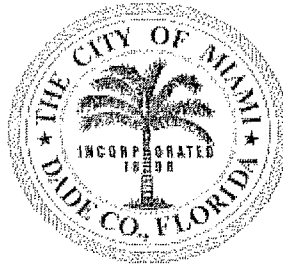


# **City of Miami**

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



## **Meeting Minutes**

**Tuesday, July 26, 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 10:07 a.m. The roll call for the Board Members at the commencement of the meeting was as follows:*

**Chairman de la O had to leave the meeting at approximately 10:35am, and Chief Examiner Kaplan assumed the Chair.**

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

**A. APPROVING THE MINUTES OF:**

Regular Meeting of July 12, 2011.

**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 Judgment from the City Manager concurring with the Board's findings concerning Manuel Lucena, Heavy Equipment Mechanic, relative to his 3-day suspension, effective February 9, 2009. It is ordered and adjudged that the decision of the Department's Director to suspend Mr. Lucena is hereby reversed. (NOTIFICATION)

**NOTIFIED**

- D.2** Copy of a Judgment from the City Manager concurring with the Board's findings concerning Manuel Lucena, Heavy Equipment Mechanic, relative to his 5-day suspension, effective August 20, 2009. It is ordered and adjudged that the decision of the Department's Director to suspend Mr. Lucena is hereby sustained. (NOTIFICATION)

**NOTIFIED**

- D.3** Copy of a Judgment from the City Manager concurring with the Board's findings concerning Daylet Diaz, Litigation Assistant, relative to her termination, effective August 17, 2010. It is ordered and adjudged that the decision of the Department's Director to terminate Ms. Diaz is hereby sustained. (NOTIFICATION)

**NOTIFIED**

- D.4** Copy of a Judgment from the City Manager concurring with the Board's findings concerning Ansonia Chatfield, Communications Operator, relative to her 80-hour suspension, effective February 3, 2011. It is ordered and adjudged that

the decision of the Chief of Police to suspend Ms. Chatfield is hereby reversed. (NOTIFICATION)

**NOTIFIED**

- D.5** Copy of a letter from Chief Miguel Exposito, Director, Department of Police, notifying Ansonia G. Chatfield, Communications Operator, of her 120-hour suspension, effective July 7, 2011. (NOTIFICATION)

**RECEIVED AND FILED**

- D.6** Copy of a letter from Mariano Fernandez, Director, Department of Building & Zoning, notifying Carlos Jimenez, Structural Engineer/Plans Examiner, of his 3-day suspension, effective July 18, 2011 and a copy of a request to appeal from Michael Braverman, Attorney, on behalf of Carlos Jimenez. A hearing of appeal will be scheduled in accordance with Civil Service Rules & Regulations. (NOTIFICATION)

**RECEIVED AND FILED**

**E. GENERAL ITEMS**

- E.1** Investigation Hearing on behalf of Teresa Borkowski, Police Sergeant, pursuant to Rule 16.1, Abuse of Power. (DISCUSSION)

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

*The Executive Secretary stated that Items E.1 through E.4 involve pending settlements, but were placed on the Agenda pursuant to the Board's Continuance Policy because the settlements have not been received. Chairman de la O suggested that Items E.1 through E.4 be considered together. He asked the department's attorney for an update on the settlements.*

*Assistant City Attorney (ACA) Richard stated concerning Agenda Items E.1 through E.4 that she is waiting for signatures on the settlement agreements. Chairman de la O asked ACA Richard who she needed signatures from. ACA Richard responded with regards to Item E.1 (Investigation Hearing on behalf of Sgt. Teresa Borkowski), she is waiting for the Police Chief's signature. She went on to say that concerning Item E.2 (Appeal Hearing on behalf of Dashon Yearby), she is waiting for the original settlement signed by Officer Yearby before she can send it to the Police Chief for his signature. ACA Richard further stated concerning Item E.3 (Appeal Hearing on behalf of Officer Eddy Rodriguez, Jr.) that she has not received the signed agreement from Officer Eddy Rodriguez and in the matter of Item E.4 (Appeal Hearing on behalf of Jeffrey Jans), she is waiting for the Police Chief to sign the settlement.*

*Chairman de la O asked Attorney Cohen if he was waiting to be heard on any of the matters relating to Items E.1 through E.4. Attorney Cohen responded that he represents the employees pertaining to Items E.1, E.2, and E.4 and that the settlements were signed and forwarded to ACA Richard. He went on to say that since the settlements were sent via fax and email for signature, he did not have the original settlement for some of the cases so he thinks he and his clients have done all that they could with the settlements.*

*Chairman de la O asked if a motion needed to be made for a continuance of the hearings. The Executive Secretary responded in the negative. She went on to say that if the settlements are not received, these matters will be placed back on the agenda within 30 days.*

**NO ACTION TAKEN : Case will be closed upon receipt of written settlement agreement or placed back on the agenda within 30 days for Board consideration.**

- E.2** Hearing of Appeal on behalf of Dashon Yearby, Police Officer, relative to her 10-hour suspension, effective February 14, 2010. (DISCUSSION)  
Rescheduled pursuant to continuance policy; pending settlement since May 17, 2011.

**NO ACTION TAKEN : Case will be closed upon receipt of written settlement agreement or placed back on the agenda within 30 days for Board consideration.**

- E.3** Hearing of Appeal on behalf of Eddy Rodriguez Jr., Police Officer, concerning his 40-hour forfeiture, effective February 4, 2010. (DISCUSSION)  
Rescheduled pursuant to continuance policy; pending settlement since August 24, 2010.

**NO ACTION TAKEN : Case will be closed upon receipt of written settlement agreement or placed back on the agenda within 30 days for Board consideration.**

- E.4** Hearing of Appeal on behalf of Jeffrey Jans, Police Officer, relative to his 80-hour suspension, effective April 13, 2010. (DISCUSSION)  
  
Rescheduled pursuant to continuance policy; pending settlement since April 19, 2011.

**NO ACTION TAKEN : Case will be closed upon receipt of written settlement agreement or placed back on the agenda within 30 days for Board consideration.**

- E.5** Copy of Findings of Fact in the 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. (DISCUSSION)  
*Chairman de la O asked if Attorney Guttman-Valdes was going to be present at today's meeting. The Executive Secretary responded that she had not heard from Attorney Guttman-Valdes so if it is the Board's pleasure, she can roll this item over to the next meeting. Hearing no objections, this matter was deferred.*

**DEFERRED TO AUGUST 9, 2011 MEETING FOR BOARD DISCUSSION.**

- E.6** Notice of a Request for a continuance from Janeen Richard, Assistant City Attorney, concerning the hearing of appeal of Candace Jones, Police Officer, relative to her 10-hour forfeiture and 1-month suspension of take home vehicle, effective February 12, 2011. Ronald J. Cohen, Attorney, expressed no objection to opposing Counsel's request. (DISCUSSION)Hearing of appeal is scheduled for today.

*Chairman de la O noted that Attorney Cohen expressed no objection to ACA Richard's request for a continuance. He asked if this was the first time this hearing was scheduled. ACA Richard responded in the affirmative. Following discussion, the Board entered a motion to APPROVE the department's request for a continuance of Officer*

*Candace Jones' hearing 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 Moy

**No:** Dames

## F. REPORTS

F.1 Pending Hearings as of August 9, 2011. (NOTIFICATION)

PRESENTED

## G. REQUESTS FOR HEARINGS

G.1 Copy of a request from Ronald J. Cohen, Attorney, on behalf of Wilfredo Cruz, Police Lieutenant, pursuant to Civil Service Rule 16.1- Investigation by the Board, concerning an Abuse of Power complaint against Major Louis Melancon, Commander of Specialized Operations Section, Department of Police. (DISCUSSION)

*Attorney Cohen informed the Board that he could proceed without Lt. Cruz, but he preferred that he be present; therefore, he would ask that the Board table this item until his client has arrived. Hearing no objection, Chairman de la O tabled consideration of this item and took up the matters under Item H., Today's Hearings.*

-----  
*At approximately 2:30 p.m., the Board returned to Lt. Cruz' Item that was tabled earlier today. Member Silverman stated that before taking up discussion regarding Lt. Cruz' request for a hearing, he wished to be heard. He advised Attorney Cohen that Chairman de la O had left the meeting and would therefore not be present to vote on this matter so if his client wished he could go forward today, or wait to have his matter heard before a full Board. Attorney Cohen responded that his client would like to proceed today.*

*Chairman Kaplan asked Attorney Cohen to present to the Board the reason for his client's request. Attorney Cohen responded that his client, Lt. Cruz was ordered by Major Melancon not to follow various departmental orders. He went on to say that in his June 8, 2011 letter to the Executive Secretary, it contained a detailed memo from Lt. Cruz which was made a part of their offering to the Board. For the Board's edification, Attorney Cohen provided the Board with an overview of the summary of events contained in Lt. Cruz' memo that led to his client's request for a hearing. He went on to say that from December 13, 2009 to December 17, 2010, Lt. Cruz held the position of Acting Section Commander for the Specialized Operations Section and during this time he held numerous counseling sessions and took corrective action to further improve the productivity and efficiency of the unit. Attorney Cohen further stated that on December 17, 2010, then Commander Melancon was appointed to the rank of Major, thus placing him in charge of the Specialized Operations Section. He stated that Major Melancon took a leave of absence and left Lt. Cruz in charge as Acting Section Commander from December 17, 2010 to January 4, 2011, but on December 23, 2010 rumors began circulating on a website that Lt. Cruz was going to be transferred out of the unit. Attorney Cohen went on to say that on January 18, 2011, Major Melancon held a meeting with Lt. Cruz and told him, "Some of your officers do not agree with your*

management style, including me." He further stated that as a Commander, there is no question that Major Melancon had every right to say this to Lt. Cruz, however they disagreed with his judgment. Attorney Cohen stated what Major Melancon said next to Lt. Cruz concerned them and should be of concern to the Board which was: "You should maintain minimal contact with your officers and disciplinary action should be taken only by a traffic supervisor and not you." He went on to say that even though Major Melancon gave this directive, the departmental orders require Lt. Cruz to command the officers under his authority.

Member Dames stated that the fact that Major Melancon gave orders that Lt. Cruz was not to discipline his subordinates was a bad reflection on Lt. Cruz in his opinion. Attorney Cohen stated that it was Major Melancon who told Lt. Cruz to maintain minimal contact with the officers and that he could not discipline officers under his command so for this reason, they are bringing a complaint against Lt. Cruz' superior officer (Melancon) for essentially stripping Lt. Cruz of his rank by not allowing him to supervise his subordinates and ordering him not to follow disciplinary orders of the police department, which people get disciplined for all of the time. He went on to say that Lt. Cruz was transferred out of the unit into a less prestigious and desirable position and that his transfer was in retaliation for taking corrective actions against certain officers, which he is required to do. Attorney Cohen further stated that the Board has to protect the rank and file of the Miami Police Department from superiors ordering those under their command not to do their job.

Chairman Kaplan asked for the department's position concerning Lt. Cruz' request for a hearing. ACA Richard responded that they oppose a hearing because the way she reads the material submitted by opposing counsel, Lt. Cruz is upset that he was transferred to another section within the Police Department. She went on to say that although Lt. Cruz was transferred he did not lose his rank or salary and that the FOP contract and the Rules clearly give management the right to transfer officers. ACA Richard further stated her only concern is once the Board allows one employee to air his grievance because he/she was unhappy about a transfer, it would just open up the floodgates for employees to come before the Board whenever they were unhappy about a transfer. She stated if the Board is inclined to grant a hearing, she would simply ask that the Board follow its past procedures which are: (1) Instruct the employee or his attorney to identify which Civil Service Rule the department allegedly violated and (2) Instruct the employee or his attorney to specify which departmental orders he allegedly was told not to follow. ACA Richard went on to say that she does not think there needs to be a hearing because she does not think any of the facts raised amount to an abuse of power rather this is a routine transfer for which Lt. Cruz was upset that he was transferred from a more cushioned job to a less desirable assignment. She further stated that the Board has neither the time nor the resources to hear these types of complaints, but should the Board decide to grant the hearing, she would ask that opposing counsel be required to provide more specifics.

Attorney Cohen referred the Board to page 6 of Lt. Cruz' memo and began to read off the numerous cited departmental orders for which his client believes the department violated. Chairman Kaplan responded that he did not think the Board needed to know which departmental orders were violated at this time rather it needed to determine whether a hearing should be granted. He went on to say that if the hearing is granted, then Attorney Cohen and his client would need to provide to the Board what he intends to present at that time. Attorney Cohen stated that the department argued that he needed to provide more specifics if the hearing is granted and he was showing the Board that they did provide specific information relating to departmental orders that were violated. ACA Richard stated that neither she nor the Board received the information that Attorney Cohen referenced with regards to the alleged violations of the departmental orders. The Executive Secretary upon reviewing the Civil Service file

*stated that the Board Members did receive Lt. Cruz' February 8, 2010 document that Attorney Cohen made reference to with the exception of the departmental orders. Following much discussion on which documents were or were not submitted by Attorney Cohen to the Executive Secretary, Member Silverman suggested and Chairman Kaplan agreed that the first thing that needs to be done is decide on whether to grant a hearing.*

*Chairman Kaplan stated that what he tried to point out before was if the Board should grant a hearing, at the outset of the hearing Attorney Cohen would set forth exactly how he wished to proceed. Member Silverman reiterated that he thinks the Board should decide whether to grant Lt. Cruz' request for a hearing; however, before doing so, he wished to say that he did not think the Board should grant a hearing because if it does, it would be something that would never end. He went on to say that he also did not think the Board was in the business of micromanaging the Police Department because he believes the act of transferring employees within the department is the Police Chief's job and not the Board's authority to decide what job a person should have within a department. Member Silverman further stated that it is not the function of the Civil Service Board to provide a remedy for a person who is unhappy with his/her supervisor because he/she was transferred.*

*Following discussion, the Board entered a motion to DENY the employee's request for a hearing. Under discussion on the motion, Member Dames stated that some years ago he worked for a Fire Chief who had to make a decision involving a dissension that arose among his 20 workers. He went on to say that 19 of the workers felt the one worker should be transferred, so to remedy the situation, the Fire Chief called the one worker into his office and let him know that it was better that he be transferred rather than the other 19 workers, which is what happened in Lt. Cruz' case. Member Dames further stated that he agreed with Member Silverman's position and was therefore in favor of the motion to deny Lt. Cruz' request for a hearing.*

*Attorney Cohen asked if he could address ACA Richard's argument that the reason Lt. Cruz requested a Board investigation was because he was transferred out of the Traffic Enforcement Unit, which was not true. Chairman Kaplan responded that he would allow Attorney Cohen to speak only on the limited issue of the transfer since the Board had already closed the hearing. Attorney Cohen stated that they are not complaining about the transfer, but about what Lt. Cruz was told prior to his transfer. He went on to say that prior to the transfer, Lt. Cruz was told not to supervise his officers which is in violation of what his requirements are under the disciplinary orders on file with this Board under Civil Service Rule 2.4 and that Lt. Cruz was also stripped of his rank which violates the promotional rule. Attorney Cohen further stated that Lt. Cruz was also told that he was not allowed to discipline his officers so they are requesting and should be granted a hearing based upon these facts.*

*Member Kaplan stated that he concurred with Attorney Cohen that Lt. Cruz should be granted a hearing.*

*Following discussion, the motion on the floor to DENY Lt. Cruz' request for a hearing pursuant to Civil Service Rule 16.1 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

**Absent:** de la O

**H. TODAY'S HEARINGS****H.1** Hearing of appeal on behalf of Javier Gonzalez, Police Officer, relative to his 20-hour suspension, effective June 1, 2006.

*Attorney Cohen announced that a settlement had been reached between the City and his client in this case. He went on to say that both parties have agreed to change the 20-hour suspension to a 20-hour forfeiture of earned overtime, effective the same date.*

*Chairman Kaplan asked if the Board needed to take any type of action on the settlement. Attorney Cohen responded in the negative. He went on to say that he announced the settlement for the purpose of having it reflected in the record.*

**SETTLED : Case will be closed and removed from the Board's Docket upon receipt of written settlement agreement or rescheduled in accordance with the Board's Continuance Policy.**

**H.2** Hearing of appeal on behalf of Jorge E. Aguilar, Police Officer, relative to his 80-hour forfeiture, effective October 26, 2008.

*The Board entered into the scheduled hearing of appeal on behalf of Officer Jorge E. Aguilar, the Appellant. Chairman de la O recused himself and Member Kaplan presided over the hearing.*

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

*Ronald J. Cohen and Jon Kreger, Attorneys at Law, represented the Appellant.*

*Opening statements were presented by ACA Richard and Attorney Kreger. The Rule of Witnesses was invoked and all witnesses were sworn in individually. Chairman Kaplan instructed those who would be testifying not to discuss the case among themselves. Witnesses for the Department appeared in the following order:*

*1. Kenneth Cunningham, Police Major, City of Miami, Department of Police. Questions were posed by Board Members Kaplan, Moy, and Dames during the testimony of witness Kenneth Cunningham.*

*2. Benjamin Payen, Sergeant, City of Miami, Department of Police. Questions were posed by Board Member Kaplan during the testimony of witness Benjamin Payen.*

*3. Horace Morgan, Police Officer, City of Miami, Department of Police. Questions were posed by Board Members Moy and Dames during the testimony of witness Horace Morgan.*

*4. Orlando Villaverde, Sergeant, City of Miami, Department of Police.*

*5. Jeffrey Locke, Police Lieutenant, City of Miami, Department of Police. Questions were posed by Board Member Kaplan during the testimony of witness Jeffrey Locke.*

*The Department rested its case.*

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

*Jorge Aguilar, Police Officer, City of Miami, Department of Police testified on his own behalf.*



The Appellant rested his case and the Board proceeded to closing argument, which was presented by ACA Richard and Attorney Kreger. Following final argument, Chairman Kaplan called for discussion on the case. Hearing none, the Board entered a motion to find the Appellant NOT GUILTY of the charges. Under discussion on the motion, Member Dames stated that the department's attorney did a very good job in presenting her case and also that the Appellant is a fine police officer according to witness testimony. He went on to say that as he ran this case through his mind, he saw that there was a measure of carelessness, which is the reason some of the other officers were also disciplined. Member Dames further stated that it was only by the grace of God that no one was killed (when the weapon was accidentally discharged). He stated that he understands the "buddy" system which is the reason the Appellant relied on his co-worker's word that the weapons were safe. Member Dames went on to say that if his buddy had told him the same thing, he would have believed it too, but because these guns were involved in a drug raid, in his opinion this would have been the ultimate reason the Appellant would have checked the weapons to ensure they were safe for handling. He further stated that he could lean more favorable towards the Appellant if the situation was that an officer other than the Appellant flex-cuffed the weapons, but that was not the case. Member Dames stated that the Appellant admitted to flex-cuffing the weapons, which was done incorrectly so when he picked up the weapons that he believed to be secure, one of the guns discharged. He went on to say that it took the department two and one-half years to discipline the Appellant on something that was very serious and then there was the testimony of Lt. Locke who decided to send the disciplinary letter via his chain of command because he feared it might get lost if it was sent through the Appellant's chain-of-command. Member Dames further stated the fact that Lt. Locke sent the disciplinary letter via his chain-of-command let him know that the weapon was accidentally discharged and that no one wanted to prosecute the Appellant. Member Dames stated that he thinks the Appellant suffered enough having to endure the gunshot to his foot and the jokes from co-workers.

Chairman Kaplan stated he was inclined to agree with Member Dames in that he thinks a wrongful, negligent act was committed, but the punishment is absurd. Chairman Kaplan further stated that he is inclined to vote against the motion and hope that a second motion can be made to find there was a wrongful act and (if found guilty) hopefully another motion be made with respect to the punishment in order to clear up the extent of the punishment.

Member Moy stated that he definitely thinks negligence was involved in this case. He proceeded to read into the record notes included in the investigative report prepared by Internal Affairs which states, "Miami-Dade Laboratory determined that the Tech-9mm handgun had a missing bolt on the handle making it difficult to open and inspect." Member Moy went on to say the fact that the magazine was removed from the weapon let him know that someone actually took the time to try to make the weapon safe. He further stated that there was a round in the chamber which could have been discovered (if the Appellant had inspected the weapon). Member Moy stated that the Appellant never transported the weapons, but took a co-worker's word that the weapons were safe, but as it turned out that was not the case; therefore, this should serve as a lesson for the Appellant in the future. He went on to say that as he looked at the photos of the weapons, he could see that the weapons were negligently secured and based upon the testimony of the witnesses, the Appellant did not properly secure the weapons. Member Moy further stated that he did not find Lt. Locke's testimony credible as to the reason it took 2 ½ to 3 years to discipline the Appellant. He went on to say that the fact that Lt. Locke sent the disciplinary letter via his chain and not that of the Appellant's chain let him know that no one wanted to deal with the matter. Member Moy further stated that he had a problem with the missing signatures on the reprimand and it bothered him that Officer Knowles, who could have shed light as to whether he made the weapon safe, he was not subpoenaed.

*Following discussion, the motion on the floor to find the Appellant NOT GUILTY of all of the charges resulted as follows:*

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

**Aye:** Silverman, Dames and Moy

**No:** Kaplan

**Absent:** de la O

### H.3

Hearing of appeal on behalf of Candace Jones, Police Officer, relative to her 10-hour forfeiture and 1-month suspension of take home vehicle, effective February 12, 2011.

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

**CONTINUED : Case will be rescheduled to a future meeting date.**

### ADJOURNMENT:

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

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

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

*Breaks were taken at*

### SIGNATURE:

---

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

### ATTEST:

---

**Tishria L. Mindingall, Executive Secretary**