

City of Miami

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

Tuesday, June 26, 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 10:02 a.m. The roll call at the commencement of the meeting was as follows:

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

Absent: Member Lago

A. APPROVING THE MINUTES OF:

Regular Meeting of June 12, 2012.

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

Aye: Silverman, Moy, Gomez and Harris

Absent: Lago

B. PERSONNEL MATTERS

- B.1** Request from Kevin Wright, to be placed on the re-employment list for Waste Equipment Operator, pursuant to Civil Service Rule 12, Sec. 12.4, Resignations. (DISCUSSION)

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

Aye: Silverman, Moy, Gomez and Harris

Absent: Lago

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

- D.1** Copy of a Judgment from the City Manager concurring with the Board's findings concerning the appeal hearing of Meredith Nation, former Procurement Supervisor, relative to her termination, effective March 23, 2011. It is ordered and adjudged that the decision of the City Manager to terminate Ms. Nation is sustained. (NOTIFICATION)

NOTIFIED

D.2

Copy of a Memorandum from the City Manager concurring with the Board's recommendation in reinstating Joan Greene, Secretary II as it relates to her Grievance hearing pursuant to Civil Service Rule 16.2, concerning a violation of Rule 12, Layoff, Resignation, and Reinstatement. (NOTIFICATION)

NOTIFIED

- D.3 Copy of a letter from Keith A. Carswell, Director, Department of Solid Waste, notifying Alan Blonder, Administrative Aide I, of his three (3) day suspension, effective June 12, 2012 and a copy of a request to appeal from Michael Braverman, Attorney, on behalf of Alan Blonder. A hearing of appeal will be scheduled in accordance with Civil Service Rules and Regulations.
(NOTIFICATION)

RECEIVED AND FILED

E. GENERAL ITEMS

- E.1 Notice of a Request to Withdraw from Teri Guttman Valdes, Attorney, on behalf of Vernell Reynolds, Police Officer (former), relative to her termination, effective July 25, 2011. (NOTIFICATION)
Hearing of Appeal will be closed and removed from the Board's docket.

NOTIFIED

- 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)

Deferred from the meeting of June 12, 2012.

Chairman Silverman asked if there was any discussion regarding the findings. Member Harris responded in the affirmative. She stated in her opinion, what appeared to be the crux of the appellant's argument was discrimination. Member Harris went on to say that her recommendation to the appellant would be to provide supporting documentation (i.e. Internal Affairs or personnel cases) that may possess the elements (needed to prove the allegation) if she were to make this same argument in the future otherwise the Board would only have statements (to consider) as was the situation in this case. She further stated while the Board has to weigh the appellant's statements, it also has to give the other side the opportunity for counter testimony and then weigh the [facts as presented]. Member Harris stated she felt (after considering the evidence) that the department's side carried more weight due to what she considered to be proper use of progressive discipline administered by the supervisors. She went on to say that given the appellant's extensive (disciplinary) record for which she was counselled previous times (about leaving her district), the supervisor only recommended a 10-hour forfeiture. Member Harris further stated based on the recommended penalty, she felt it was not necessarily a "witch hunt" because according to the appellant's disciplinary profile, the supervisor could have recommended a higher penalty. She stated when the appellant was asked about the alleged harassment, she stated that the harassment ceased and she decided to return to the same area (where she was previously assigned). Member Harris went on to say that as law enforcement officers, it is critical that officers are available to the public for calls for service and backing up other officers so another reason she rendered a guilty vote (in this case) was because not only was the appellant out of her NET area but she was outside of her district which was more egregious in her opinion. She further stated that although the appellant did not cause the accident, it did call for another police unit to be out of service to complete an accident report as well as causing other resources to be out of service thereby depleting the City's resources unnecessarily. Member Harris stated that the appellant also admitted to the charges so it is the Board's responsibility to make its decision based upon the facts and evidence that are presented. Member Harris further stated that the aforementioned factors

weighed heavily on her decision (in finding the appellant guilty of the violations cited in the charging document.)

Chairman Silverman asked Board Members if there was any other discussion regarding the findings of fact. Hearing none, Chairman Silverman asked Attorney Kreger if he wished to share his thoughts concerning the findings. Jon Kreger, Attorney on behalf Officer Viona Browne-Williams responded as long as the Board was provided with the copy of the findings he submitted to the Executive Secretary, there was nothing more he wished to offer concerning the findings.

Following discussion, the Board entered a motion to APPROVE the Findings and Recommendation report as amended. 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: Silverman, Moy, Gomez and Harris

Absent: Lago

F. REPORTS

F.1 Pending Hearings as of June 26, 2012. (NOTIFICATION)

PRESENTED

G. REQUESTS FOR HEARINGS

H. TODAY'S HEARINGS

H.1 Hearing of Appeal on behalf of Miguel Baralt, Police Sergeant, relative to his 10-hour suspension, effective June 25, 2011.

Chairman Silverman called for Sgt. Baralt's appearance before the Board. Seeing that he did not appear, Chairman Silverman asked for the scheduling history of Sgt. Baralt's case. The Executive Secretary responded this was the second time Sgt. Baralt's hearing was scheduled and he did not appear. She went on to say from the time Sgt. Baralt filed his appeal request, she had not heard from him.

Chairman Silverman stated that it seemed to him that the Board should dismiss this case for lack of prosecution and then asked the Board's counsel for her opinion on this matter. Cynthia A. Everett, Special Counsel to the Board, responded that Sgt. Baralt properly asked for a hearing so she would suggest that the Board hear his case in his absence. Chairman Silverman stated Sgt. Baralt requested a hearing, he did not appear either times his hearing was scheduled, and that it is the appellant's burden to go forward with his appeal, so (based upon these elements), it appeared to him that a Motion to Dismiss for lack of prosecution was appropriate in this case. He asked Special Counsel Everett if she was in agreement with the Motion to Dismiss. Special Counsel Everett responded that she might be able to agree but she would like to know a little bit more (i.e. what the charges are, is the appellant still working or was on leave, etc.) before advising the Board.

Chairman Silverman asked the Executive Secretary if she had anything to offer regarding this matter. The Executive Secretary responded that Sgt. Baralt retired (effective June 8, 2012).

Member Harris asked if she could hear the department's position before the Board ruled on this matter. Janeen Richard, Assistant City Attorney (ACA) responded that she was aware that Sgt. Baralt retired and that she believed the last time his hearing was scheduled the Board's position was that if he did not appear the next time his hearing was scheduled that his appeal would be dismissed. She went on to say that this was the second time this hearing was scheduled and Sgt. Baralt has been a "no-show" each time.

Following discussion, the Board entered a motion to Dismiss Sgt. Baralt's appeal for lack of prosecution which resulted as follows:

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

Aye: Silverman, Moy, Gomez and Harris

Absent: Lago

H.2

Grievance Hearing on behalf of Corina S. Esquijarosa, former Sr. Project Representative, pursuant to Rule 16.2, alleging a violation of Rule 12.1, 14.1 and 17, as it concerns her layoff, effective September 23, 2011.

The Board entered into the hearing of Corina S. Esquijarosa, the Grievant.

Corina S. Esquijarosa, former Senior Project Representative, represented herself.

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

Ms. Esquijarosa presented opening statements while ACA Richard reserved opening statements. The Rule of Witnesses was invoked and all witnesses were sworn in individually. Witnesses for the Grievant appeared in the following order:

1. Luis Cabrera, Assistant City Manager/Deputy Police Chief, City of Miami, Office of the City Manager. Questions were posed by Board Member Harris during the testimony of Luis Cabrera.

2. Daniel J. Alphonso, Director, City of Miami, Department of Management and Budget. Questions were posed by Board Members Moy and Harris during the testimony of Daniel Alphonso.

3. Mary E. Leckband, Assistant Director, City of Miami, Department of Human Resources. Questions were posed by Board Member Harris during the testimony of Mary Leckband.

4. Peter Kendrick, Lease Manager, City of Miami, Department of Public Facilities.

5. Jamil Fraser, Assistant to the Director, City of Miami, Department of Public Facilities. Questions were posed by Member Harris during the testimony of Jamil Fraser.

6. Judy Marsie-Hazen, Senior Project Representative, City of Miami, Department of Public Facilities.

7. Daniel Newhoff, Assistant Director, City of Miami, Department of Public Facilities. Questions were posed by Member Harris during the testimony of Daniel Newhoff.

The Grievant rested her case. The Department rested its case without calling any

witnesses. The Board proceeded to closing arguments and the Grievant and ACA Richard presented their prospective positions on this case.

Following final argument, Chairman Silverman read into the record Civil Service Rule 16.2(d) which is the process the Board follows for grievance hearings. He asked Board Members if they had any discussion or motions they wished to make concerning this case. Member Harris responded in the affirmative and stated that when dealing with the (City's) budget, which equals to the proper use of public funds, her question was did the City in this case get its return on investment. She went on to say if the City is in the midst of a hiring freeze for a reason, she would think that it was for the reason that the City was already projecting a budget shortfall. Member Harris further stated that she was perplexed as to whether the City used the public resources properly and did it think ahead in terms of the most efficient use of human resources, which she feels is the City's most valuable resource, but unfortunately it is not always treated as such. She stated that so much money is put into training and development of employees, but she has seen time and again that the City does not get its return on investment, particularly if the City is cutting its own throat in terms of losing employees that could be very valuable to the City, and in a case where the position the employee held was certainly a revenue-generating position. Member Harris went on to say that the numbers that could have been produced she does believe is directly related to a person's experience, training, education, and effectiveness in the position so she leaned towards there being discriminatory practices involved in this case. She further stated if a department had an existing position (to be filled), she did not understand why the department would approach an individual to fill the position as opposed to advertising the position and giving other individuals an opportunity to apply so as to avoid possibly being laid off. Member Harris stated by advertising the position, it would have also given the employee an opportunity to prepare himself, but if that employee chose not to apply that would have been on the employee (if he/she did not apply and was laid off).

