

# **City of Miami**

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## **Meeting Minutes**

**Tuesday, April 17, 2012**

**10:00 AM**

**Commission Chambers**

## **Civil Service Board**

*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 10:14 a.m. The roll call at the commencement of the meeting was as follows:*

**Present:** Member Dames, Member Silverman and Member Moy

**Absent:** Chief Examiner Kaplan

**Vacant:** Member \*\*Vacancy

**ELECTION OF CIVIL SERVICE BOARD MEMBER**

*Miguel de la O, Chairman, having resigned from the Civil Service Board, and Chief Examiner Kaplan not being in attendance, the Executive Secretary stated that the first order of business would be for the Board to nominate an acting Chairperson. Member Dames nominated Member Silverman for the position of Chairperson. Upon hearing no other nominations, the Board considered a motion to ELECT Gerald Silverman to the position of acting Chairperson of the Civil Service Board which resulted as follows:*

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

**Aye:** Silverman, Dames and Moy

**Absent:** Kaplan

**Vacant:** \*\*Vacancy

**A. APPROVING THE MINUTES OF:**

Regular Meeting of April 3, 2012.

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

**Aye:** Silverman, Dames and Moy

**Absent:** Kaplan

**Vacant:** \*\*Vacancy

**B. PERSONNEL MATTERS**

- B.1 12-00423** Copy of a memorandum from Albert Sosa, Director, Capital Improvement Programs, requesting to extend the probationary period of Yogesh Shah, Accountant Supervisor, three (3) additional months beyond May 2, 2012. (DISCUSSION)

*Chairman Silverman asked Mr. Shah if he was aware that the department requested to extend his probationary period an additional three months beyond May 2, 2012. Yogesh Shah responded in the affirmative. Chairman Silverman asked Mr. Shah if he objected to the extension of his probationary period. Mr. Shah responded in the negative.*

*Following discussion, the Board entered a motion to grant the department's request to extend Yogesh Shah's probationary period an additional three months beyond May 2, 2012 which resulted as follows:*

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

**Aye:** Silverman, Dames and Moy

**Absent:** Kaplan

**Vacant:** \*\*Vacancy

**C. MILITARY LEAVES OF ABSENCE**

**D. DISCIPLINARY MATTERS**

- D.1 11-00830** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Marcel Jackson, Police Officer, of his 30-hour suspension, effective March 23, 2012 and a copy of a request to appeal from Officer Jackson. A hearing of appeal is scheduled for September 18, 2012. (NOTIFICATION)

**RECEIVED AND FILED**

- D.2 09-00159** Copy of Memorandum from Janeen Richard, Assistant City Attorney, on behalf of the City of Miami Police Department, restoring an 8-hour suspension to Shekita Johnson, Communications Operator. Ms. Johnson's Civil Service Board appeal, #09-04D, will be withdrawn from the Board's docket. (NOTIFICATION)

**NOTIFIED**

**E. GENERAL ITEMS**

- E.1 11-00308** Copy of a "Motion to Declare Null and Void action of Civil Service Board," from Reginald Klyne, Attorney, in the matter of Meredith Nation and a copy of a "Response," from Janeen Richard, Assistant City Attorney. (DISCUSSION)
- Chairman Silverman asked Attorney Clyne to present his Motion, but asked that in doing so, he did not want him to retry the case since the Board has already heard the case. Attorney Clyne responded that there were errors in the procedures and violations of the Civil Service Rules. He went on to say that the errors in the procedures are based upon the Board's own policies and procedures, which have due process built into it. Attorney Clyne further stated the Board is a quasi-judicial body like a judge and jury that hears the evidence and deliberate and rule on it at that time in front of everyone. He went on to say that the Board cannot rule on a matter and then go home for three months, come back and redo whatever rulings were previously made. Attorney Clyne further stated Special Counsel Everett indicated that the Board has not adopted Robert's Rules of Order so it would not apply in this case and that the Board cannot change its mind and use Robert's Rules of Order to make a Motion for Reconsideration and turn it into a Motion to Reopen and then a Motion to Rescind; however, it was done and by doing so the Board violated its own rules. He stated that he does not mean to insult any of the Board Members, but the Board is giving the appearance of impropriety by doing what it did. He further stated the question becomes whether the Board could do what it did and the answer is no based upon the Board's own Rules. Attorney Clyne stated there was a motion made at the time as to whether the Board could follow through with this process had his client been properly terminated. He went on to say that by the Board's own rules, it does not say that a designee can terminate an employee instead it states that*

*the only two people who can terminate an employee are the department director and the City Manager.*

*Chairman Silverman interrupted Attorney Clyne's presentation to remind him not to retry the case. He also reminded Attorney Clyne if he felt it was improper for the Board to change its vote, he should make a record to that concern. Attorney Clyne responded that what he is trying to make as a record is to show the flaws in the process and the flaws in not following the rules. He went on to say that one of the flaws is that his client was terminated by Larry Spring who was not a department director nor the City Manager rather he was the temporary Human Resources Director, so he did not have the authority to fire his client. Attorney Clyne further stated the other point he would like to make is when his client returned from the Downtown Development Authority (DDA), there was a contract between DDA and the City that his client would be guaranteed a job. ACA Richard interjected and stated she normally does not object to motions but the first argument (made by Attorney Clyne) was already decided by this Board and now this new argument about whether there was a contract between the DDA and the City [has no standing at this time]. Chairman Silverman asked ACA Richard to allow Attorney Clyne to make his record.*

*Member Kaplan asked if Special Counsel Everett stated that the Board had the authority to reopen the case regarding Ms. Nation. Chairman Silverman responded in the affirmative. He went on to say that after both sides have presented their positions, the Board will hear from Special Counsel at that time, but for now he would like for Attorney Clyne to continue with his Motion.*

*In continuing with his presentation, Attorney Clyne read a statement from Board Minutes, made by the former Chairman (Miguel de la O) of the Civil Service Board into the record which states, "It troubles him obviously because the environment he works in is courts. He went on to say that whenever someone wants to reopen a matter, there has to be something that changed. Chairman de la O further stated that he does not like the idea of the Board being able to rescind a vote when having second thoughts because it opens the Board up to the appearance of impropriety or the appearance that someone got to them afterwards. Chairman de la O clarified that his thoughts are not about or directed towards any one Board Member but it begs the question why is the Board changing the vote when there has been no new evidence." Attorney Clyne further stated this was the crux of the matter and the (former) Chairman was right that a Motion to Reconsider is not done to reopen a matter unless there is new evidence or facts or the law has somehow changed. He stated that Robert's Rules of Order is not used in court or to a jury so when a jury has made a decision, it is final. Attorney Clyne went on to say his client was willing to give back the money and a deal was worked out to that effect. Chairman Silverman made clear that Ms. Nation wanting to repay the money was not a part of the record and the reason he could say this was because he specifically asked Ms. Nation if she would repay the money and she replied in the negative. Attorney Clyne responded that Ms. Nation's attorney at the time stated that she would talk to Ms. Nation about the repayment of funds. He went on to say that he attached a copy of Jessica Pacheco's (former Assistant Director of Labor Relations) affidavit to his motion which shows that the City had talked to his client about repaying the money. He went on to say that the City's current policy is if there is an overpayment, it is worked out with the employee to pay it back.*

*Chairman Silverman again asked Attorney Clyne not to retry the case. He asked Attorney Clyne if there was anything else he wished to relate to the Board as to why his motion should be granted since he has already told the Board that the legal basis for his motion is that Robert's Rules of Order does not apply. Attorney Clyne responded that part of his motion was that the grounds for termination or the charges used to terminate her (i.e. Ms. Nation was rude or obscene to someone), do not fit (the crime). Chairman*

Silverman stated that Attorney Clyne's motion is a part of the record, but the Board is not going to retry the case. He went on to say that these issues were addressed during the hearing and this (what is currently being addressed) is a legal issue as to whether the Board had authority to change its mind. Attorney Clyne responded on the issue of whether the Board had authority to change its mind, the other issue is did the Board make some mistakes and was the procedure correct. He went on to say that he knows the Chairman wants him to hurry along but his client's job is on the line and he wants to do the best job he can as an advocate. Attorney Clyne further stated according APM 2-11, it provides for the procedures of returning money when an employee is overpaid and by doing so, the employee maintains their job. He stated the rules used to terminate his client were tied to her being absent and tardy but she was never tardy because her job was never given back to her. Attorney Clyne went on to say none of the rules match the crime, but there is a perfect rule that matches the crime which is the contract between the DDA and the City. He further stated when Ms. Nation's attorney at the time met with Larry Spring, Jessica Pacheco, and the Assistant City Attorney, the deal was they had to give Ms. Nation her job back because of the DDA and contract and that they would work out how much Ms. Nation had to pay back to the City. Attorney Clyne stated what he is saying is that the Board should go back to its original decision because reconsidering the Board's vote was improper and that the Board should follow the current policy which is to let his client keep her job and have her repay the money.

Chairman Silverman asked for the Special Counsel advice to the Board on the Motion. Cynthia A. Everett, Special Counsel to the Board responded her advice is to hear the matter which is what the Board has done and after hearing from the City, the Board can make a decision whether to grant or deny Attorney Clyne's motion. Member Kaplan stated that he preferred to hear from Special Counsel Everett first. Special Counsel Everett responded that she sees what the Board is asking her and she has already opined on this matter which is the Board can change its mind.

Chairman Silverman asked for the City's position. ACA Richard stated that she prepared a short memo setting forth her response to motion filed by Ms. Nation. She went on to say that the heart of the matter is whether the Board had the authority or power to reconsider its vote and provided an overview of the process that was followed by the Board. ACA Richard further stated after considering Robert's Rules of Order, it was decided that if a Motion to Reconsider was introduced, it had to be considered at the same meeting; however, there is procedure for a Motion to Rescind that could be made at a subsequent meeting and that is what happened. ACA Richard further stated the Motion to Rescind was done on the advice of the Board's Special Counsel and both attorneys were given ample time to prepare whatever legal memorandum they wanted at that time as to whether the Board had the authority to change its vote. She stated this issue was already raised and decided by the Board in a vote, that it could move to rescind a (previous) vote and that it is perfectly acceptable under Robert's Rules which this Board has been operating under as its procedural manual. ACA Richard went on to say with regards to the other issues, she thinks Chairman Silverman hit it on the head because all of this new evidence as it relates to the policy and procedures for employees who have been overpaid that Attorney Clyne is now trying to introduce, she can say that policy was officially adopted after Ms. Nation was terminated. She further stated that affidavits are improper at this time to be introduced since the case has already been heard and the votes cast the case and the Board's attorney did in effect advise the Board that it could do what it did and rescind its prior vote, revoke, and find Ms. Nation guilty by a vote of (4-1).

Chairman Silverman asked Special Counsel Everett if there was anything else she wished to relate to the Board. Special Counsel Everett responded that she thought the City's attorney summed it up nicely. Special Counsel Everett further stated just to make it clear since it is an issue that continues to come up, to the best of her knowledge, this

Board has never formally adopted Robert's Rules of Order or any other course of proceedings for deliberative bodies. She stated as a practical matter, the Board has conducted itself to a certain extent in accordance with Robert's Rules; however, the Civil Service Rules allows the Board to set its policies and procedures as it deems fit. She stated the Board's mission is to provide justice and to do what is right and fair by all parties so in keeping with the Board's practice, Robert's Rules is used as a model of proceedings and there was a proceeding for a Motion to Rescind. Special Counsel Everett went on to say she believes at the time the issue came up, Ms. Nation and her attorney may not have been present so notice was given to the parties. She further stated that when the parties were present, additional time was given so that both sides could be properly prepared to make all of the legal arguments they wanted for or against the issue at hand.

Attorney Clyne stated Special Counsel Everett stated one critical fact which was this Board never adopted Robert's Rules of Order. He went on to say that would mean the Board would not be following Robert's Rules, and if the Board were to look at Rule 14 and the Board's manual, it does not say the Board uses Robert's Rules of Order. Attorney Clyne further stated according to the process, the Board is supposed to make a deliberation, listen to the evidence, and then make a ruling, but the rule does not allow the Board to rescind. He stated that he supplied a memorandum of Supreme Court cases and from other jurisdictions and he outlined the rules but what supplied is you can do whatever you want, but it did not cite one rule or case to support its argument. Attorney Clyne went on to say that if the Board has not adopted Robert's Rules of Order, then how can the Board apply it arbitrarily and capriciously at a moment's notice because it wants to do something? He further stated that is not right and what he is asking is that the Board follow its own policies and procedures. Attorney Clyne stated that Rule 14.4(a) through (g) outlines the process, but when the Board considered the Motion to Rescind, it went outside of its own process. He went on to say that the process is designed to keep the constitutional guarantees that every employee has a right to have in this hearing. Attorney Clyne further stated he asked and begged Special Counsel Everett and ACA Richard to show him one case or rule that can support their position and neither one has produced anything.

Special Counsel Everett stated so that the record is clear since Attorney Clyne has called her into play, she would specifically refer the Board to Rule 14.4 (i) and (g) as well as Rule 14.1(a) that clearly state that this Board decides how it is going to conduct its proceedings so whether the Board wants to follow Robert's Rules, Mason's Rules, or some other entity that has set out a conduct for a meeting or proceedings, the Board has the authority to do so.

Chairman Silverman called for Board discussion on the employee's Motion to Declare Null and Void Actions of the Civil Service Board. Member Kaplan stated that he is one of the Members of the Board who changed his mind following the hearing where very emotional responses were given by Ms. Nation. He went on to say he felt very emotionally involved with this woman with a child collecting her pay for 9 months and staying at home. Member Kaplan further stated that is such an outrageous act that his feeling should have come up the very first time, but it did not in his case, and he had an opportunity to think about the matter and change his mind. He stated the suggestion by [the former Chairman] that some impropriety may have been involved and now the suggestion of Attorney Clyne that some impropriety was involved offends him because he has never been accused of impropriety during the practice of law or while as a Member of the Civil Service Board. Member Kaplan went on to say any Motion to deny what the Board did should be defeated.

Member Moy stated that he agrees with Member Kaplan's sentiments. He went on to say that Ms. Nation was given the opportunity to return to her job just as long as she

agreed to repay the money she received while sitting at home. Member Moy further stated he clearly recalls that Ms. Nation and her attorney stepped out of the room to discuss whether she would repay the money and upon her return to the room, she decided she was not going to repay the money so Ms. Nation was given an opportunity to repay the money but she chose not to.

Member Dames stated that he will defend his colleagues (Members Moy and Kaplan) that it is clear in his mind that they did not go home and talk to anybody about anything regarding this case so there was no impropriety. He went on to say that he was the Board Member who slept very well after he voted and he voted in favor of Ms. Nation. Member Dames further stated the reason he voted the way he did was because the City knew she was at home and there is no getting around that. He stated that he really has a problem with an employee being on loan to another organization or department and is promised to have a job, but upon returning finds there is no job although a contract was provided to guarantee the employee a job. Member Dames went on to say based on what transpired, he feels the City still had the burden to find Ms. Nation a job, but it was twisted around as if Ms. Nation had to find herself a job instead of the City.

Following discussion, the Board entered a motion to GRANT the employee's Motion to Declare Null and Void Actions of the Civil Service Board. The motion DIED FOR LACK OF A SECOND. The motion having failed, the Board entered a motion to DENY the employee's motion which resulted as follows:

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

**Aye:** Silverman, Moy and Kaplan

**No:** Dames

**Vacant:** \*\*Vacancy

**E.2 11-00308**

Copy of Findings of Fact in the Appeal Hearing of Meredith Nation, Procurement Supervisor (former), relative to her termination, effective March 23, 2011. (DISCUSSION)  
Deferred from the meeting of March 20, 2012.

The Board entered a motion to APPROVE the Findings of Fact as amended, which resulted as follows:

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

**Aye:** Silverman, Moy and Kaplan

**No:** Dames

**Vacant:** \*\*Vacancy

**E.3 11-01010**

Copy of Findings of Fact in the Appeal Hearing of Ansonia Chatfield, Emergency Dispatcher, relative to her termination, effective October 20, 2011. (DISCUSSION)  
Deferred from the meeting of April 3, 2012.

The Board entered a motion to APPROVE the Findings of Fact as presented which 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

**Absent:** Kaplan

**Vacant:** \*\*Vacancy

- E.4 11-01036** Copy of Findings of Fact in the Grievance Hearing 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)

*The Board entered a motion to APPROVE the Findings of Fact as amended, which resulted as follows:*

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

**Aye:** Silverman, Dames and Moy

**Absent:** Kaplan

**Vacant:** \*\*Vacancy

## **F. REPORTS**

- F.1 12-00007** Pending Hearings as of April 17, 2012. (NOTIFICATION)

**PRESENTED**

## **G. REQUESTS FOR HEARINGS**

- G.1 12-00425** Copy of a Request for Grievance Hearing from Lewis Mahoney, Park Manager II, pursuant to Rule 16.1, Abuse of Power by his Supervisor, Donald Lutton, Superintendent, Parks and Recreation Department and 16.2, Complaint by Employee. (DISCUSSION)

*Chairman Silverman asked Mr. Mahoney to tell the Board his reason for requesting a hearing. Mr. Mahoney responded that he requested a hearing because he believes he should not be harassed or have fear of being harmed or verbally abused by his superintendent. He went on to say that he believes that his superintendent abused his power by yelling and belittling him and while he does not know if he has done this to other employees, he has personally experienced the superintendent's abuse.*

*Chairman Silverman asked Mr. Mahoney if he had spoken with staff from the Office of Labor Relations or anyone else to resolve his matter or did he just file his complaint with the Civil Service Board. Mr. Mahoney responded that he spoke with former Director Ernest Burkeen and Interim Director Juan Pascual about the matter before coming to the Board. He went on to say that (since he had spoken to Administration in the Parks Department) his hope was that the matter would be resolved and he could continue to do his job, but that did not happen which is why he is before the Board. Mr. Mahoney further stated that he has had to flee from his office to avoid a verbal confrontation and fear of a physical confrontation on the part of his superintendent, which is another reason he requested a hearing before the Board.*

*Chairman Silverman stated this is not the type of case the Board normally hears and asked to hear the department's position. Assistant City Attorney (ACA) Richard*



responded that she agreed with Chairman Silverman that the Board does not hear the type of case for which Mr. Mahoney is seeking a hearing. She went on to say that as an initial point, she does not see what Mr. Mahoney is claiming or what rules have been violated. She went on to say based upon what she heard from Mr. Mahoney, it just seemed to be a verbal dispute between two co-workers that can be resolved in another forum. ACA Richard further stated that Mr. Mahoney's claim does not rise to the level of an abuse of power investigation that should be filed with the Board.

Chairman Silverman asked ACA Richard if the Board were to defer Mr. Mahoney's request today, would she be willing to meet with administration and Mr. Mahoney for the purpose of trying to resolve the matter without the Board's action. ACA Richard responded that this is the first that she has heard of Mr. Mahoney's complaint, but she did not have a problem meeting with administration and Mr. Mahoney on the matter. She went on to say that Mr. Mahoney did mention that he spoke with the former Parks Director but she can reach out to the Interim Director, Juan Pascual, to see what can be done to resolve this matter. Chairman Silverman asked if there is someone from the Office of Labor Relations that normally deals with this type of matter. ACA Richard responded in the affirmative. She went on to say that if there are any claims of workplace violence, for example, Mr. Mahoney made mentioned of verbal harassment that could have escalated to a physical altercation, these types of issues would be investigated by the Office of Labor Relations.

Member Dames asked Mr. Mahoney for the name of his supervisor and how long he had been working for this individual. Mr. Mahoney responded that his superintendent's name is Donald Lutton, that he began working for him in 2008 and since that time he has been harassed by him. Member Dames asked Mr. Mahoney what the result was when he complained to management about his dealings with Mr. Lutton. Mr. Mahoney responded that he has been transferred to various City parks and that his hours of work have been changed. He went on to say that he also thinks there is an abuse of power on the part of the department by changing his reporting time from 3:00 p.m. to 12 noon, which will force him into retirement from the School System, although the reporting time for other individuals has not changed. Mr. Mahoney further stated that he is at the point that he does not know what else to do other than bring his complaint to the Board.

Following discussion, the Board entered a motion to grant Lewis Mahoney's request for a grievance hearing pursuant to Rule 16.1. Under discussion on the motion, Chairman Silverman reiterated that Mr. Mahoney needs to meet with ACA Richard and the Office of Labor Relations to try to resolve the issue before the Board considers the matter. The motion resulted as follows:

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

**Aye:** Silverman, Dames and Moy

**Absent:** Kaplan

**Vacant:** \*\*Vacancy

**DISCUSSED :** Chairman Silverman instructed ACA Richard to meet with the Parks Interim Director, a representative from the Office of Labor Relations and Mr. Mahoney to try and resolve the matter prior to case being heard by the Board.

**G.2 12-00426**

Copy of a Request for Grievance Hearing from Paul Hernandez, Chief Mechanical Inspector, pursuant to Rule 16.1, Abuse of Power by his Director, Mariano Fernandez, Building Department, and 16.2, Complaint by Employee alleging a violation of Rule 14.10, Reduction in Pay or Position.

**(DISCUSSION)**

Chairman Silverman stated that the Board has reviewed Mr. Hernandez' complaint and asked Attorney Braverman if there was anything he wished to add. Michael Braverman, Attorney at Law on behalf of Paul Hernandez, stated that his client would like to address the Board but before doing so, he would say that under Rule 16.1, there have been allegations of an abuse of power and there clearly have been issues raised in Mr. Hernandez' memorandum that depending on what happens (with regards to granting a hearing) the Board may hear additional comments in the [Joan Greene] hearing because it involves the Building Department. He went on to say that it now appears there is a grievance filed by every employee that has been involved in the reorganization by the Building Department so he believes Mr. Hernandez should be granted a hearing. Attorney Braverman further stated there are serious problems with the Building Department and he believes that the issues outlined in Mr. Hernandez' memorandum rise to the level where he should be afforded a Rule 14 hearing because it appears that his client's duties are being reduced to such an extent that he is actually being placed in a different classification. He stated that he does not mean to put the cart before the horse but this is what is being done in the Building Department systematically to circumvent the Rules.

Chairman Silverman asked Attorney Braverman if anything was done by him or his client internally to try to resolve the matter. Attorney Braverman responded that he has not, but he is aware that Mr. Hernandez has had a number of emails go back and forth to Administration. He went on to say that the Board may have discerned from the emails that his client's complaint stemmed from him being out on family medical leave and having an exchange with a supervisor so he knows that Mr. Hernandez has been open to discuss any resolution regarding this matter. Attorney Braverman reiterated that Mr. Hernandez wished to address the Board.

Paul Hernandez, Chief Mechanical Inspector, appeared before the Board and stated that he has been employed with the City of Miami for almost 12 years, two of which will be as a Chief Mechanical Inspector on September 5, 2012. He went on to say that he has had the privilege to participate with City of Miami during the construction boom with regards to building projects that were mechanically related. Mr. Hernandez further stated that he has always considered himself humble and a privilege provided to him by the City of Miami to participate in major building projects. He stated as a public servant he has always treated the public and his co-workers in the same manner that he would like to be treated that when they walked away they were treated with respect and a complete sense of satisfaction for the purpose for which they came to see him. Mr. Hernandez went on to say that all of his performance evaluations have always been rated above average and nothing less. He further stated that during his tenure as Chief Mechanical Inspector he has been faced with a new challenge unlike the other divisions in the Building Department (i.e. electrical, plumbing, building) in a way that he has had to work 10-12 hour days, has had to come in on Saturdays unlike the other divisions that have been properly staffed, and in an email from his department director to him, he learned that his director removed him from the Dade County Board of Rules and Appeals as Chief Mechanical Inspector and reassigned it to a part-time/temporary employee. Mr. Hernandez stated that since the retirement of Mechanical Inspector Rodriguez, he is the only person assigned to his area and he was told he could not solicit assistance from another employee who works in the elevator section unless it is an emergency. He went on to say that he provided emails and meeting notes providing proof of an abuse of power, harassment, and a hostile working environment on the part of the Building Director Mariano Fernandez.

Chairman Silverman asked for the department's position on Mr. Hernandez' request for a hearing. ACA Richard responded that she opposes the employee's request for a hearing. She went on to say that the facts do not rise to the level of a violation of Rule

14.10, Reduction in Pay or Position, because Mr. Hernandez continues to serve as the Chief Mechanical Inspector. ACA Richard further stated when an employee goes on FMLA leave, the City can hire a temporary employee during the time of the employee's absence. She stated in this case, because the City is required by the Building Code to have a Chief Mechanical Inspector, that is what the City did when it hired the temporary employee. ACA Richard went on to say that when Mr. Hernandez returned to work, he returned as a Chief Mechanical Inspector, receiving the same pay, so he has not lost his position. She further stated that what she is hearing is Mr. Hernandez complain that he has to go out in the field to conduct inspections; however, the truth of the matter is there are no other inspectors in the Building Department and the inspections have to be done. ACA Richard stated Mr. Hernandez wants to sit back and supervise but his job description indicates that he must perform duties as assigned. She went on to say if Mr. Hernandez feels that he has an issue that FMLA has been violated, or that he has not been given his rights, there is a separate department within the City devoted to resolving claims of harassment and violations of Federal Law. ACA Richard further stated there has been no evidence of an abuse of power or that Rule 14.10 was violated so she oppose the request for a hearing.

Chairman Silverman asked if Mr. Hernandez was reduced in grade. Attorney Braverman responded that Mr. Hernandez had a de facto demotion. He went on to say the reality is that this abuse of power is not necessarily the same as having a suspension where Mr. Hernandez was given reason or cause for discipline. Chairman Silverman asked again if Mr. Hernandez was reduced in grade. Attorney Braverman responded that Mr. Hernandez' pay was not reduced and his classification has not been changed, but his duties and placement at certain Boards where he serves on behalf of the City of Miami have been affected. Chairman Silverman asked Attorney Braverman if (what he explained to the Board) was a Civil Service matter. Attorney Braverman responded that he believes that it meets the criteria under Rule 14.1 because de facto he believes Mr. Hernandez has been reduced in grade.

ACA Richard stated that she has the job specification for the Chief Mechanical Inspector position which states that Mr. Hernandez has to do work as assigned. She went on to say that Mr. Hernandez is being assigned to conduct inspections because there are no other mechanical inspectors in the department. ACA Richard further stated there is a recruitment for mechanical inspector but until that happens, Mr. Hernandez needs to go out and conduct mechanical inspections.

Following discussion, the Board entered a motion to grant the employee's request for a Rule 16.2 hearing, alleging a violation of Rule 14.10, which resulted as follows:

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

**Aye:** Silverman, Dames and Moy

**Absent:** Kaplan

**Vacant:** \*\*Vacancy

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

**H.1 11-00892** Grievance Hearing on behalf of Ricardo Novas, Broadcast Engineer, pursuant to Rule 16.2, concerning a violation of Rule 12, Layoff, Resignation, and Reinstatement.

ACA Richard stated that she is not prepared to go forward with her case and that she is requesting a continuance due to the fact that two of her witnesses are not available.

*She went on to say this is her first request for a continuance and that she has been very accommodating with opposing counsel when he requested a continuance. ACA Richard further stated that she is asking for the Board's indulgence to allow her additional time to have her witnesses available.*

*Attorney Braverman stated that he would like to know the names of the department's two witnesses that are unavailable. He went on to say that he did receive an email from ACA Richard on Friday requesting his input regarding a continuance and he responded that he would be willing to take the hearings out of turn and have Ms. Greene's case heard first but he had not been told of any witness being unavailable except Luis Cabrera. Attorney Braverman further stated that he finds himself in a unique position in that this is a Rule 16.1 hearing and it appears that he subpoenaed certain witnesses who have not responded so he is going to be placed in a position that if he oppose the continuance being made by the department, he may be forced to go forward without the witnesses he may need to present his case.*

*Chairman Silverman asked Attorney Braverman if he has an objection to the continuance because it sounds as though he also needs a continuance. Attorney Braverman responded he did not think that was the case. Chairman Silverman asked if the Board denied the department's continuance request would he be prepared to go forward with his case. Attorney Braverman responded that he would be prepared to go forward; however, he would request that Ms. Greene's case be heard first. Chairman Silverman suggested that Attorney Braverman consult with his client and then advise the Board of their decision.*

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*Some time later Attorney Braverman returned to the podium and advised the Board that he had no objection to the department's request for a continuance, but he does not know why the two witnesses did not show up for the hearings today and he has not had anything placed on the record to show good cause for their unavailability. He went on to say that he plans on enforcing the subpoenas for the next hearing if those witnesses fail to appear.*

*Following discussion, the Board entered a motion to CONTINUE the hearing of Ricardo Novas and charge the continuance to the department which resulted as follows:*

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

**Aye:** Silverman and Moy

**No:** Dames

**Absent:** Kaplan

**Vacant:** \*\*Vacancy

**NOTE: Hearing will be rescheduled to a future meeting date.**

**H.2 11-00902**

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.

*Chairman Silverman asked the department's attorney if she was prepared to go forward with her case today. ACA Richard responded in the negative. She went on to say that her witnesses, Daniel Alfonso and Luis Cabrera, are not available to testify at either*

*scheduled hearing today.*

*Chairman Silverman asked if this case had been continued before. ACA Richard responded that this case has been continued before but not at her request. Chairman Silverman asked opposing counsel for his position on the continuance request. Attorney Braverman responded that he is not in a position where he can say that these witnesses were not subpoenaed by him so he was wondering if he could indulge the Board and find out whether he can compel Luis Cabrera as to why he is not available. He stated that he also subpoenaed Mr. Cabrera and cannot potentially proceed without him. Chairman Silverman stated that it sounded to him that two of the department's witnesses are not available and Attorney Braverman cannot go forward without having one of the witnesses testify. He asked Attorney Braverman again if he would be ready to go forward with his case today if the Board denies the department's continuance request and if the witness is not available to testify. Attorney Braverman responded that he is ready and will deal with the matter in whatever way he can. Chairman Silverman stated he did not understand what Attorney Braverman meant but he would say that if the Board starts Ms. Greene's case, he does not want Attorney Braverman to tell him in the middle of the hearing that he is missing a witness because if the Board goes forward today, it will finish the case today. He went on to say this is the last meeting of the current Board so he is not going to start the case and continue it down the road and if the Board starts the case, he wants Attorney Braverman to understand that he will not be in a position later on to say that he cannot finish the case because his witness is not available. Chairman Silverman asked Attorney Braverman to consult with his client as to whether they will proceed today. After meeting with his client, Attorney Braverman responded that they will go forward with Ms. Greene's case today.*

*ACA Richard stated that she thinks it is very unfair if the City cannot be granted one continuance that is requested in this case. She went on to say that she has been amenable to opposing counsel when he needed to request a continuance; however, the one time that she requests a continuance, it is not even-handed. ACA Richard further stated it is clear that the deck is stacked against her. Chairman Silverman stated he would not say that because the Board has not done anything with regards to the continuance request. ACA Richard responded she understands, but the Board is going to hold a hearing where the department is not in a position to put on any of its witnesses. She went on to say that Luis Cabrera is an essential witness to the case because he signed the letter which ended Ms. Greene's employment. ACA Richard further stated if the case goes forward, the Board's recommendation will not be based on a complete evidentiary record and therefore the City Manager would not have all of the evidence available to him come time for him to make the decision [for a remedy, if any].*

*Following discussion, Member Dames stated that the matter of Joan Greene came up months ago where there was supposed be a settlement of this case but at the time the settlement was due, there was death in the family and the settlement did not happen so he is ready to hear the case today.*

*Chairman Silverman asked if Ms. Greene's has been continued before. ACA Richard stated there was a continuance granted by the Board at the request of the employee. She went on to say regarding the death in family mentioned, it had to do with the death of her mother who died two days before this case was to go to hearing; so to bring it up now and suggest that should be charged against her for requesting a hearing is highly offensive.*

*Following discussion, the Board entered a motion to DENY the department's request for a continuance which resulted as follows:*

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

**Aye:** Dames, Moy and Kaplan

**No:** Silverman

**Vacant:** \*\*Vacancy

*The department's motion for a continuance having been denied, the Board entered into the scheduled grievance hearing on behalf of Joan Greene, the Grievant.*

*Michael A. Braverman, Attorney at Law, represented the Grievant.*

*Janeen Richard, Assistant City Attorney (ACA), represented the Department.*

*The Rule of Witnesses was invoked and the witnesses were instructed not to discuss the case among themselves. All witnesses were sworn in individually. Witnesses for the Grievant appeared in the following order:*

- 1. Amarilys Perez, AFSCME-Local 1907 Union.*
- 2. Luis Cabrera, Assistant City Manager/Deputy Police Chief, City of Miami.*
- 3. Joan Greene, Secretary II, City of Miami, Department of Building. Questions were posed by Board Members Moy and Dames during the testimony of Joan Greene.*

*The Grievant rested her case.*

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

- 1. Luis Cabrera, Assistant City Manager/Deputy Police Chief, City of Miami.*
- 2. Vanessa Acosta, Assistant Director, City of Miami, Department of Building. Questions were posed by Board Member Moy during the testimony of Vanessa Acosta.*
- 3. Ricardo Martinez, Classification & Pay Supervisor, City of Miami, Department of Police. Questions were posed by Board Members Moy and Dames during the testimony of Ricardo Martinez.*

*The Department rested its case. The Board proceeded to closing argument which was presented by both attorneys. Following final argument, the Board entered a motion to return Joan Greene to her position of Secretary II with full salary and benefits.*

*Under discussion on the motion, Member Dames stated that he had no problem with the department trying to eliminate the Secretary II position in the Building Department as a result of a reorganization plan because Management has that right. He went on to say that the Building Director thought Ms. Greene would bump another employee in the Police Department (with the same classification and still have a job) which is why she was transferred to the Police Department. Member Dames further stated that he has always wondered if the position of an employee who (elected to enter the Deferred Retirement Option Plan [DROP]) was eliminated would that employee be terminated if he/she had no previous classified position to return to or would the employee be grandfathered into the position because of their years of service, and then eliminate the position once the employee retired. He stated that the employee Ms. Greene was expected to bump was reclassified to a Typist Clerk III position two years prior to Ms. Greene being transferred so he thought this oversight in itself was negligence on the part of the City. Member Dames went on to say once the oversight came to light, there was no other Secretary II (in the City of Miami) that Ms. Greene could bump so the*

*department terminated her employment after 29 years of service which he thinks is horrible.*

*Chairman Silverman stated that he did not think Ms. Greene was properly discharged so he thinks the Board should recommend to the City Manager that Ms. Greene be reinstated.*

*Following discussion, the motion on the floor to recommend to the City Manager that Joan Greene be returned to her position of Secretary II with full salary and benefits which resulted as follows:*

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

**Aye:** Silverman, Dames, Moy and Kaplan

**Present:** Chief Examiner Kaplan, Member \*\*Vacancy, Member Dames, Member Silverman and Member Moy

**ADJOURNMENT:**

*The meeting ADJOURNED at 3:37 p.m. Breaks were taken at 11:48-11:55 a.m., 12:39-12:58 p.m., 2:10-2:45 p.m. (LUNCH) and 3:12-3:17 p.m.*

**SIGNATURE:**

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**Gerald Silverman, Chairperson**

**ATTEST:**

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**Tishria L. Mindingall, Executive Secretary**