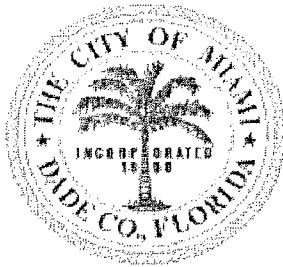


City of Miami

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Meeting Minutes

Tuesday, May 15, 2012

10:00 AM

Commission Chambers

Civil Service Board

*Gerald Silverman, Board Member
Sean Moy, Board Member
Carlos Lago, Board Member
Lillie Harris, Board Member
Christine Gomez, Board Member*

PLEDGE OF ALLEGIANCE

The meeting was called to order at 10:12 a.m. The roll call at the commencement of the meeting was as follows:

Present: Member Gomez, Member Harris, Member Lago, Member Moy, and Member Silverman

ELECTION OF CIVIL SERVICE BOARD MEMBERS

The Executive Secretary stated that in accordance with Civil Service Rule 2.1, the first order of business after the appointment of the Civil Service Board Members is to elect officers, inclusive of a Chairperson, Chief Examiner, and appointed Executive Secretary. The Executive Secretary then opened the floor for nominations for the position of Chair of the Board.

Member Harris 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 Chairperson of the Civil Service Board which resulted as follows:

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

Aye: Silverman, Gomez, Lago, Harris and Moy

Subsequent to electing a Member as Chairperson of the Board, the Executive Secretary turned the meeting over to Chairman Silverman, who opened the floor for nominations for the position of Chief Examiner.

Member Harris nominated Member Moy for the position of Chief Examiner. Upon hearing no other nominations, the Board considered a motion to ELECT Sean Moy to the position of Chief Examiner which resulted as follows:

Motion by Member Harris, seconded by Member Gomez, to APPROVE. PASSED by the following vote.

Aye: Silverman, Gomez, Lago, Harris and Moy

Chairman Silverman opened the floor for nominations for the appointment of Executive Secretary to the Civil Service Board.

Chief Examiner Moy nominated Tishria L. Mindingall for the position of Executive Secretary. Upon hearing no other nominations, the Board considered a motion to APPROVE the appointment of Tishria L. Mindingall as Executive Secretary of the Civil Service Board which resulted as follows:

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

Aye: Silverman, Gomez, Lago, Harris and Moy

ADOPTION OF CIVIL SERVICE RULES AND REGULATIONS

The Board considered a motion to adopt the existing Civil Service Rules and Regulations which resulted as follows:

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

Aye: Silverman, Gomez, Lago, Harris and Moy

Following consideration of the Board's parliamentary duties, Chairman Silverman thanked the Board for nominating him as Chairman and stated that he wished to say a couple of things since this is a new Board. He went on to say that the Board has a substantial case load as can be seen from the list of pending cases and that he thinks the Board needs to move the cases a little faster than they have before in the past. Chairman Silverman further stated his first thought is the Board cannot remain in the Commission Chambers all day so the Board needs to start and finish cases on the same day. He stated it is very difficult to start a case and have to carry it over for weeks before hearing its conclusion so his intention is to try to keep the cases moving. Chairman Silverman went on to say that in addition to the cases involving employee suspensions, there are also termination cases the Board will hear so his feeling is that priority should be given to the termination cases. He further stated that it is not fair to the City to wait several months to have a termination case heard by the Board, nor is it fair to the employee to have to wait several months to find out whether he/she would have a job, so for this reason, he will try to give priority to the termination cases.

Chairman Silverman shared with the Board the process for which appeal hearings are conducted. He went on to say that appeal hearings are conducted in two parts and the first part is to determine whether the employee is guilty or not guilty of the charges (cited in the charging document). Chairman Silverman further stated if the Board finds the employee not guilty of all of the cited charges, this would end the case and findings are filed with the City Manager. He stated that the City Manager has no authority to overrule the Board as far as whether the employee is guilty or not guilty. Chairman Silverman went on to say if the Board finds the employee guilty of at least one of the cited violations in the charging document, the Board would enter the second part of the hearing which is called the penalty phase. He further stated at that time, the Board would hear evidence and make a recommendation to the City Manager as to the penalty; however, the City Manager does not have to follow the Board's recommendation as to the penalty. Chairman Silverman stated that the City Manager has no authority to overrule the Board as far as whether the employee is guilty or not guilty, but he has complete authority to overrule the Board's recommended penalty if he chooses to do so. He went on to say that the employee has the option of going to court if he/she disagrees with the City Manager's judgment.

Chairman Silverman stated that the Board has relaxed rules in that hearsay evidence is admissible (and taken for what it is worth). He went on to say that the overall philosophy is the Board sits as a jury and is neither the lawyer for the department or the employee. Chairman Silverman further stated that the department is well-represented by an Assistant City Attorney and the employee can represent himself or be represented by a licensed, practicing attorney. He stated since both sides are well-represented, his opinion is that the Board should try to be a judge/jury and not a participant. Chairman Silverman went on to say that the Board Members are all equal in that any Member can respectfully say whatever he/she wants and if anyone does not like anything he does or say, he would ask that the matter be brought to his attention.

Chairman Silverman stated the Board is blessed with a terrific staff consisting of Tishria L. Mindingall, Diane Laurent, and Tameka Jackson. He went on to say that the Board's Special Counsel, Cynthia Everett, is tops even though he sometimes disagree with her position, but she knows what she is doing. Chairman Silverman further stated that was all he had to say and asked if any other Member wished to comment. Hearing none, the Board considered the items on the agenda.

A. APPROVING THE MINUTES OF:

Regular Meeting of May 1, 2012.

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

Aye: Silverman, Gomez, Lago, Harris and Moy

B. PERSONNEL MATTERS

- B.1** A copy of a letter from Johnny Martinez, P.E., City Manager, notifying William Tharp, Project Manager, Department of Information Technology, of his layoff, effective April 2, 2012 and that his name will be placed on the layoff register for his classification for a period not to exceed 36 months. (NOTIFICATION)

NOTIFIED

- B.2** A copy of a letter from Johnny Martinez, P.E., City Manager, notifying Maria Saavedra, Administrative Aide II, Department of Community Development, of her transfer to the Department of Building, effective May 1, 2012. (NOTIFICATION)

NOTIFIED

- B.3** A copy of a letter from Johnny Martinez, P.E., City Manager, notifying Regina Jones, Administrative Assistant I, Department of Community Development, of her transfer to the City of Miami Police Department, effective May 1, 2012. (NOTIFICATION)

NOTIFIED

- B.4** A copy of a memorandum from Johnny Martinez, P.E., City Manager, notifying Elizabeth Quijano, Administrative Assistant I, of her rollback, effective May 1, 2012. Elizabeth Quijano is being rolled back to Fiscal Assistant. (NOTIFICATION)

NOTIFIED

- B.5** Copy of a memorandum from Beverly Pruitt, Director, Department of Employee Relations, to Konshawnia A. Kelly, Emergency Dispatch Assistant, Department of Police, confirming her voluntary return to her former classification of Typist Clerk II, effective May 7, 2012. (NOTIFICATION)

NOTIFIED

- B.6** A copy of a letter from Johnny Martinez, P.E., City Manager, notifying Frank Lopez, Fiscal Assistant, Community Development Department of his layoff, effective May 1, 2012, and that his name will be placed on a layoff register for his classification for a period not to exceed 36 months. (NOTIFICATION)

NOTIFIED

- B.7 A copy of a letter from Johnny Martinez, P.E., City Manager, notifying Penny White, Fiscal Administrator, Community Development Department of her layoff, effective May 1, 2012, and that her name will be placed on the layoff register for her classification for a period not to exceed 36 months. (NOTIFICATION)

NOTIFIED

- B.8 A copy of a letter from Johnny Martinez, P.E., City Manager, notifying Elga P. Rueda, Administrative Aide II, Community Development Department of her layoff, effective May 1, 2012, and that her name will be placed on the layoff register for her classification for a period not to exceed 36 months. (NOTIFICATION)

NOTIFIED

- B.9 A copy of a letter from Johnny Martinez, P.E., City Manager, notifying Charles F. Johnson, Contract Compliance Analyst, Community Development Department of his layoff, effective May 1, 2012, and that his name will be placed on the layoff register for his classification for a period not to exceed 36 months. (NOTIFICATION)

NOTIFIED

C. MILITARY LEAVES OF ABSENCE

D. DISCIPLINARY MATTERS

E. GENERAL ITEMS

- E.1 Hearing of Appeal on behalf of Luis Hernandez, Police Officer, relative to his 40-hour suspension, effective March 6, 2009. (DISCUSSION)
Rescheduled pursuant to continuance policy; pending settlement since March 6, 2012.

