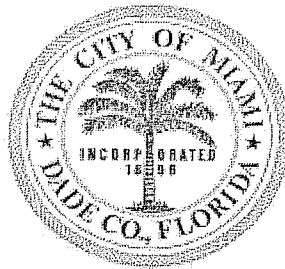


City of Miami

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



Meeting Minutes

Tuesday, October 4, 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 10:04 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 September 20, 2011.

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

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

B. PERSONNEL MATTERS

- B.1** A copy of a letter from Luis E. Cabrera, Assistant City Manager, notifying Ricardo Novas, Broadcast Engineer, of his layoff and the abolishment of his position, effective September 23, 2011, and that his name will be placed on a "Layoff" register for a period of no more than 36 months.
(NOTIFICATION)

NOTIFIED

- B.2** A copy of a letter from Luis E. Cabrera, Assistant City Manager, notifying Corina Esquijarosa, Senior Project Representative, of her layoff and the abolishment of her position, effective September 23, 2011, and that her name will be placed on a "Layoff" register for a period of no more than 36 months. (NOTIFICATION)

NOTIFIED

- B.3** A copy of a letter from Luis E. Cabrera, Assistant City Manager, notifying Min-Li Nar, Process Design Analyst, of her layoff and the abolishment of her position, effective September 23, 2011, and that her name will be placed on a "Layoff" register for a period of no more than 36 months.
(NOTIFICATION)

NOTIFIED

- B.4** A copy of a letter from Luis E. Cabrera, Assistant City Manager, notifying Jose Velazquez, Facility Manager, of his layoff and abolishment of his position, effective September 23, 2011, and that his name will be placed on a "Layoff" register for a period of no more than 36 months. (NOTIFICATION)

NOTIFIED

- B.5** A copy of a letter from Luis E. Cabrera, Assistant City Manager, notifying Dorcas Martin, Secretary II, Department of Police, of the abolishment of her

position, effective September 23, 2011. (NOTIFICATION)

NOTIFIED

- B.6** A copy of a letter from Luis E. Cabrera, Assistant City Manager, notifying Carlos Jimenez, Structural Engineer, of the abolishment of his position, effective September 23, 2011. (NOTIFICATION)

NOTIFIED

- B.7** A copy of a memorandum from Mariano Fernandez, Director, Department of Building, notifying Gilberto Izquierdo, Building Inspector II, of his return to his former classification of Building Inspector I, effective September 26, 2011. (NOTIFICATION)

NOTIFIED

- B.8** A copy of a memorandum from Beverly Pruitt, Director, Department of Human Resources, notifying Fred Pericles, Senior Staff Analyst, of his return to his previous classification of Budget Analyst, effective September 26, 2011. (NOTIFICATION)

NOTIFIED

- B.9** A copy of a memorandum from Mariano Fernandez, Director, Building Department, notifying Luis Torres, Building Inspector III, of his return to his former classification of Building Inspector II, effective September 26, 2011. (NOTIFICATION)

NOTIFIED

- B.10** A copy of a memorandum from Beverly Pruitt, Director, Department of Human Resources, notifying Antonio Bosque, Senior Staff Analyst, of his transfer from the Building Department to the Department of Public Facilities with the same salary and benefits, effective September 26, 2011. (NOTIFICATION)

NOTIFIED

- B.11** A copy of a memorandum from Beverly Pruitt, Director, Department of Human Resources, notifying Joan Greene, Secretary II, of her transfer from the Building Department to the Department of Police with the same salary and benefits, effective September 26, 2011. (NOTIFICATION)

NOTIFIED

C. MILITARY LEAVES OF ABSENCE

D. DISCIPLINARY MATTERS

E. GENERAL ITEMS

E.1

Hearing of appeal on behalf of Javier Gonzalez, Police Officer, relative to his 20-hour suspension, effective June 1, 2006. (DISCUSSION)
Rescheduled pursuant to continuance policy; pending settlement since July 26, 2011.

The Executive Secretary informed the Chairman that Agenda Items E1 through E6 are discussions regarding pending settlements. The Board considered Items E.1 through E.6 together.

Chairman de la O asked for the status of the settlement in matter of Officer Javier Gonzalez. Jon Kreger, Attorney at Law on behalf of Javier Gonzalez responded that he has a drafted agreement that was sent to the City Attorney's Office on August 18, 2011; however, he has not heard back from Attorney Richard concerning the settlement agreement.

Chairman de la O asked for the department's position on this matter. Janeen Richard, Assistant City Attorney (ACA) responded that Attorney Kreger is correct that she has not gotten back with him concerning the settlement agreement and that is because she was not able to discuss the settlements involving police employees with former Police Chief Exposito prior to his departure so she has to start the process anew with the interim police chief. Chairman de la O asked which agenda items does this affect. ACA Richard responded that the settlements for which she will have to meet with the interim Police Chief include Agenda Items E.1 (Officer Javier Gonzalez), E.3 (Officer Dashon Yearby), E.4 (Officer Eddy Rodriguez) and E.6 (Communications Operator Shekita Johnson). She went on to say that she was able to obtain the Police Chief's signature in the matter of Sgt. Teresa Borkowski (Item E.2); however, she forwarded the settlement to Attorney Cohen's office for signature, but he has not returned the settlement to her. Attorney Kreger of Attorney Cohen's Office responded that he is in the process of obtaining the employee's signature so that it can be returned to ACA Richard. ACA Richard stated that she has a signed settlement agreement in the case of Jeffrey Jans (Item E.5) and that a copy was distributed to Board Members this morning.

Member Moy stated that the settlements involving Officer Javier Gonzalez, Officer Dashon Yearby, Officer Eddy Rodriguez, and Communications Operator Shekita Johnson have been pending for some time and it does not appear that they will be finalized any time soon. Following discussion, the Board entered a motion to schedule hearings in the cases of Officers Javier Gonzalez, Dashon Yearby, Eddy Rodriguez and Communications Operator Shekita Johnson.

Under discussion, Attorney Kreger stated to the extent that both sides have already agreed to language and the matter has been agreed to in part, he would submit that if the City does not respond within an adequate amount of time that cases be dismissed as opposed to scheduling a hearing. Teri Guttman-Valdes stated that she echoes Attorney Kreger's position (of dismissing the cases if the City fails to finalize the settlement agreements in a timely fashion).

Member Dames asked if he could amend the motion. Chairman de la O responded that the maker (Member Moy) of the motion would have to amend the motion. Member Dames asked Member Moy if he wished to amend his motion to include that if the department does not have the settlements finalized within a specified time frame that the cases would be dismissed. Member Moy responded in the negative. For clarification purposes, Attorney Kreger responded what he meant was that whatever disciplinary measures were taken against the employee should be dismissed and not the repeal because essentially the settlements are not finalized because the City has not acted

upon them. Attorney Guttman-Valdes responded that with regards to the settlements, the City made an offer (to settle) and her clients accepted. She went on to say that she is sorry that (Police) administration changed but if the City is not going to sign off on the settlements, then the discipline should be overturned and the employee made whole.

Chairman de la O informed Member Dames that since Member Moy did not wish to amend his motion, he could either vote against the motion, make his own motion, or even if Member Moy's motion should pass, he could make the motion that if the settlements are not presented by a particular date that the case would be dismissed. Chairman de la O asked if anyone else wished to respond before the Board votes on the motion. ACA Richard responded in the affirmative. She stated that with regards to the settlements, the City was not the only one that did not obtain signatures in a timely manner to finalize settlements because there were a couple of settlements that she had to wait to receive from the employee's attorney and provided as examples, the settlements of Officers Javier Gonzalez and Eddy Rodriguez for which the employee's attorney failed to return the settlements in a timely fashion, in support of her argument. ACA Richard further stated that for (Attorneys Kreger and Guttman-Valdes) to now say that it is the City's fault that the settlements are not finalized is absolutely not true. She stated there has been a change in police chiefs so she needs additional time for the new police chief to review the file and sign the settlement agreements. ACA Richard went on to say that is unfair, untrue and unconscionable to say that the City is just sitting back doing nothing and that the City is the sole cause for the delay of the settlements not being finalized.

Chairman de la O stated there are potential settlements but until they are signed by both sides, there is no settlement agreement. He went on to say that he thinks the remedy would be to set the cases for a hearing and at that point, if the employee wants to go forward with the hearing instead of signing the settlement agreement, the employee can do so and if the City wants to go forward with a hearing, the opposing side cannot make the City sign an agreement; therefore, everyone has to sign before the settlement agreement is binding. Chairman de la O further stated that he agrees there should be some sort of fire lit under whoever needs it (department or employee) so that when the hearing comes up, either settle or try the case. He stated this is no different than it is in any court when settlement offers are going back and forth. Chairman de la O went on to say that he would not agree with dismissing the charges (as suggested by Attorneys Kreger and Guttman-Valdes) and he definitely was not on a blanket basis and the Board would have to go case by case to determine where the fault lies, but he thinks Member Moy is right that at some point there should be a hearing set and every one will fish or cut bait.

Member Dames stated that he agrees with the Chairman's comments because there have been numerous times these items appeared on the agenda as pending settlements for months, but nothing seems to get finalized. He went on to say that the Board needs to light a fire under either the City or employee concerning the settlements (by scheduling the case if the settlement is not finalized within a specified time period.)

Following discussion, the motion on the floor to schedule hearings in the cases of Officers Javier Gonzalez, Dashon Yearby, Eddy Rodriguez and Communications Operator Shekita Johnson resulted as follows:

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

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

E.2

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.

Awaiting employee's signature on Settlement Agreement.

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 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.

DISCUSSED : In accordance with the Board's motion, the Executive Secretary will schedule this case for a hearing.

E.4

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.

DISCUSSED : In accordance with the Board's motion, the Executive Secretary will schedule this case for a hearing.

E.5

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.

Settlement Agreement noted by Board on 10/4/11.

NO ACTION TAKEN : Case will be closed and removed from the Board's docket.

E.6

Hearing of appeal on behalf of Shekita Johnson, Communications Operator, relative to her 8-hour suspension, effective February 8, 2009.

DISCUSSED : In accordance with the Board's motion, the Executive Secretary will schedule this case for a hearing.

F. REPORTS

F.1

Pending Hearings as of October 4, 2011. (NOTIFICATION)

PRESENTED

G. REQUESTS FOR HEARINGS

G.1

A copy of a request from Olga M. Zamora, Sr. Project Representative, for an Investigation or Grievance Hearing, pursuant to Rules 16.1 or 16.2, alleging a violation of Rules 5.1, 6.1,

6.2 and 6.3, in connection with the recruitment process for Property Manager.

Chairman de la O informed Ms. Zamora that the Board reviewed her request and asked her if there was anything she wished to add to her complaint. Ms. Zamora responded in the negative. Chairman de la O asked for the department's position with regards to Ms. Zamora's request for a hearing. ACA Richard responded that she does not oppose Ms. Zamora's request for a hearing.

Following discussion, the Board entered a motion to grant Olga Zamora's request for a grievance hearing pursuant to Civil Service Rule 16.2, Complaint by Employee, which 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

G.2

A copy of a request from Corina S. Esquijarosa, former Senior Project Representative, for a Grievance hearing, pursuant to Rule 16.2, alleging a violation of Rule 12.1, as it concerns her layoff, effective September 23, 2011.

The Executive Secretary informed the Board that Ms. Esquijarosa requested that her request be placed on the Board's next agenda.

DEFERRED : Item will be rescheduled to the October 18, 2011 agenda for Board discussion.

H. TODAY'S HEARINGS

H.1

Hearing of Appeal on behalf Jeffrey Locke, Police Lieutenant, relative to his 20-hour suspension, effective February 25, 2009. (DISCUSSION)

Attorney Guttman-Valdes stated that Lt. Locke was on standby for trial this week. She went on to say that Lt. Locke contacted and advised her yesterday that the State selected a jury; therefore, he would not be present for his appeal hearing since he is under subpoena with the State Attorney's Office for a DUI trial that will begin today at 10:00 a.m.

Chairman de la O asked for the department's position. ACA Richard responded that the department's position is what it has always been (which is to object to the continuance request). She went on to say that this case has been pending since [the initial hearing date on March 9, 2010] and that the Board may recall the last time Lt. Locke requested a continuance was because he was going to attend the Police Olympics, another time he was on vacation, and another reason was that one of his witnesses could not appear and each time the Board granted his request for a continuance. ACA Richard further stated that it is unfair to the department who has the burden of proof to come prepared with its witnesses and only to be told the day before at 4:15 p.m. that Lt. Locke is not available to testify. She stated her witness, Lt. Anita Najji, who works the midnight shift has come three times to testify at this hearing and always been met with a continuance request. ACA Richard went on to say that she has one witness who has since retired so it is going to be difficult for her to convince him to come back to testify. She further stated that this case has been dragging on, she has opposed every continuance request, but the continuances have been granted over the department's objections. ACA Richard stated it is clear to her that Lt. Locke does not wish to proceed with his hearing because every excuse he can come up with, he has presented it to the Board, and the Board granted his continuance request each time. She went on to say her witnesses are present to testify, she has the burden of proof, and is ready to proceed.

Chairman de la O asked opposing counsel if she wished to say anything in response to ACA Richard's argument. Attorney Guttman-Valdes responded in the affirmative. She stated Lt. Locke made an arrest and now has to appear before Judge Hague so she cannot tell Judge Hague that Lt. Locke's Civil Service case takes precedence over a pending DUI court case.

Member Moy stated he agrees with ACA Richard that this case has been dragging on and that each time Lt. Locke comes up with a reason why he cannot go forward with his hearing. He went on to say that he recalls Lt. Locke's first reason for not appearing for his hearing was because he would be attending the Police Olympics. Member Moy further stated he feels if Lt. Locke wants his case heard, he needs to make an effort to be present. He stated Lt. Locke's hearing is scheduled today and again he is not present. Attorney Guttman-Valdes responded that her client is under subpoena with the State Attorney's Office which is why he is not present and related the reasons why the Board granted previous continuances in Lt. Locke's case. She went on to say they were prepared to go forward today but because Lt. Locke is before Judge Hague, he cannot be present for his hearing today. Attorney Guttman-Valdes further stated if the Board denies her client's continuance request, she would have to let Judge Hague know what the Board imposed and for her client to appear for his hearing today, he would be in contempt of court.

Member Kaplan stated if a person requests a continuance because he is on vacation, under subpoena to appear in court, or due to death of a family member, he thinks each case must be decided on its own merit. He went on to say that he thinks the grounds given to continue this case are reasonable and understandable which is why he is in favor the continuance. ACA Richard asked how much longer are the continuances going to be granted in this case. Member Kaplan responded that it would depend on the circumstances. ACA Richard stated so that she is clear, Member Kaplan is saying an employee can request continuance after continuance and conceivably drag this matter on forever. Attorney Guttman-Valdes interceded and suggested that ACA Richard telephone the State Attorney's Office to have Lt. Locke recused from his subpoena so that he can appear without fear of contempt of court. ACA Richard responded that it was not her responsibility to subpoena opposing counsel's witness.

Chairman de la O asked if there was discussion from any of the Board Members. Member Moy responded that he continue to agree with ACA Richard's position that this case has dragged on too long. He went on to say that perhaps today Lt. Locke has an acceptable reason why he could not be present today since he is in court, but prior to this, he has heard a lot of excuses (from the employee) as to why he cannot appear for his hearing. Member Moy further stated he has seen the department's witness (Lt. Anita Najiy) appear twice to testify only to have the case continued. He stated in all fairness to the department's attorney who has all of her witnesses present today, opposing counsel should have notified the Executive Secretary in advance rather than announce the day of the hearing that her client is unable to appear and in this way, the Executive Secretary could have given another employee an opportunity to have their case heard in place of Lt. Locke's case.

Following discussion, the Board entered a motion to grant the employee's request for a CONTINUANCE, 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 and Dames

No: Moy

Abstain: de la O

H.2

Hearing of Appeal on behalf of Lillie Harris, concerning her demotion from Lieutenant to Sergeant, effective May 19, 2010. (DISCUSSION)

Prior to entering into Sgt. Harris' hearing, Osnat Rind, Attorney at Law on behalf of Sgt. Harris stated that she believes both sides are ready; however, she wished to bring to the Board's attention two preliminary issues. She went on to say that some of her witnesses were not subpoenaed which was probably due to a misunderstanding with Civil Service staff; however, it's going to be a short day and she has spoken with ACA Richard so she does not think it would be an issue. Attorney Rind further stated there is a piece of evidence that she requested from opposing counsel, but she does not know if it exists; however, she is willing to go forward with her case today although she has not received the requested evidence.

Chairman de la O stated it is his understanding that both sides have 6 witnesses. ACA Richard responded that the number of witnesses mentioned for both sides is not correct. She went on to say this is a comprehensive Internal Affairs investigation where at least 15 people were interviewed as part of the investigation. ACA Richard further stated she brought along only 5 witnesses to testify with the assumption that Lt. Locke's case was going forward today, but that did not happen. She stated the fact that this is a short day, she did not want all 15 witnesses to appear to testify today and besides this case will not be finished today and she believes even with a full day it will be difficult to finish in one day because there are so many witnesses. ACA Richard went on to say if the Board wishes to start the hearing today, she has a few witnesses in the audience who can testify or if it is the Board's pleasure, the hearing can be specially set for back-to-back Tuesdays. Attorney Rind stated she does not think she is available for the next two Tuesdays. Chairman de la O stated the problem is the Board does not have a full day to schedule this case until January 2012 so no matter when the case is scheduled, it will span at least two to three hearing dates. He stated his view is, subject to it being overruled is to start the hearing today. Member Silverman stated he was not in favor of starting the hearing today and suggested special setting the hearing on another day, which does not have to be on a Tuesday, start the hearing at 9:00 a.m., and finish the hearing the same day even if that means going beyond 5:00 p.m. He went on to say that he prefers to go this route because if the case is started today to be continued next month, then no one remembers who said what. Member Silverman further stated it has been his experience that the cases run smoother and faster when heard in one day. Chairman de la O stated so that the parties know, this case may begin in January 2012. The Executive Secretary responded that there may be an alternate date of November 29, 2011, but she is not sure the attorneys will be available since this is the Tuesday following Thanksgiving. She went on to say there are no evening meetings so the Chambers would not have to be vacated and although hearings are currently scheduled on the 29th, they can be rescheduled since they are newer cases.

Attorney Rind stated she and her client are available on November 29. She went on to say that she would ask ACA Richard and she will also commit to trying to shorten the hearing. She went on to say that while she has not spoken to opposing counsel about this, she believes a lot of the evidence can be stipulated to and this should shorten the hearing significantly. ACA Richard responded that she has no problem meeting with Attorney Rind to determine what stipulations can be made in this case.

Following discussion, the Board entered a motion to CONTINUE Lt. Harris' hearing and reschedule it to the meeting of November 29, 2011, beginning at 9:00 a.m. 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

ADJOURNMENT:

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

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

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

The meeting adjourned at 10:27 a.m.

SIGNATURE:

Miguel M. de la O, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary