

# **City of Miami**

*City Hall  
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[www.miamigov.com](http://www.miamigov.com)*



## **Meeting Minutes**

**Tuesday, November 1, 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:*

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

**A. APPROVING THE MINUTES OF:**

Regular Meeting of October 18, 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**

- B.1** Copy of a letter from Luis E. Cabrera, Assistant City Manager, notifying Dorcas Martin, Typist Clerk III, that the abolishment of her position, effective September 23, 2011 which resulted from her being bumped by the Secretary II incumbent (Joan Greene) in the Building Department was in error. Dorcas Martin has been advised that she will receive continuation of pay benefits from September 23, 2011 through October 24, 2011 and to return to work, effective October 24, 2011. (NOTIFICATION)

**NOTIFIED**

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

- D.1** A copy of a letter from Chief Manuel Orosa, Director, Department of Police, to Ansonia Chatfield, advising of her Termination from the position of Emergency Dispatcher, effective October 20, 2011 and a copy of a request to appeal from Michael Braverman, Attorney, on behalf of Ansonia Chatfield. A hearing of appeal will be scheduled in accordance with Civil Service Rules & Regulations. (NOTIFICATION)

**RECEIVED AND FILED**

- D.2** Copy of a letter from Miguel A. Exposito, Director, Department of Police, notifying Yatha Legrand, Police Officer, of her 10-hour suspension, effective October 20, 2011. (NOTIFICATION)

**NOTIFIED**

- D.3** A copy of a letter from Maurice Kemp, Director, Department of Fire-Rescue, notifying Veldora Arthur, Assistant Fire Chief (unclassified)/Fire Lieutenant (classified) of her termination from employment, effective October 5, 2011. (NOTIFICATION)

**NOTIFIED**

- D.4 A copy of a letter from Keith A. Carswell, Director, Department of Solid Waste, notifying Sedrick Davis, Waste Collector Operator II, of his one-week suspension, effective September 12, 2011. (NOTIFICATION)

NOTIFIED

**E. GENERAL ITEMS**

- E.1 Copy of Findings of Fact in the Appeal Hearing of Meredith Nation, Procurement Supervisor (former), relative to her termination, effective March 23, 2011. (DISCUSSION)

*Member Kaplan stated that prior to discussing the findings of fact in the matter of Meredith Nation, he would like for the Board to reconsider or reopen the voting (by the Board at its October 18, 2011 meeting) on Ms. Nation's case. Chairman de la O responded that he remembered the vote was (3-2) in finding Ms. Nation not guilty of the charges. He asked Member Kaplan which way he voted on the charges. Member Kaplan responded that he voted to find Ms. Nation not guilty.*

*Chairman de la O asked Special Counsel Everett if the proper motion would be a motion to reconsider or reopen the voting. Cynthia A. Everett, Special Counsel to the Board, responded it is her understanding that this Board has not formally adopted any rules or procedures in terms of parliamentary procedures. She went on to say that generally the Board seem to have followed Robert's Rules of Order so she thinks the proper motion would be a motion to rescind the vote of the Board. Special Counsel Everett further stated under Robert's Rules, a motion to reconsider should be done at the same meeting or if it is a meeting consisting of more than one day, the motion to reconsider should be done at the next successive day. She stated there is also a provision under Robert's Rules to rescind a motion that can be done at a subsequent meeting, which she thinks would be most applicable in this situation. Special Counsel Everett went on to say that generally under this procedure, a super majority vote is needed for the motion to carry so in the abundance of caution and as a matter of fairness, the Board might want to get input from both counsels. She further stated the short answer is she thinks this Board can reconsider the vote if it wants to do so.*

*Chairman de la O asked if it is a motion to rescind (that would apply in this case) and there is a super majority requirement, what is the requirement? Special Counsel Everett responded there has to be a 4/5th vote. Member Kaplan asked where does any rule say that the Board needs a super majority to reconsider a vote? Special Counsel Everett responded again, that it is her understanding that the Board has not formally adopted Robert's Rules so she was only giving the Board an analysis under Robert's Rules. She went on to say that she thinks the Board's mission is to make sure that it fundamentally provides due process and fairness. Chairman de la O stated that he has always assumed the Board operated under Robert's Rules. Special Counsel Everett responded that she had been told that the Board is not operating under Robert's Rules. Chairman de la O stated not officially but by conduct, the Board has always referred to Robert's Rules.*

*Chairman de la O asked Special Counsel Everett if she thinks there would have to be four out of five votes under a motion to rescind if the Board decides it is the proper rule? Special Counsel Everett responded if the Board wants to rescind the motion today because of a lack of notice, she believes the Board could notice it today and hear the matter subsequently. Member Kaplan stated that he did not move to rescind the motion rather he moved to reopen the vote.*

*Member Silverman suggested that since a reconsideration of the vote will affect the employee and her attorney, he thinks this matter should be carried over to the next meeting to give Attorney Guttman-Valdes and her client an opportunity to respond before the Board takes any action. Chairman de la O stated he thinks what Member Silverman suggested is ultimately going to be a good proposal no matter what, but he wants to know if anyone is interested in taking a temperature of the room to see how the vote would go?*

*Following discussion, the Board entered a motion to reopen the vote which resulted as follows:*

**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

*Following the approved motion to reopen the vote in the matter of Meredith Nation, the Board entered a motion to DEFER this matter to the Board's next meeting for consideration which resulted as follows:*

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

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

*So that everyone is clear on how the Board will proceed when this matter is discussed, Chairman de la O stated that the Board approved a motion to reopen the vote which can be addressed at the next meeting if it is in effect lawful and proper. He went on to say that since the Board has voted to reopen the vote, the Board will look to Attorneys Richard, Guttman-Valdes, and Special Counsel Everett to counsel the Board on whether the reopening of the vote is possible, lawful and proper. Attorney Guttman-Valdes stated that she did not know if she would be available for the Board's next meeting since she did not have her calendar with her; however, she would hope that the Board would accommodate her if she has a scheduling issue.*

*Member Dames asked the Chairman if he ruled that the super majority has to be a 4/5th vote? Chairman de la O responded that he did not rule on anything; however, the required 4/5th vote is one of the issues that will be addressed. Special Counsel Everett stated that since the motion to reopen was noticed today, she thinks the notice may eliminate the super majority issue at any point.*

*For clarification purposes, Chairman de la O explained to Member Dames that Special Counsel Everett's concern was because the Board was operating without any notice to the employee or the department, that a motion to rescind should be in order and since the matter had just come up, it would require a 4/5th vote to approve the motion. He went on to say that Special Counsel Everett does not believe there is that concern of the 4/5th vote any more because the Board tabled the matter, both sides were noticed, and the matter would be discussed at a subsequent meeting.*

*Member Kaplan stated if this concept of a super majority, which he does not remember the Board ever using in the past, is in the law and is an appropriate procedure, he would like to see that from Special Counsel Everett. Special Counsel Everett responded that she would show Member Kaplan the provision at the end of today's meeting.*

**DISCUSSED :** Chairman de la O instructed the attorneys to be prepared to present their prospective positions as to how the Board should proceed.

**F. REPORTS**

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

**PRESENTED****G. REQUESTS FOR HEARINGS**

G.1 Copy of a request from Peter Kendrick, Lease Manager, requesting the Chief Examiner to conduct a preliminary investigation pursuant to Rule 16.2(b) concerning his abuse of power complaint filed against Madeline Valdes, former Director of Public Facilities, alleging a violation of Rules 14.2(h), (i) and (r). (DISCUSSION)

*Chairman de la O asked if Mr. Kendrick is requesting the Chief Examiner conduct a preliminary hearing in lieu of holding today's hearing. Peter Kendrick responded in the affirmative. He went on to say that it was his initial idea that the Chief Examiner conduct an investigation when he came before the Board on July 12, 2011; however, according to the letter he submitted, his request for a Rule 16.2 hearing was crossed out.*

*Chairman de la O asked for the department's position. Janeen Richard, Assistant City Attorney (ACA) responded it is the department's position to go forward with the investigation hearing that is scheduled for today since the witnesses are present. She went on to say she did not think an investigation was different in this particular case than going forward with the Rule 16.1 investigation. ACA Richard further stated she is at a loss of what this Board will investigate because the department director who Mr. Kendrick alleged abused her power retired from the City more than a month ago. She stated based upon the aforementioned, (1) She thinks this is a moot issue and (2) She does not think there needs to be a preliminary investigation because all of the witnesses are available today (for today's hearing). Chairman de la O asked ACA Richard what is the issue she believes is moot? ACA Richard responded she did not understand what relief Mr. Kendrick can seek from this Board due to the fact that the complaint he lodged against a particular department director no longer works for the City of Miami. Mr. Kendrick responded that he came to the Board to get clearance of his name because he believes that the Board can issue a statement after hearing all of the facts as to whether he is exonerated of the claim Ms. Valdes (former Director of Public Facilities) made against him.*

*Chairman de la O asked ACA Richard if the Board could still find whether there was an abuse of power even if there is no recommendation about any prospective conduct or impact against the supervisor who is no longer employed with the City? ACA Richard responded that she does not understand what Mr. Kendrick means when he says that he wants to be exonerated or cleared of charges because she does not know what charges he is referring to. She went on to say that when Mr. Kendrick initially requested a hearing, the Board decided over her objection to grant him a hearing. She went on to say Mr. Kendrick is accusing Ms. Valdes of violating three particular Civil Service Rules (i.e. insubordination, disgraceful conduct, antagonistic towards employees) so she does not understand how any finding can be made against Ms. Valdes who is no longer employed with the City. ACA Richard further stated Mr. Kendrick basically wants to discipline Ms. Valdes under Rule 14. Chairman de la O responded that Mr. Kendrick is saying that he wants a finding that his department director abused her power vis a vis him.*

*Chairman de la O asked Mr. Kendrick to tell the Board exactly what he wants the Chief*

*Examiner to investigate in order to have a more effective or efficient hearing later. Mr. Kendrick responded there are time lines that he documented and the witnesses will verify there was a pattern Ms. Valdes perpetrated upon him, which will help clear his name. Chairman de la O asked Mr. Kendrick to explain why the Board cannot establish the time lines and the testimony today during the hearing. Mr. Kendrick responded that he is not an attorney and Member Kaplan who is an attorney can ask questions based upon conversations with the witnesses. He went on to say that Member Kaplan can also make an objective analysis as to whether the statements presented are true.*

*Following discussion, the Board entered a motion to grant Peter Kendrick's request for a preliminary investigation to be conducted by the Chief Examiner which resulted as follows:*

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

**Aye:** Dames and Moy

**No:** Kaplan, Silverman and de la O

**DISCUSSED :** The motion having failed, Chairman de la O stated that the preliminary investigation as requested by Mr. Kendrick will not take place. The hearing pursuant to Rule 16.1 is still pending.

## G.2

A copy of a letter from Michael Braverman, P.A., requesting a hearing on behalf of Dorcas Martin, Typist Clerk III, for an appeal of her dismissal and the abolishment of her position pursuant to Civil Service Rule 14, Dismissals, Suspensions, Demotions and Resignations and a grievance hearing pursuant to Rule 16.2, Complaint by Employee, effective September 23, 2011. (DISCUSSION)

*Attorney Braverman stated that Ms. Martin was reinstated; therefore this matter can be withdrawn. Chairman de la O asked Attorney Braverman if he was withdrawing Ms. Martin's request for a hearing. Attorney Braverman responded in the affirmative. Member Dames asked what affect does Ms. Martin's reinstatement have on Ms. Joan Greene. Attorney Braverman responded that Ms. Greene is without employment and that the Chief Examiner conducted a preliminary investigation concerning her grievance. Chairman de la O asked for the department's position on this matter. ACA Richard stated that the investigations are not complete so she had nothing to say on the matter.*

*Member Moy asked the Chief Examiner if he had an idea of when he will complete his investigation involving Joan Greene? Chief Examiner Kaplan responded that he spent three days last week with both attorneys and staff and they are not done. He went on to say he is waiting for another open date to attempt to complete the investigations. Member Moy asked Attorney Braverman if he could give the Board an update in the matters of his clients Carlos Jimenez, Alejandro Pascaul, and Ricardo Novas. ACA Richard responded that she prefers not to talk about these cases because the investigations are not complete. She went on to say that the City has not offered any of its witnesses yet so she think it is premature for any discussion to take place on any of the cases. She went on to say that once Chief Examiner Kaplan completes his report, it will be presented to the Board for the next step. Chairman de la O stated he would ask Attorney Braverman when he responds to Member Moy's status question that he not get into the merits of the case. In response to Member Moy's question, Attorney Braverman stated the preliminary investigations of Ricardo Novas and Joan Greene have been taken up by Chief Examiner Kaplan and that the Chief Examiner has to set a date and time to meet with Carlos Jimenez and Alejandro Pascaul.*

**WITHDRAWN : No further action required by the Board; Ms. Martin's request will be removed from the Board's Docket.**

**G.3**

A copy of a request from Michael Braverman, P.A., on behalf of Frank Rodriguez, Building Inspector I, for an Appeal hearing and a Grievance hearing, pursuant to Rule 16.2, alleging a violation of Rule 12, Layoff, Resignation and Reinstatement; regarding his dismissal from employment, effective October 7, 2011. (DISCUSSION)

*Attorney Braverman stated that Mr. Rodriguez recently received notice about his layoff. He went on to say that he would ask that this request for a hearing follow the same track as his other clients that were affected by a layoff. Attorney Braverman further stated he believes the information that is going to be derived from the investigation is ongoing with Chief Examiner Kaplan relative to the Building Department.*

*Chairman de la O asked the department's attorney for her position. ACA Richard stated that she does not oppose the request for hearing; however, she would ask, as was done in Attorney Braverman's other cases, that he travel under Rule 16 for which he would have the burden of proof. She went on to say she did not understand how Rule 14 came into play because this employee like the others who were affected by the reorganization of the Building Department were not released for disciplinary reasons.*

*Chief Examiner Kaplan stated the City has been very cooperative during the investigations he is conducting.*

*Chairman de la O asked in light of the way the Board treated the other employees, was there any reason the Board should treat Mr. Rodriguez differently? ACA Richard responded in the negative.*

*Following discussion, the Board entered a motion to grant Frank Rodriguez' request for a hearing pursuant to Rule 16.2 and a preliminary investigation pursuant to Rule 16.2(b) which resulted as follows:*

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

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

**H. TODAY'S HEARINGS****H.1**

Investigation hearing on behalf of Peter Kendrick, Lease Manager, pursuant to Rule 16.1, Abuse of Power by his former director, alleging a violation of Civil Service Rules 14.2(h), (i), and (r). (DISCUSSION)

*Chairman de la O asked Mr. Kendrick to explain to the Board why he needs a continuance of his case today. Mr. Kendrick responded that two of his witnesses are not available and there are other extenuating circumstances. He went on to say that ACA Richard raised the issue that there are two distinct issues that he raised in his complaint, but there is another issue and there may be other incidents that he will bring that his witnesses will verify. Mr. Kendrick further stated at the time he prepared his request, he did not go into everything rather he documented the things that were more pressing to him at the time. Chairman de la O asked Mr. Kendrick if he was requesting more time to amend his request to add other bases for the Rule 16.2 violation? Mr. Kendrick responded in the affirmative.*

*Chairman de la O asked for the department's position on Mr. Kendrick's request. ACA*

*Richard responded that she objects to Mr. Kendrick's request because it is a little late in the game to include additional allegations. She went on to say this case has been pending for a while, Mr. Kendrick wrote a very detailed grievance for which he raised two issues. ACA Richard further stated if Mr. Kendrick wishes to continue his hearing on the basis that his witnesses are not available, she would like for him to proffer what the witnesses would say as to the two allegations he raised in his complaint. She stated the department is ready to go forward and she opposes any request to continue the hearing.*

*Chairman de la O stated Mr. Kendrick's matter has been pending since July 2011 and asked ACA Richard if this was correct. ACA Richard responded that Mr. Kendrick made a request for a hearing that was placed on the Board's July 12 agenda. She went on to say the hearing was granted at that time and set for a hearing today. Chairman de la O asked if this is the first time Mr. Kendrick's hearing was scheduled. The Executive Secretary responded in the affirmative.*

*Following discussion, the Board entered a motion to grant Mr. Kendrick's request for a CONTINUANCE of his grievance hearing 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 to grant Mr. Kendrick's request for a continuance of his hearing, ACA Richard stated if Mr. Kendrick amends his request, she would like to be given an opportunity to object to that request as well. Chairman de la O stated to Mr. Kendrick that if he is interested in amending his prior grievance, he needs to submit it as soon as possible because if he waits too long, then there maybe yet another continuance by the City if granted by the Board. He went on to say to ACA Richard that once the Board receives Mr. Kendrick's amendment, it will be brought up for discussion and if she feels the amendment is improper, she could move to strike the amendment. Chairman de la O further stated he is taking this approach because Mr. Kendrick is not an attorney so he does not want to put the burden on him. ACA Richard stated that she would like to review Mr. Kendrick's new information as a brand new request for a hearing. Chairman de la O stated he was not going to do what ACA Richard suggested, but he would offer to her that if she feels the amendment is improper or it is too much that Mr. Kendrick is adding, she can move to strike the information.*

*The Executive Secretary asked the Chairman if he could establish a deadline for which Mr. Kendrick needs to submit his amendment. Chairman de la O responded that the Executive Secretary shall receive Mr. Kendrick's amendment within two weeks. Mr. Kendrick stated he will submit his amendment tomorrow.*

**DISCUSSED : Chairman instructed Mr. Kendrick to submit his amended grievance by November 15, 2011.**

## H.2

Grievance hearing on behalf of Olga M. Zamora, Sr. Project Representative, pursuant to Rule 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.  
(DISCUSSION)

*Prior to entering into Olga Zamora's hearing, Chairman de la O informed the attorneys that Member Silverman has a 2:00 appointment; therefore, the hearing will stop at 1:00 p.m. He went on to say if the hearing is not finished today, it will be set for another hearing date.*

*The Board entered into the scheduled grievance hearing on behalf of Olga Zamora, the*



*Grievant.*

*Kristin Sowers-Figueroa, Attorney at Law, represented the Grievant.*

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

*Opening statements were presented by both attorneys. The Rule of Witnesses was invoked and all witnesses were sworn in individually. Chairman de la O instructed the witnesses not to discuss their testimony before or after they testify. Member Kaplan stated when the witnesses step outside the room not only should they not discuss the case among themselves but they should also not be in a position where they can hear what is going on inside the room.*

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

- 1. Corina Esquijarosa, Private Citizen. Questions were posed by Board Members Moy and Kaplan during the testimony of Corina Esquijarosa.*
- 2. Joni Jones-Harris, Employee Relations Manager, City of Miami, Department of Human Resources. Questions were posed by Board Members Moy, de la O, Kaplan, and Dames during the testimony of Joni Jones-Harris.*

*Chairman de la O stated the Board is in recess because Member Silverman has to leave. He went on to say that he would like to make one observation which is since Ms. Valdes is no longer employed with the City and she was the cause of the push back, he was wondering if the department and the City might not want to look again at the eligible register and address some of the concerns. ACA Richard stated her position is that the changes (to the Property Manager register announcement) were approved by the Department of Human Resources in accordance with the Civil Service Rules and according to Ms. Zamora's complaint, she cited violations of Civil Service Rules pertaining to the role of the Human Resources Department and not charges against the former Department Director of Public Facilities, Madeline Valdes. Chairman de la O responded that it was only a suggestion he made since they have time to look at the matter.*

**HEARING TO BE CONTINUED TO THE BOARD MEETING OF DECEMBER 13, 2011  
(Due to scheduling conflicts).**

## **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

*The meeting ADJOURNED at 1:20 p.m. A break was taken at 12:27 - 12:34 p.m.*

**SIGNATURE:**

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

**ATTEST:**

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**Tishria L. Mindingall, Executive Secretary**