Chairman Silverman stated that this matter was continued from the last meeting because the parties were in the process of settling the case. He asked for the status of the settlement. The Executive Secretary responded that she received a copy of the settlement so this matter will be removed from the Board's docket.

NO ACTION TAKEN: Case will be closed and forwarded to Human Resources for placement in the employee's personnel file.

- E.2 Notice of a Request to Continue from Jon Kreger, Attorney, Ronald J. Cohen, P.A., on behalf of David Carpenter, Police Officer, relative to his 10-hour forfeiture of earned time, effective May 25, 2011. Janeen Richard, Assistant City Attorney, expressed no objection to the continuance request. (DISCUSSION)

Jon Kreger, Attorney on behalf of David Carpenter, stated that his client cannot be present today due to personal issues so he is asking that the Board grant his continuance request.

Chairman Silverman asked ACA Richard if she had an objection to the employee's request for a continuance. ACA Richard responded in the negative. Chairman Silverman asked if there were any questions from Board Members. Hearing none, the Board entered a motion to APPROVE the employee's request for a continuance which resulted as follows:

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

Aye: Silverman, Gomez, Lago, Harris and Moy

E.3

Notice of a Request to Continue from Jon M. Kreger, Attorney, Ronald J. Cohen, P.A., concerning the Appeal Hearing of David Carpenter, Police Officer, relative to his 40-hour suspension, effective November 15, 2011. Janeen Richard, Assistant City Attorney, expressed no objection to the continuance request. (DISCUSSION)

Chairman Silverman stated that agenda items E.2 and E.3 are different cases but they both pertain to hearings requested by Officer David Carpenter. He asked Attorney Kreger if he was offering the same reason as the basis for a continuance in this case. Attorney Kreger responded in the affirmative.

Chairman Silverman asked ACA Richard if she had an objection to the continuance request. ACA Richard responded in the negative. Following discussion, the Board entered a motion to APPROVE the employee's request for a continuance which resulted as follows:

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

Aye: Silverman, Gomez, Lago, Harris and Moy

E.4

Notice of a Request to Continue from Janeen Richard, Attorney, Office of the City Attorney, concerning the Appeal Hearing of Gilberto Gomez, Police Sergeant, relative to his 40-hour forfeiture, effective January 14, 2008. Jon Kreger, Attorney, Ronald J. Cohen, P.A., opposes the request to continue. (DISCUSSION)

ACA Richard stated that she filed a motion to continue because her witness, Lt. Jeffrey Locke, who authored the reprimand, is not available to testify. She went on to say that although her witness is not available, a settlement offer was made to Sgt. Gomez to restore the 40 hours of earned overtime to him that he lost as a result of disciplinary action thereby making the appeal moot at this time.

Chairman Silverman asked opposing counsel for his position on the proposed settlement. Attorney Kreger responded that they oppose the continuance request because opposing counsel is again requesting a continuance because her witnesses are not available. He went on to say that they did receive the settlement offer and that Sgt. Gomez rejected the offer.

Chairman Silverman asked Attorney Kreger if it is his position to go forward with his client's hearing today. Attorney Kreger responded in the affirmative. Chairman Silverman asked for the department's response to the opposing side wanting to go forward with the case. ACA Richard responded that she is not prepared to go forward today because Lt. Locke is not available and the fact that the City is giving Sgt. Gomez back his time, there is no appeal before the Board. She went on to say that respectfully, the Board does not have

jurisdiction to hear Sgt. Gomez' appeal.

Chairman Silverman asked for the scheduling history of Sgt. Gomez' case. The Executive Secretary responded that Sgt. Gomez' case has been continued seven times and of the seven continuances, three continuances each were charged to the employee and to the Board, and one was charged to the department.

Chairman Silverman stated that according to what he heard from ACA Richard, there is no matter to be appealed because the City is going to restore the 40 hours of earned overtime back to Sgt. Gomez. He asked Special Counsel Everett if this was correct. Cynthia A. Everett, Special Counsel to the Board, responded that she did not have any documents in front of her on this matter so she does not know what the charges are. She went on to say this being the case, Attorney Kreger would need to state what the appeal is based on because she does not know if Attorney Kreger is saying that ACA Richard's statement is inaccurate or if there is something else pending. Special Counsel Everett further stated if the Board could hear from Attorney Kreger on this matter, then the Board would know what to go forward on if the case is heard today.

Attorney Kreger stated that the objection stems from a technical issue that he shared with ACA Richard. He went on to say that as far as he understands it, although the departmental order violation would be stricken, the reprimand and Civil Service Rule violation would remain. Attorney Kreger further stated, this being the case, there would still be a record of Sgt. Gomez receiving a reprimand. He stated if the City wants to give Sgt. Gomez his time back (40 hours of earned overtime) that it is fine, but the City should also rescind the reprimand as well because he does not see why the Civil Service Rule should remain if the departmental order is stricken.

Chairman Silverman stated that the Board does not have authority over reprimands and asked Special Counsel Everett if this was correct. Special Counsel Everett responded that the Board does not have jurisdiction over reprimands which is why she is asking what rule would the Board be proceeding under (if there is no time loss included with the reprimand). Attorney Kreger responded as he understands it, Rule 14.2(e)(2) would remain in the reprimand. Chairman Silverman stated that ACA Richard made a settlement offer that was rejected so he would like to know if it is her position to restore the 40 hours back to Sgt. Gomez' time balance. ACA Richard responded in the affirmative. She went on to say that with the restoration of the 40 hours, Sgt. Gomez would receive a reprimand only that is not appealable to the Board because there is no loss of time.

Chairman Silverman asked Attorney Kreger if there was anything else he wished to say on this matter. Attorney Kreger responded that he would submit to change the grounds of the reprimand and not cite a Civil Service Rule since there is the claim that the Board has no jurisdiction to consider reprimands without loss of time. ACA Richard stated that reprimands cite Civil Service Rules all the time even if there is no time loss. She went on to say that this just means the employee does not have the right to come before the Board to challenge the discipline. ACA Richard further stated the only time the employee can appeal discipline is when the penalty results in a suspension, demotion, termination, or loss of time due to a forfeiture. She reiterated that the department is more than willing to restore the 40 hours back to Sgt. Gomez' time balance and close out this matter.

Special Counsel Everett asked to see the charging document that was issued to Sgt. Gomez. Chairman Silverman stated that he would like to say something while Special Counsel Everett reviews the document. He went on to say that it would seem to him that the Board should carry this matter over to the Board's next meeting and if the department does in fact return the 40 hours to Sgt. Gomez, the Board would have no authority to

proceed and this would end the case.

Member Harris asked if the reprimand could be rescinded. Chairman Silverman responded that the Board has no authority to rescind a reprimand. Member Harris stated she asked the question because as it stands now, the Board does have jurisdiction to hear the appeal since Sgt. Gomez rejected the department's offer to restore the 40 hours of earned overtime to him. She went on to say that if Sgt. Gomez is rejecting the settlement offer at this time, her question is if the employee's response to the current settlement offer is to restore the 40 hours and rescind the reprimand, would this be possible? Special Counsel Everett responded that she would like to have the department address the charging document because she needs to know if it is still a part of the record, has it been withdrawn, or is it a settlement of the charges. She went on to say that the settlement offer was not accepted by the employee so it is not clear to her whether the appeal has been withdrawn. She went on to say if the appeal has not been withdrawn, then her response might be there is something pending to appeal but the charging document is a little complicated and confusing and she has not had an opportunity to review it in relation to the allegation. Chairman Silverman responded that is why he suggested this matter be carried over to the next meeting so that Special Counsel has an opportunity to review the document and to make sure that the City restore the 40 hours to Sgt. Gomez.

Member Harris stated at the beginning of the meeting, there was talk about swift justice for closure on both sides. She went on to say that the discipline was effective January 14, 2008 and there have been 7 continuances of this case so that would be her concern with continuing the case again particularly when one side is ready to proceed today.

Member Moy stated that the City is willing to restore the 40 hours to Sgt. Gomez and Sgt. Gomez has a problem with the reprimand so the way he sees it, either way the Board would have to hear the case. He went on to say that the employee has to either agree to the settlement offer or the Board hears the case, but the employee cannot have two bites of the apple. Member Moy further stated this case was continued several times and the Board is trying to move the cases forward so it is up to the employee to decide whether he would accept the settlement offer and if not, the Board will hear the case.

ACA Richard stated that she has agreed to strike certain language in the reprimand along with restoring the time so if Sgt. Gomez does not accept the settlement offer, the Police Department can unilaterally restore the time because this has been done in the past in the case involving Shekita Johnson. She went on to say that she will do the same in this case and afterwards the Board would be divested of jurisdiction to hear a reprimand with no loss of time so there is nothing to appeal.

Chairman Silverman asked if there was anyone else that wished to say something more on this matter. Attorney Kreger responded that he thinks it is completely inappropriate to remove the Board's jurisdiction by simply restoring the 40 hours to his client because at least part of what Sgt. Gomez is appealing is the mark on his record.

Following discussion, the Board entered a motion to DENY the department's request for a continuance. Prior to voting on the motion, ACA Richard asked and was granted to comment on the Board's motion. She went on to say that of the 7 continuances requested, three continuances were granted on behalf of the employee, one on behalf of the department, and three charged to the Board. ACA Richard further stated that she requested a second continuance today because her main witness is not available. She stated that every time the employee has requested a continuance, the department has not opposed, and there were two continuance requests that appear on today's agenda for which she did not object so she is only asking for a brief continuance until the next meeting so

that she can resolve the issue of whether the 40 hours will be restored to Sgt. Gomez and the Board can move forward from that point. She reiterated that her main witness, Lt. Jeffrey Locke, is not available to testify today and he is the person who authored the reprimand.

Following discussion, the motion on the floor to DENY the department's request for a continuance resulted as follows:

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

Aye: Gomez, Harris and Moy

No: Silverman and Lago

DISCUSSED: The motion having passed to deny the continuance request, Sgt. Gomez' hearing will go forward today.

F. REPORTS

F.1 Pending Hearings as of May 15, 2012. (NOTIFICATION)

PRESENTED

G. REQUESTS FOR HEARINGS

H. TODAY'S HEARINGS

H.1 Hearing of Appeal on behalf of David Carpenter, Police Officer, relative to his 10-hour forfeiture of earned time, effective May 25, 2011.

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

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

H.2 Hearing of Appeal on behalf David Carpenter, Police Officer, of his 40-hour suspension, effective November 15, 2011.

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

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

H.3 Hearing of Appeal on behalf of Gilberto Gomez, Police Sergeant, relative to his 40-hour forfeiture, effective January 14, 2008.

Prior to entering the case of Sgt. Gomez, ACA Richard reminded the Board that she was not prepared to go forward today because her main witness was not available to testify. Chairman Silverman responded that the motion to deny was adopted by the Board so if ACA Richard is not prepared to go forward today, she does not have to put on a case and the Board will rule accordingly.

Special Counsel Everett stated that it is still unclear to her what is pending so she would ask that the Board take a 5-minute break, so that she can get clarification.

Following the break, the Board entered into the scheduled hearing of appeal on behalf of

Sgt. Gilberto Gomez, the Appellant.

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

Jon Kreger, Attorney, represented the Appellant.

Chairman Silverman asked ACA Richard to call her first witness. ACA Richard stated that she believed there has been an agreement whereby the department will rescind the reprimand and restore the 40 hours to Sgt. Gomez.

Chairman Silverman asked opposing counsel was he in agreement with the settlement. Attorney Kreger responded that he is in agreement with the settlement and that his client has no objection. Chairman Silverman stated that there is no further action for the Board to take since a settlement agreement has been reached by both parties.

DISCUSSED: Settlement offer accepted by the employee. Case will be closed and removed from the Board's docket upon receipt of a written settlement agreement or rescheduled in accordance with the Board's Continuance Policy.

ADJOURNMENT:

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

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

Aye: Silverman, Gomez, Lago, Harris and Moy

A break was taken from 10:32 - 10:45 a.m. The meeting ADJOURNED at 10:47 a.m.

SIGNATURE:

Gerald Silverman, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary