

City of Miami

*City Hall
3500 Pan American Drive
Miami, FL 33133
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Meeting Minutes

Tuesday, March 6, 2012

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 10:01 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 February 21, 2012.

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**C. MILITARY LEAVES OF ABSENCE**

- C.1** Luis F. Pla, Police Officer, requests active duty military leave without pay from March 10, 2012 through April 13, 2013. Copy of Orders attached.
(DISCUSSION)

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

- C.2** Brett F. Wolfe, Fire Fighter, requests active duty military leave without pay from February 17, 2012 through May 23, 2012. Copy of Orders attached.
(DISCUSSION)

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

D. DISCIPLINARY MATTERS

- D.1** Copy of a Judgment from the City Manager concurring with the Board's findings concerning Jeffrey Locke, Police Lieutenant, relative to his 20-hour suspension effective February 25, 2009. It is ordered and adjudged that the decision of the Department Director to suspend Lt. Locke for 20-hours is hereby sustained. The Board recommended a reprimand only.
(NOTIFICATION)

NOTIFIED

E. GENERAL ITEMS

- E.1** Notice of a Request to Continue on behalf of Michael Braverman, Attorney,

concerning the Grievance Hearing of Ricardo Novas, Broadcast Engineer, pursuant to Civil Service Rule 16.2. (DISCUSSION)
Hearing of Appeal is scheduled for today (Item H.6)

Chairman de la O stated that the Board would consider Items E.1 through E.4 together. He asked Attorney Braverman if the reason for the continuances the same for all four cases. Attorney Braverman responded in the affirmative. Chairman de la O asked what was the reason for the continuances. Attorney Braverman responded that the same witnesses that will be called in a number of the cases scheduled today will also be called to testify in upcoming cases; therefore, the thought process is to expedite the appearances of witnesses such as the City Manager and Assistant City Manager.

Chairman de la O asked for the department's position on the continuance request. Assistant City Attorney (ACA) Richard responded that she has no objection to the continuance requests. Following discussion, the Board entered a motion to grant the employee's request for a continuance.

Under discussion on the motion, Member Dames stated that the Chief Examiner conducted preliminary investigations of the four cases so he would like to know the time frame for hearing these cases. Attorney Braverman responded that he already placed requests for subpoenas to be served so they are ready to go forward; however, they are just trying to coordinate their efforts to make sure the witnesses are available to testify before the Board in one day. Member Dames stated that he will vote against the motion because he wants to hear the cases today. Following discussion, the motion on the floor resulted as follows:

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

Aye: Kaplan, Silverman, de la O and Moy

No: Dames

E.2

Notice of a Request to Continue on behalf of Michael Braverman, Attorney, concerning the Grievance Hearing of Joan Greene, Secretary II, pursuant to Civil Service Rule 16.2. (DISCUSSION)

Hearing of Appeal is scheduled for today (Item H.7)

Opposing counsel expressed no objection to Attorney Braverman's request for a continuance on behalf of his client so the Board entered a motion to grant the employee's request for a continuance which resulted as follows:

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

Aye: Kaplan, Silverman, de la O and Moy

No: Dames

E.3

Notice of a Request to Continue on behalf of Michael Braverman, Attorney, concerning the Grievance Hearing of Alejandro Pascual, Building Inspector I, pursuant to Civil Service Rule 16.2. (DISCUSSION)

Hearing of Appeal is scheduled for today (Item H.8).

Opposing counsel expressed no objection to Attorney Braverman's request for a continuance on behalf of his client so 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 APPROVED. PASSED by the following vote.

Aye: Kaplan, Silverman, de la O and Moy

No: Dames

E.4

Notice of a Request to Continue on behalf of Michael Braverman, Attorney, concerning the Grievance Hearing of Frank Rodriguez, Building Inspector I pursuant to Rule 16.2. (DISCUSSION)

Hearing of Appeal is scheduled for today (Item H.9).

Opposing counsel expressed no objection to Attorney Braverman's request for a continuance on behalf of his client so 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 APPROVED. PASSED by the following vote.

Aye: Kaplan, Silverman, de la O and Moy

No: Dames

E.5

Civil Service Board's Calendar (DISCUSSION)

Item Addition

The following item was not listed on today's printed agenda for Board discussion:

Member Dames stated that since the Board has to finish Ms. Chatfield's hearing on March 20, he was wondering if the cases of Ricardo Novas, Joan Green, Alejandro Pascual, and Frank Rodriguez could be placed on the same agenda since these cases involve layoffs. The Executive Secretary responded that it was doubtful, as there were already four cases scheduled for the March 20 meeting, excluding Ms. Chatfield's case, and of the four cases, two of them also involve layoffs. ACA Richard responded that Corina Esquijarosa's case was specially set by the Board to be heard first at the March 20 meeting. She went on to say that Ms. Esquijarosa has 15 witnesses even though she doubts they will all show up, but that has been her representation. ACA Richard further stated Ms. Esquijarosa is going to be highly upset if her case is not heard on March 20 because she was also laid off.

Member Dames asked for the rescheduled dates of the four cases that he is interested in hearing. ACA Richard responded that the cases (Ricardo Novas, Joan Green, Alejandro Pascual, and Frank Rodriguez) were not rescheduled because they were continued by the Board today.

Chairman de la O stated that the changing of Board Members is imminent so the Board needs to be careful about starting something (i.e. hearings) it cannot finish. He asked when does the terms of the Board Members end. The Executive Secretary responded that the Board will begin to change as of the April 17, 2012 Board meeting. NOTE: Terms of the present elected members are due to expire April 26, 2012. Members of Boards continue to serve until their replacements are named.

She went on to say the schedule is set so that the confirmation of the Board's elected members will be on the Commission meeting agenda of April 12, 2012. The Executive Secretary further stated the Board's May 1, 2012 meeting should consist of the three currently appointed members and the one or two new elected members. She stated that confirmation of the three appointed members is scheduled to be placed on the May

10, 2012 commission meeting.

Chairman de la O stated regardless of when the City Commission confirms the three new appointed members, he would have to resign as a Board Member in order to qualify by April 20th to run for an elected position. He went on to say that his last meeting with the Board will be on April 17, 2012.

Member Dames stated his last meeting with the Board will also be on April 17, 2012. The Executive Secretary responded that if the City Commission confirms the elections at the April 12th meeting as scheduled, the last meeting for the elected members will be April 17, 2012. Chairman de la O stated that would mean the Board cannot have any Board matters go past April 3, 2012 that cannot be finished on April 3rd because there would be different Board Members. The Executive Secretary stated the problem is she is not sure that the Commission would handle every item that will be placed on its April 12th agenda. Chairman de la O responded it is certain that he will no longer be a Board Member after the April 17 meeting.

Member Kaplan asked how the Board would function if it has no Chairman. Chairman de la O stated that he believes there could be a temporary Chairman until all five new Board Members are in place or the Board can do what it has always done in his absence (which is the Chief Examiner acts in his place).

Member Dames stated as it stands now, there are likely two Board meetings (March 20 and April 3) left before the current Board begins to have new members. Chairman de la O stated the main thing is to finish with Ms. Chatfield's case. Member Dames stated that he would like to go into the layoff cases following the conclusion of Ms. Chatfield's hearing. Chairman de la O asked for the number of witnesses in those cases. Attorney Braverman responded there are approximately 3 to 4 witnesses for each of the four cases; however, because some of the questions will be repetitious he believes that if he obtains the answer in the first case, he could move along to other questions that would save time. Chairman de la O responded to have six different hearings with three witnesses each equals to approximately three days of testimony.

Attorney Braverman suggested for the sake of saving time to consolidate the cases. He went on to say he did not think opposing counsel would object to consolidating the two cases that involve employees that were in the Building Department. ACA Richard responded that she does object to consolidating the cases for the reason that the cases are not the same because the employees were separated from the City for different reasons. Attorney Braverman responded that he would not consider consolidating the cases.

The Executive Secretary asked the Board Members and attorneys to check their calendar to see if they would be available for a special set meeting on April 10. ACA Richard responded that April 10 will be an unreasonable burden on her and an impossibility for her to prepare each week for 12 cases involving three different attorneys. Chairman de la O stated that he does not see how the Board would be able to hear all of the cases that Member Dames is requesting to be heard by the Board before it changes. He went on to say perhaps the Board could clear up some other matters on April 10, but he does not see how the four cases would be heard before the Board changes. Member Moy stated that he would not be available on April 10. Chairman de la O stated if one of the cases is started and not finished on April 10th, there still would be time to finish the matter on April 17th with the same Board.

Member Kaplan asked was there ever a time that the Board met every Tuesday. The Executive Secretary responded during her tenure as Executive Secretary, the Board has never regularly met every Tuesday, but there have been special sets where in particular

months the Board would meet three weeks in a row. She stated that the Civil Service Board does meet more often than other Boards because most Boards and Committees meet only once a month. Member Kaplan stated he is concerned about the job of the Board Members as well as the unnecessary burden on the attorneys so he is willing to meet every Tuesday. Chairman de la O stated that he thinks the new Board definitely would need to meet a few special times because while it has not been done there is now a backlog of cases dealing with layoffs that need to be heard.

Attorney Braverman asked if Joan Green's case could be heard following the conclusion of Ansonia Chatfield's case. Chairman de la O responded in the negative. He went on to say that the case of Corina Esquijarosa will be taken up after the conclusion of Ms. Chatfield's case. Attorney Braverman stated Ms. Chatfield is anxious to have her case finished and asked if it could be heard next week (March 13). ACA Richard responded that she is not available next week.

Chairman de la O stated that he thinks the Board can meet April 10, but before that can happen, some of the Board Members and ACA Richard have to check for availability and notify the Executive Secretary. He went on to say it is not easy to set all four cases and have them heard on the same day. Member Kaplan suggested that both attorneys meet to see if they can settle any of the four cases. Chairman de la O responded that certainly would be a way to get some stipulations and avoid some witnesses. Member Kaplan stated the attorneys have already spoken about the cases in the preliminary investigations that he conducted. ACA Richard responded that they tried to settle the cases during the preliminary investigations and the ultimate recommendation was to have a hearing before the full Board which is the reason the hearings were scheduled. She stated because there is an overlap in the initial case in terms of the reorganization, that they were trying to have all of the cases heard on the same day, but that is just impossible to do.

Chairman de la O stated based upon what he has heard, it appears the cases would have to be tried one at a time. He went on to say it is hoped that one of the cases could be heard on April 10 if this date works out with everyone's schedule. Member Dames responded that he would like to hear the cases of Ricardo Novas and Joan Green on April 10. Chairman de la O stated that he did not think the Board would be able to hear two cases.

DISCUSSED : Awaiting confirmation from Board Members and attorneys as to their availability on April 10, 2012 to hold a special Board meeting.

F. REPORTS

F.1 Pending Hearings as of March 6, 2012. (NOTIFICATION)

PRESENTED

G. REQUESTS FOR HEARINGS

H. TODAY'S HEARINGS

H.1 Continuation of the Hearing of Appeal on behalf of Ansonia Chatfield, Communications Operator, relative to her termination, effective October 20, 2012.

The Board reconvened today to hear the conclusion of Ansonia Chatfield's hearing which began on February 21, 2012. Chairman de la O reminded the attorneys that the

Board would have until 12:30 p.m. to hear this case because Member Silverman has to leave at that time.

Janeen Richard, Assistant City Attorney, represented the Department.

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

The Rule of Witnesses continued to be invoked and the witness was sworn-in.
Witnesses for the Department continued in the following order:

7. Octavio Aguero, Sergeant of Police, City of Miami, Department of Police. Questions were posed by Board Members Moy, Kaplan, and Dames during the testimony of Sgt. Octavio Aguero.

The Department rested its case.

Member Silverman stated at the rate the Board is going, it is taking longer than expected to finish this case so he would suggest that the Board's next meeting began at 9:00 a.m. ACA Richard responded that it would be difficult for her to meet at 9:00 a.m. Chairman de la O asked ACA Richard if she could meet at 9:30 a.m. ACA Richard responded in the affirmative. Hearing no other objections, Chairman de la O stated the March 20, 2012 meeting will begin at 9:30 a.m.

HEARING TO BE CONTINUED : Conclusion of hearing to be heard at the March 20, 2012 meeting.

H.2

Hearing of Appeal on behalf of Luis Hernandez, Police Officer, relative to his 40-hour suspension, effective March 6, 2009.

Jon Kreger, Attorney on behalf of Officer Hernandez, stated that they are in process of settling this case and that he sent the settlement agreement to ACA Richard last week.

Chairman de la O asked Attorney Kreger if the Board were to continue this case [for 30 days], would the case be settled by that time. Attorney Kreger responded in the affirmative. Following discussion, the Board entered a motion to grant a JOINT 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 and Moy

No: Dames

H.3

Hearing of Appeal on behalf of Jean Marie Jean-Philippe, Police Officer, relative to his 80-hour suspension, effective March 29, 2010.

Attorney Kreger stated that he contacted ACA Richard to let her know that he would be requesting a continuance in this case. He went on to say that ACA Richard expressed no objection.

Chairman de la O asked for the scheduling history of Officer Jean-Philippe's case. The Executive Secretary responded this is the third continuance requested by the employee. 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 Chairperson de la O, that this matter be APPROVED. PASSED by the following vote.

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

H.4

Grievance Hearing on behalf of Julianne Diaz, *former* Assistant Director of Public Works, relative to her Whistleblower complaint, pursuant to Florida Statute 112.3187.

The Executive Secretary provided the Board with a scheduling history of Ms. Diaz' case. She went on to say that [at the request of her then attorney] Ms. Diaz' case was originally scheduled on April 5, 2011 and subsequently continued on behalf of the employee. The Executive Secretary further stated Ms. Diaz' case was rescheduled to July 11, 2011 and again continued on behalf of the employee. She stated the case was then rescheduled to November 15, 2011 and Ms. Diaz failed to appear for her hearing so at the request of the Board, Ms. Diaz' hearing was scheduled for today, March 6, 2012, but she has not heard from her.

Following discussion, the Board entered a motion to DISMISS Ms. Diaz' case for lack of prosecution 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

H.5

Hearing of Appeal on behalf of Miguel Baralt, Police Sergeant, relative to his 10-hour suspension, effective June 25, 2011.

The Executive Secretary informed the Board that this is the first time Sgt. Baralt's case was scheduled; however, she has not heard from him even though he received ample notice of his hearing.

Following discussion, the Board entered a motion to grant a hearing in this case and charge the CONTINUANCE to the 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

Following the Board's approved motion to continue Sgt. Baralt's case, Member Kaplan stated he understands that Sgt. Baralt is not represented by counsel but he would like to know if any documentation was received from Sgt. Baralt. Chairman de la O responded that Sgt. Baralt's disciplinary letter and Request for Hearing was received by the Executive Secretary. Member Kaplan stated that he thinks that Sgt. Baralt's failure to show for his hearing should be considered (when the hearing is rescheduled). Chairman de la O responded that the Executive Secretary will remind the Board of this matter when it is rescheduled.

DISCUSSED : Executive Secretary to remind the Board of the scheduling history of Sgt. Baralt's case the next time his hearing is scheduled. The Board will take appropriate action at that time, if necessary.

H.6

Grievance Hearing on behalf of Ricardo Novas, Broadcast Engineer, pursuant to Rule 16.2, concerning a violation of Rule 12, Layoff, Resignation, and Reinstatement.

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.

- H.7** Grievance Hearing on behalf Joan Greene, Secretary II, pursuant to Civil Service Rule 16.2, concerning a violation of Rule 12, Layoff, Resignation, and Reinstatement.

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.

- H.8** Grievance hearing on behalf of Alejandro Pascual, Building Inspector I, pursuant to Civil Service Rule 16.2, concerning a violation of Rule 12, Layoff, Resignation, and Reinstatement.

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.

- H.9** Grievance Hearing on behalf of Frank Rodriguez, Building Inspector I. pursuant to Rule 16.2, alleging a violation of Rule 12.1, as it concerns a violation of Rule 12, Layoff, Resignation, and Reinstatement.

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 Chairperson de la O, to APPROVE. PASSED by the following vote.

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

A break was taken at 10:54 -11:04 a.m. The meeting adjourned at 12:30 p.m.

SIGNATURE:

Miguel M. de la O, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary