

City of Miami

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

Tuesday, June 12, 2012

10:00 AM

Commission Chambers

Civil Service Board

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

PLEDGE OF ALLEGIANCE

The meeting was called to order at 10:08 a.m. The roll call at the commencement of the meeting was as follows:

Present: Member Lago, Chairperson Silverman, Chief Examiner Moy, Member Harris and Member Gomez

PRESENTATION OF CERTIFICATES

This item did not appear on today's printed agenda.

Certificates were presented to Board Members whose terms have ended, in appreciation for services rendered.

A. APPROVING THE MINUTES OF:

Regular Meeting of May 29, 2012.

Chairman Silverman asked the Board Members if they had any additions or corrections to be made to the minutes. Member Harris responded in the affirmative and referred the Board to page 4, Item H.2 (Hearing of appeal on behalf of Viona Browne-Williams). She stated that her name was omitted as one of the Board Members who questioned Officer Viona-Browne Williams during her testimony and that she would like to amend the minutes so that it reads, "Questions were posed by Board Members Harris and Moy during the testimony of Viona Browne-Williams."

Hearing no objection, the Board entered a motion to approve the minutes as amended which resulted as follows:

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

Aye: Silverman, Moy, Gomez, Lago and Harris

B. PERSONNEL MATTERS**B.1**

Copy of a memorandum from Stephen Petty, Finance Director, requesting to extend the probationary period of Barbara Gray, Chief Accountant (2nd request), for three (3) additional months beyond June 28, 2012.

(DISCUSSION)

Chairman Silverman stated that the department director has requested to extend Barbara Gray's probationary period an additional three months past June 28, 2012. He asked Ms. Gray if she had an objection to the extension request. Barbara Gray, Chief Accountant, responded that while she did not have an objection, (she wanted to note that) this was the second request to extend her probationary period so she would like to request from Management specific guidelines in order to measure her performance to meet Management's objectives. She went on to say that she really wants to remain a City employee and do the best to serve the City in this position.

Chairman Silverman asked if there were any questions from Board Members concerning Ms. Gray's probation extension. Members Harris and Moy asked pointed questions of both Chief Accountant Gray and Terry Kwong, Assistant Director of the Finance Department.

Following questions by Board Members, Member Moy asked what would happen to Ms.

Gray if the Board were to deny the department's extension of probation request. Chairman Silverman responded that if the Board denied the department's request, Ms. Gray's probationary period would not be extended and because she was not covered under the Civil Service Rules, the department could terminate her employment and she would have no rights to appeal the termination. He went on to say that the extension request gave Ms. Gray an opportunity to satisfy the department's needs (and the possibility of retaining employment); however, as he saw it, the Board would be doing Ms. Gray a disservice by denying the department's request because then the department would have every right to terminate Ms. Gray's employment and there would be nothing that this Board could do for her. Chairman Silverman further stated if the Board wanted to help Ms. Gray (retain her job), he thought the Board should vote in favor of extending her probationary period.

Following discussion, the Board entered a motion to APPROVE the department's request to extend Barbara Gray's probationary period an additional three (3) months beyond June 28, 2012. The motion resulted as follows:

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

Aye: Silverman, Moy, Gomez, Lago and Harris

C. MILITARY LEAVES OF ABSENCE

D. DISCIPLINARY MATTERS

- D.1** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Magdiel Perez, Police Officer, of his 40-hour forfeiture, effective May 24, 2012. (NOTIFICATION)

NOTIFIED

- D.2** Copy of a Judgment from the City Manager concurring with the Board's findings concerning Ansonia Chatfield, Emergency Dispatcher, concerning her termination, effective October 20, 2011. It is ordered and adjudged that the decision of the Chief of Police to terminate Ms. Chatfield is sustained.

(NOTIFICATION)

NOTIFIED

E. GENERAL ITEMS

- E.1** Copy of Findings of Fact in the Appeal Hearing of Candace Jones, Police Officer, relative to her 10-hour forfeiture and 1-month suspension of take home vehicle, effective February 12, 2011. (DISCUSSION)

ACA Richard stated the problem she is having is being able to tell the Board the reason she objects to opposing counsel's changes to the findings because there was no discussion as to why the Board found Officer Jones not guilty of the charges brought against her. She went on to say that the Board's attorney obviously felt that the document (Findings of Fact and Recommendation) she prepared accurately reflected the findings of the Board.

Member Harris stated that she agreed with ACA Richard that it probably was difficult for her to make a determination on the proposed changes to the Findings because there

was no Board discussion as to why the Board voted the way it did. She went on to say that (she is new to the Board) so she was not exactly sure when discussion should have taken place, but she wants to have discussion on the Findings in future cases so as to benefit the City, the employee, (and the Board's Special Counsel who has to prepare the Findings of Fact and Recommendations). Chairman Silverman suggested that the Board finish considering all of the proposed changes first and take up discussion afterwards.

Following consideration of the proposed changes, Chairman Silverman asked Member Harris was there something she wished to say concerning the Findings. Member Harris responded in the affirmative. She went on to say that when she voted to find Officer Jones not guilty, it was not to say that Officer Jones did not violate certain traffic regulations and departmental orders because according to the definition of (vehicular accidents categorized as) "Operational", it indicates that the conditions, obstructions, or actions leading up to the crash may be unavoidable thereby causing the officer to violate traffic regulations and departmental orders. Member Harris further stated that she could not speak for another Board Member, but in her view, the question before the Board was whether Officer Jones was guilty of causing a crash that could have been prevented and not whether she was guilty of possibly violating traffic regulations or departmental orders. Member Harris further stated the fact that the initial responding supervisor ruled the accident as operational, in her opinion, this carried a lot of weight to the favor of the employee. She stated that the Accident Review Board (ARB) signed off on the Supervisor's Report of City Vehicle Crash memo and initially ruled it as operational although through testimony heard that day (by the department's witness) it was learned that the operational category was mistakenly checked off. Member Harris went on to say that it concerned her that nothing was done to address or change the mistake sooner, which in her opinion added doubt as to whether a mistake was made and again lent weight in favor of the employee. She further stated that she is a new Member to the Board and that she took an oath to do what is right according to the evidence presented so if the accident policy used at the time of Officer Jones' accident is what is before the Board then perhaps the department needs to look at a possible policy failure. Member Harris stated that she had a problem with there being a video of the crash in existence but it was not used at the time the ARB reviewed the accident, and she felt there was important evidence that was skipped over that should have been factored into the ARB's investigation. She went on to say that during witness testimony it was said that vehicle traffickers sometimes either ignore or do not hear or see the sirens and lights of a police officer's vehicle, which can create unavoidable hazards that can result in an unintentional violation of traffic regulations or departmental orders, when operating in an official capacity as was Officer Jones. Member Harris further stated this being the case, she thought the City should bear some responsibility due to the nature of the job and inherent hazards, which was probably why the operational category was created. She stated that she did not believe it was Officer Jones' intent to violate traffic laws because the evidence was overwhelming to her that Officer Jones was out to do her job when the City placed her on an official emergency call. Member Harris went on to say that she would encourage the City to review its accident policy and the ARB to ensure more investigative measures in determining the category of future accident cases.

Chairman Silverman thanked Member Harris for her statements, and directed the Executive Secretary to add them to the minutes of today's meeting.

Following argument from both attorneys and discussion by the Board on the Findings of Fact and Recommendations, the Board entered a motion to APPROVE the Findings as amended, which resulted as follows:

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

Aye: Silverman, Moy, Gomez and Harris

Abstain: Lago

E.2

Copy of Findings of Fact in the Appeal Hearing of Viona Browne-Williams, Police Officer, relative to her 10-hr forfeiture, effective June 28, 2011.
(DISCUSSION)

Cynthia A. Everett, Special Counsel to the Board stated that before the Board considers the changes to the Findings, she would like to make a comment based upon the proposed changes she has seen from the employee's attorney which ties in nicely with the comments made by Member Harris. She went on to say that historically the Findings were meant to reflect the evidence on which the Board based its ultimate decision. Special Counsel Everett further stated although she may have disagreed with some of the proposed changes in the Candace Jones' findings (that the Board considered earlier and approved) ultimately the Board found the employee not guilty and she thinks the proposed changes played into their decision. She stated in Officer Browne-Williams' case however; the Board found her guilty of the major allegation of being out of her assigned area and when she read through the proposed changes in the Findings of Fact, her concern was that a lot of language suggested was self-serving and frankly tended to negate the Board's ultimate finding. Special Counsel Everett went on to say that if the facts, as proposed are what the Board relied on to make a guilty finding, then of course the Board would want to consider the facts, but she did not want this Board to appear to be trying to have it both ways. She further stated that the purpose of the findings is not to repeat all of the evidence that the Board heard because if this was the case, all she would need to do is attach a transcript of the hearing. Special Counsel Everett stated that the purpose of Findings is to present a summary of the evidence that supports the Board's finding of guilt in this case and she did not think the proposed changes submitted by the employee supported the Board's finding of guilt. She went on to say that she wants Board Members to be careful when considering this and future findings of fact that supports the Board's ultimate decision, otherwise the Board probably would be creating errors that would not be helpful to neither the City nor the employee.

After considering a few of the proposed changes, Chairman Silverman stated that he just did not feel this was the way to handle the findings because it was very time-consuming. He went to say that his thought was that both attorneys should meet ahead of time to review the findings to determine those items that they have agreement and only submit to the Board those items that they could not reach an agreement.

Following discussion, the Board entered a motion to DEFER this matter to the Board's next meeting.

Under discussion on the motion, Member Harris stated that since the Board has already considered a few of the proposed changes, she thought that the Board could finish with the findings today. Chairman Silverman responded that he did not think it would be practical to spend an entire hour on the findings. He went on to say that the attorneys have already agreed on the first set of proposed changes so he did not see why they could not get together and see what other changes they could agree on.

Following discussion, the motion on the floor to defer this matter to the Board's next meeting resulted as follows:

Motion by Chairperson Silverman, seconded by Member Gomez, that this matter be DEFERRED to the June 26, 2012 meeting for Board consideration. PASSED by the following vote.

Aye: Silverman, Moy and Gomez

No: Harris

Abstain: Lago

E.3

Notice of a Request to Continue from Janeen Richard, Assistant City Attorney, relative to the Grievance Hearing of 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. Lewis Mahoney, Park Manager II, expressed no objection to the continuance request. (DISCUSSION)
Grievance Hearing is scheduled for June 26, 2012.

Chairman Silverman asked the department's attorney to tell the Board her reason for the continuance request. ACA Richard responded that the subject of Mr. Mahoney's abuse of power case is not available on June 26, 2012 for the hearing and it is her understanding that Mr. Mahoney does not oppose her continuance request.

Chairman Silverman asked if anyone was present to represent Mr. Mahoney. Hearing none, the Board entered a motion to approve the department's request for a continuance which resulted as follows:

Motion by Member Lago, seconded by Member Gomez, that this matter be APPROVED : Hearing will be rescheduled to a future meeting date. PASSED by the following vote.

Aye: Silverman, Moy, Gomez, Lago and Harris

E.4

Meeting Schedule (DISCUSSION)

Item Addition

This item did not appear on today's printed agenda for discussion.

Chairman Silverman stated that he would like to discuss the meeting schedule which for a number of years has been set on alternating Tuesdays at 10:00 a.m. He asked if there was any possibility of changing the date and time or was everyone fixed on the current schedule. Chairman Silverman stated if there is a consideration for changing the meeting date and time, he did not know how this would affect the availability of the City Hall Commission Chambers. Member Lago responded that the City Commission meetings are held on alternating Thursdays. Chairman Silverman stated while this is true, there are other Boards that use the Commission Chambers such as the Zoning Board that meets on Monday nights. He asked again if there was a possibility of changing the date and time for Civil Service Board meetings. Member Gomez stated that she did not have a problem with whatever time the Board meets, but she preferred meeting on a Tuesday because it works better with her schedule.

Chairman Silverman stated that the Board meetings start at 10:00 a.m. and usually end at 5:00 p.m. He went on to say that when he sat on the Zoning Board, the meetings began at 7:00 p.m. and remained until every item was considered, which sometimes was at midnight. Chairman Silverman asked ACA Richard if she had a problem with starting the meetings later and staying until they were completed. ACA Richard responded that she had some flexibility because it is the summer and her kids are not in school so it was something that could be done temporarily but once school reopened it would be difficult for her to work late.

The Executive Secretary stated one of the bigger issues was the use of the chambers. She went on to say that sometimes on Tuesdays the Board meetings conflict with the Historical and Environmental Preservation Board that meets at 3:00 p.m. and the CIP and the Waterfront Advisory Boards meet on Tuesday evenings. The Executive Secretary further stated that most of the meetings that occur in the Commission Chambers are in the evening, excluding Thursdays because generally the Commission meeting is held on this day.

Chairman Silverman suggested that the Board Members and attorneys discuss this matter to see if there was any possibility of making any changes to the current meeting day and time. He went on to say that if it was not possible to change the meeting schedule, then the Board would continue to operate with the current day and time.

The Executive Secretary stated since this is a concern from the Board, she liked to know if there were any particular dates & times that she should consider for the Board to meet. Chairman Silverman responded each Board Member has their own schedule so as far as he was concerned, he did not care which day the Board met, he just needed to know in advance. He went on to say that he would prefer to start the meetings later because it would mean less time out of the office for him, but he was flexible.

Member Lago stated that he was flexible Monday through Friday, but being at the meeting all day was his problem. He asked if the Board could try on a trial basis to begin the meeting at 3:00 p.m. for the summer. Chairman Silverman responded if the Board were to meet at 3:00 p.m., the meeting would have to go beyond 5:00 p.m. Member Lago responded that he had no problem meeting beyond 5:00 p.m.

Member Moy stated that the current schedule works fine for him. He went on to say that he believes they made the commitment to be fair to employees and also to be present (to hear employee matters) when they became Board Members. Member Moy further stated that the current schedule has been in place for many years so personally he did not think it should be changed. He stated that they all have jobs and responsibilities so if there had to be a change, it would be to start the meeting earlier at 9:00 a.m. and end at 5:00 p.m.

Chairman Silverman asked if anyone had an objection to starting the meeting at 9:00 a.m. and ending at 5:00 p.m. ACA Richard stated that she would have a problem meeting at 9:00 a.m. because she has to drop her kids off to school at that time. Chairman Silverman stated that it did not look like they would agree on a day and time that everyone could meet for the Board meetings and suggested that this matter be deferred.

This matter was DEFERRED : The Executive Secretary will schedule this matter for discussion at the Board's next meeting since a consensus could not be met on a new meeting day and time.. PASSED.

F. REPORTS

F.1 Pending Hearings as of June 12, 2012. (NOTIFICATION)

PRESENTED

G. REQUESTS FOR HEARINGS

H. TODAY'S HEARINGS

H.1

Hearing of Appeal on behalf of Carlos Jimenez, Structural Engineer/Plans Examiner, relative to his 3-day suspension, effective July 18, 2011.

The Board entered into the scheduled hearing of appeal of Carlos Jimenez, the Appellant.

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

Michael Braverman, Attorney at Law, represented the Appellant.

Opening statements were presented by both attorneys. The Rule of Witnesses was invoked and all witnesses testified individually. Witnesses for the Department appeared in the following order:

- 1. Shellande Tropnas, Payroll/Personnel Specialist, City of Miami, Department of Human Resources. Questions were posed by Board Members Moy, Harris, and Lago during the testimony of Shellande Tropnas.*
- 2. Miguel Lemus, Building Inspector III, City of Miami, Department of Building. Questions were posed by Board Members Harris, Moy, and Lago during the testimony of Miguel Lemus.*
- 3. Mariano Fernandez, Director/Building Official, City of Miami, Department of Building. Questions were posed by Board Members Harris, Moy and Lago during the testimony of Mariano Fernandez.*

The Department rested its case. Witnesses for the Appellant appeared in the following order:

Carlos Jimenez, (former) Structural Plans Examiner, City of Miami, Department of Building. Questions were posed by Board Members Moy and Harris during the testimony of Carlos Jimenez.

The Appellant rested his case and the Department waived rebuttal. The Board then proceeded to closing arguments that were presented by both attorneys.

Following final argument, Member Harris stated she had a couple of concerns she wanted to relate about this case. She went on to say that the chain of command in the Building Department, beginning with Mr. Lemus and up to Mr. Fernandez, indicated to her that they did try to work with Mr. Jimenez to get him on the right track. Member Harris further stated she understood Attorney Braverman's position as to whether progressive discipline was followed; however, the multitude of documented incidents cited by Mr. Fernandez (concerning Mr. Jimenez) were overwhelming. She stated the fact that Mr. Fernandez did not increase Mr. Jimenez' discipline after the 10th incident spoke volumes with regards to him trying to work with Mr. Jimenez. Member Harris went on to say that she begged to differ with Attorney Braverman that an employee is not a customer because with respect to our job duties as City employees, we provide services (internally to other employees) which is what Ms. Tropnas did when she assisted Mr. Jimenez. She further stated that when employees work in a customer service-related environment, there will be times when the employee will get yelled at, but she has learned not to take it personal. Member Harris stated as public servants, employees must take the higher road because the fact of the matter is we are here to serve the public. She went on to say that one of the hardest things to do in an organization is to "hand-up" your fellow employee; however, Mr. Fernandez had no problem handing up Mr. Jimenez when she asked him if he believed Ms. Tropnas' story

of events that happened between her and his employee, Mr. Jimenez, which in her opinion, lent credence to Ms. Tropnas' explanation of what occurred more so than Mr. Jimenez' explanation. Member Harris further stated that an employee is not given entitlement to be rude to another employee because the answers the employee may have been seeking were not delivered in a timely manner or received in opposition to what the employee expected to hear. She stated that at the very least, Mr. Jimenez admitted to being rude to a fellow employee who was not tasked with the responsibility of helping him, but took it upon herself to do so. Member Harris went on to say that she commends Mr. Fernandez because as he said, it is the supervisor's responsibility to make sure "bullying" and disrespect of others are not promoted in the workplace.

Following discussion, the Board entered a motion to find the Appellant GUILTY of Charge #1 - Civil Service Rule 14.2(e)(1) - An act of insubordination and Charge #2 - Civil Service Rule 14.2(e)(2) - A serious breach of proper discipline. The motion resulted as follows:

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

Aye: Silverman, Moy, Gomez, Lago and Harris

The Board entered a motion to find the Appellant GUILTY of Charge #3 - Civil Service Rule 14.2(h) - Has been guilty of actions which amount to insubordination or disgraceful conduct whether committed on duty or off. The motion resulted as follows:

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

Aye: Silverman, Moy, Gomez, Lago and Harris

The Board entered a motion to find the Appellant GUILTY of Charge #4 - Civil Service Rule 14.2(i) - Has been wantonly offensive in conduct or language toward the public or City officers or employees. The motion resulted as follows:

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

Aye: Silverman, Moy, Gomez, Lago and Harris

The Board entered a motion to find the Appellant NOT GUILTY of Charge #5 - Civil Service Rule 14.2(k) - Is incompetent, negligent, or inefficient in the performance of the duties of the position held. The motion resulted as follows:

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

Aye: Moy, Gomez and Harris

No: Silverman and Lago

The Board entered a motion to find the Appellant GUILTY of Charge #6 - Civil Service Rule 14.2(r) - Is antagonistic toward supervisors and fellow employees. The motion resulted as follows:

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

Aye: Silverman, Moy, Gomez, Lago and Harris

The Appellant having been found guilty of some of the charges, the Board entered into the Penalty Phase of the Appellant's hearing. The Board reviewed the Appellant's personnel file which revealed that he received one (1) reprimand, excluding the disciplinary action before the Board today.

Chairman Silverman called for closing arguments and both attorneys presented their positions. Following final argument on the penalty portion of the Appellant's hearing, the Board entered a motion to recommend to the City Manager that the Appellant receive a 1-day suspension in lieu of the 3-day suspension ordered by the department director. The motion resulted as follows:

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

Aye: Moy, Gomez and Harris

No: Silverman and Lago

H.2

Hearing of Appeal on behalf of Carlos Jimenez, Structural Engineer/Plans Examiner, relative to his 5-day suspension, effective July 26, 2011.

Chairman Silverman asked both attorneys if they were prepared to go forward with Mr. Jimenez' case today. ACA Richard responded that she did not think there was sufficient time to finish this hearing today. Chairman Silverman stated he understands the attorneys are tired but the problem is the Board has three pages of pending cases and if they continue to be put off, then nothing gets done. He went on to say that it is almost 4:00 p.m. so if this case was going to take an hour or two to finish, he thought the Board should hear it today, but if it was going to take 6 hours to finish that would be another story. Chairman Silverman suggested to take a break to allow the attorneys time to meet for a few minutes and afterwards the Board would know how to proceed.

Following the break, ACA Richard stated in discussion with Attorney Braverman, they just did not think they would be able to finish this hearing within the time remaining; however, Attorney Braverman had given her a settlement offer that she would need time to discuss with her clients before she could accept. She went on to say that there was a chance that this matter could be worked out, but not today, so they asked that this item be continued.

Chairman Silverman asked Attorney Braverman if he was in agreement with what ACA Richard represented to the Board. Attorney Braverman responded in the affirmative.

Following discussion, the Board entered a motion for a JOINT CONTINUANCE of Mr. Carlos Jimenez' case which resulted as follows:

Motion by Member Lago, seconded by Chief Examiner Moy, that this matter be CONTINUED. PASSED by the following vote.

Aye: Silverman, Moy, Gomez, Lago and Harris

H.3

Grievance Hearing on behalf of Carlos Jimenez, Structural Engineer, pursuant to Rule 16.2, alleging a violation of Rule 12.1, as it concerns his layoff effective September 23, 2011.

Due to time constraints, the Board entered a motion to CONTINUE this hearing and charge the continuance to the Board which resulted as follows:

Motion by Member Lago, seconded by Member Gomez, that this matter be CONTINUED. PASSED by the following vote.

Aye: Silverman, Moy, Gomez, Lago and Harris

H.4

Hearing of Appeal on behalf of Samaly Rodriguez, Personnel Services

Representative, concerning her two-week suspension, effective November 7, 2011.

Chairman Silverman asked Attorney Braverman if he was prepared to go forward with his case today. Attorney Braverman responded that he is prepared to go forward; however, he made a settlement offer to the City today and that there is information that his client is trying to obtain from her physician with regards to this case. Chairman Silverman stated that it sounded like Attorney Braverman was asking for a continuance. He stated that he did not think the Board would get to hear Ms. Rodriguez' case today and asked opposing counsel if she had an objection to continuing the case. ACA Richard responded in the negative.

Following discussion, the Board entered a motion to CONTINUE the hearing of Samaly Rodriguez and charge the continuance to the Board, which resulted as follows:

Motion by Chief Examiner Moy, seconded by Member Lago, that this matter be CONTINUED. PASSED by the following vote.

Aye: Silverman, Moy, Gomez, Lago and Harris

ADJOURNMENT:

The meeting adjourned at 4:05 p.m. Breaks were taken at 11:14 - 11:25 a.m., 12:32 - 1:34 p.m. (LUNCH), 2:50 - 2:58 p.m. and 3:51 - 3:59 p.m.

SIGNATURE:

Gerald Silverman, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary