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

**CONTINUED**

**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 asked for a motion to continue Fire Fighter Brennan's hearing and charge the continuance to the Board because there would not be sufficient time to hear the case today.*

*Member Moy asked that Fire Fighter Brennan's case be given scheduling priority since this is the second time that he has appeared for his hearing and it had to be continued. Attorney Guttman-Valdes responded that she asked that her client's case be rescheduled to the July 12 meeting. Member Moy asked ACA Richard if she was in agreement with the July 12 rescheduling date for Fire Fighter Brennan's hearing. ACA Richard responded in the affirmative.*

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

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

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

**H.4**

Hearing of Appeal on behalf of Ansonia Chatfield, Communication Operator, relative to her 80-hour suspension, effective February 3, 2011.

*The Board entered into the scheduled appeal hearing on behalf of Ansonia Chatfield, the Appellant.*

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

*Michael Braverman, Attorney at Law, represented the Appellant.*

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

1. *Angela Glass, Communications Operator Supervisor, City of Miami, Department of Police. Questions were posed by Board Members Moy, Kaplan, and Dames during the testimony of witness Angela Glass.*

2. *Thomas Visney, Sergeant, City of Miami, Department of Police. Questions were posed by Board Members de la O, Dames, and Kaplan during the testimony of witness Thomas Visney.*

3. *Anita Najiy, Police Lieutenant, City of Miami, Department of Police. Questions were posed by Board Members de la O, Dames, and Kaplan during the testimony of witness Anita Najiy.*

*The Department rested its case.*

*Witnesses for the Appellant appeared in the following order:*

*Ansonia Chatfield, Communications Operator, Department of Police, appeared on her own behalf. Questions were posed by Board Members Moy and Dames during the testimony of the Appellant.*

*The Appellant rested her case. The Department waived rebuttal and the Chairman called for closing arguments that were presented by both attorneys. Following final argument, Board Member Silverman stated that the way he viewed this case, it was a question of credibility. He went on to say that (based upon the testimony), the Board believed either the witnesses for the department or the Appellant. He went on to say that he chose to believe the department's witnesses and therefore believed that the Appellant was guilty of most of the charges (cited in the charging document).*

*Chairman de la O stated that he saw a number of charges that seemed to break along two lines, one of which was insubordination in terms of failure to follow orders and the second being whether there was a lack of courtesy or disrespect towards a superior officer. He went on to say that he felt the way witness testimony was presented, there was no failure to follow orders so what he thinks the Board had (in terms of testimony) was that the witnesses saw different parts of the same story. Chairman de la O further stated that when Sgt. Visney testified, he just did not think there was ever any testimony that the Appellant was given a direct order and she failed to follow it. He stated that as Member Silverman mentioned, this is a case of credibility and what it all boils down to is did the Appellant in a disrespectful manner put her hand up to her supervisor's face and did that (gesture) amount to a violation of the courtesy or disrespect rules. Chairman de la O went on to say that in some senses, it was "he said, she said" and then there was Sgt. Visney who gave consistent testimony that the Appellant did raise her hand in her supervisor's face in a disrespectful manner. He further stated that he thought there was a lack of courtesy that was proven but he did not see an act of insubordination in the sense of failing to follow a direct order.*

*Member Kaplan stated that he thinks the Board saw something very informative (from the Appellant), which was that the Board saw the Appellant moving her hands when she was talking normally. He went on to say that a lot of people, including him, tend to move their hands when they speak. Member Kaplan contemplated could it be possible that from the emotional reactions due to the Appellant's illness to the circumstances of her dislike of her supervisor who was giving her a tough time about going home, that it is possible she was raising her hands? He stated that he did not know because he was not there; however, at the same time he could believe that it did happen, but either way, he did not think it was conduct which was any way, shape, or form worthy of subjecting the Appellant to two weeks loss of pay. He stated [it was] nonsense about the Appellant faking her illness as testified to by Sgt. Visney, [as] he was not specially trained in this field to make that determination. Member Kaplan went on to say that there was testimony about the Appellant's hand up in the air and the charge of disrespect, that he felt none of which amounted to a violation of the rules; however, he did believe the Appellant needs to learn how not to talk so much. He further stated that if in the past the department did not like how the Appellant conducted herself, it should have taken action at those times rather than take the waving of the hands as the precipitating factor to bring in all of the Appellant's past incidents. Member Kaplan stated that the Board has considered this type of case before, but this is probably the weakest case the City has ever set before the Board.*

*Member Moy stated that he agreed with a lot of things said by Member Kaplan. He went on to say that he did believe the incident of the Appellant's hand in the supervisor's face was disrespectful; however, when looking back at the record (Appellant's disciplinary profile), he believed there was a lack of leadership (on the part of the department). Member Moy further stated that he felt Lt. Najji did a superb job (handling the matter), but the fact that the Commander that the Appellant requested to see never got involved especially after the Appellant had so many issues going forward. He stated something he thinks everyone forgot was that the position of Communications Operator is a very stressful job, not to mention the Communications Unit was understaffed. He*

further stated the fact the Appellant could not go home and the talk about there being a policy requiring ill Communications employees to call the department upon arriving home, everyone knew that no such policy existed. Member Moy stated that he felt Ms. Glass' admonition to the Appellant to call her when she arrived home was somewhat distasteful and he felt the Appellant used good judgment by calling the department from the time she arrived to the medical facility until the time she arrived home, which made him believe the Appellant felt intimidated.

Member Silverman stated that hearings are conducted in two parts (the fact-finding phase and the penalty phase). He went on to say that the penalty, which is an 80-hour suspension, is not before the Board at this time and that while he did not believe this case warranted an 80-hour suspension, the issue before the Board at this time is whether the Appellant is guilty or not guilty of the charges. He stated as far as the penalty, if the Board got that far, that would be another story.

Member Kaplan stated that the other matter is the City Manager has to make the final decision, but if the Board finds the Appellant not guilty of the charges, that would be the end of the matter.

Member Dames stated that he agreed with what Member Moy had to say on this matter, which was that the Appellant was stoked. He went on to say that when he questioned Ms. Glass, he used the word, "stoke" which related to the part of Ms. Glass' testimony when she said, "Don't forget to call us when you get home." Member Dames further stated that everything from that point spiraled out of context. He stated that he agreed with Member Kaplan that the Appellant needs to tone down her conversations.

Following discussion, the Board entered a motion to find the Appellant NOT GUILTY of all 10 violations as cited in the charging document:

1. Departmental Order 1, Chapter 11.6.13.3 - Courtesy
2. Departmental Order 1, Chapter 11.6.13.8 - Conduct Unbecoming
3. Departmental Order 1, Chapter 11.6.13.11 - Courtesy Towards Others
4. Departmental Order 1, Chapter 11.6.13.12 - Obeying/Executing Orders
5. Departmental Order 1, Chapter 11.6.17.8 - Insubordination
6. Civil Service Rule 14.2(e)1 - Act of Insubordination
7. Civil Service Rule 14.2(e)2 - Breach of Proper Discipline
8. Civil Service Rule 14.2(e)3 - Loss/Injury to the City
9. Civil Service Rule 14.2(h) - Disgraceful Conduct
10. Civil Service Rule 14.2(r) - Antagonistic Toward Superiors

The motion resulted as follows:

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

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

**No:** Silverman

## H.5

Hearing of Appeal on behalf of Meredith Nation, Procurement Supervisor (former), relative to her termination, effective March 23, 2011.

Attorney Guttman-Valdes stated that she believed that they probably will be able to reach a settlement in this case. She went on to say that she just got authority yesterday afternoon to have discussion on the matter so she would like to remove this item from the agenda and try to resolve it via a settlement.



*Chairman de la O asked ACA Richard if she was in favor of a joint continuance. ACA Richard answered in the affirmative. Following discussion, the Board entered a motion to grant a JOINT CONTINUANCE of this matter which resulted as follows:*

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

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

*Breaks were taken at 10:28-10:48 a.m; 12:05-12:14 p.m; 12:44-1:29 p.m. (LUNCH); and 3:17-3:21 p.m. The meeting adjourned at 3:31 p.m.*

**SIGNATURE:**

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

**ATTEST:**

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**Tishria L. Mindingall, Executive Secretary**