Chairman Silverman stated this is not a pleasurable job because unfortunately in this situation, there were budget cuts and someone had to lose their job. He went on to say that it is not up to the Board to decide which employee stays and which employee should be released (in terms of losing their job) and also that it is not the Board's function to be the "super City Manager" or "super City Commission." Chairman Silverman further stated it is unfortunate there was not enough money to go around and that someone had to be laid off. He stated the City Manager made a decision that we might not agree with, but this is not the Board's function. He stated that Ms. Esquijarosa's name is number one on the layoff register (for Senior Project Representative) so it is hoped that someone in the Deferred Retirement Option Plan (DROP) finishes their term soon and Ms. Esquijarosa is called back to work. Chairman Silverman went on to say that at this stage, he did not see where Ms. Esquijarosa proved her burden so he did not believe this Board should recommend to the City Manager that any action be taken.

Member Moy stated that it was mind-boggling to him that the Assistant City Manager did not know the reason Ms. Esquijarosa was laid off and that months after she was laid off, an employee was hired at a higher salary. He went on to say that this case brings a lot of light to not only what is happening in the Public Facilities Department but also what is happening in the Departments of Building and Community Development for which employees are being laid off per Civil Service Rule 12, but are not given the reason for the layoff. Member Moy further stated that Rule 12.1 clearly states that temporary and probationary employees are to be laid off before permanent, classified employees. He stated that this case also showed that the Assistant to the Director (Fraser) reviewed the job qualifications, applied for the position, and a week later he was hired into the position. Member Moy went on to say that upon looking at the duties and responsibilities of the Assistant to the Director position, they are similar to the duties of

the Senior Project Representative position. He further stated that Mr. Fraser testified that he performs whatever duties are given to him that day or week; however, while we are all given different tasks to do, we all must have a job description of the duties we are to perform. Member Moy stated that Mr. Fraser's job duties are so broad that it made him believe that Ms. Esquijarosa could have done this job very easily. He went on to say that this Board is not tasked with which employee is laid off and who keeps their job, but the Board is definitely tasked with making sure the procedures are properly followed and he did not think the procedures were followed in this case.

Following discussion, the Board entered a motion to recommend to the City Manager that Corina Esquijarosa be reinstated to her position of Senior Project Representative effective her layoff date of September 23, 2011. The motion resulted as follows:

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

Aye: Moy and Harris

No: Silverman and Gomez

Absent: Lago

The motion having failed, the Board entered a motion to find that the City did not violate Civil Service Rules (12.1, 14.1, 17) as alleged by the Grievant and that no further action be taken. The motion resulted as follows:

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

Aye: Silverman and Gomez

No: Moy and Harris

Absent: Lago

The Board unable to reach a consensus on the vote, Chairman Silverman deferred to Special Counsel Everett for advice. Cynthia A. Everett, Special Counsel to the Board suggested that the Board engage in further discussion to find out if there was some common ground to perhaps persuade a Member to see another Member's point of view. She went on to say that if at some point the Board was to see that no one's opinion was going to change, such as a majority that is supporting any particular position, then indeed it would be a nullity in terms of the Board being unable to make any decisions, recommendations, or determinations because it takes a majority vote of the Board to do so.

For clarification purposes, Chairman Silverman asked Special Counsel Everett if she was saying that the Board would have to retry the case with a full Board if it did not arrive at a majority vote. Special Counsel Everett responded in the affirmative.

Chairman Silverman asked if the Board wished to engage in further discussion. Member Gomez responded that she was very sympathetic to the Grievant losing her job and as a woman over 40 years of age, she was sympathetic to any claim of discrimination, but she just did not see any discrimination claim that was presented today. She went on to say that according to testimony, it was said that four individuals in the Public Facilities Department held the position of Senior Project Representative and that Ms. Esquijarosa's position was abolished based upon her (having the lowest) seniority score which was in accordance with Rule 12.1.

Member Harris stated the point she viewed as discriminatory was that the position of

Assistant to the Director was not advertised. She went on to say that Ms. Esquijarosa presented live testimony of females that were in a position, at a minimum, to apply and participate in a competitive process and that opportunity was not given. Member Harris further stated that she was also sympathetic towards Ms. Esquijarosa but more so what pulled her in that direction was the purpose that we are all here for and that is for public positions. She stated that there was testimony about not putting a face to positions when it comes to layoffs, but the fact of the matter is there is a human resource and there is a face to it. Member Harris went on to say that if the City were to look at what it invested in job classifications and not specifically people and if the City utilized human resources most effectively and efficiently during budget times, then the City would use the resources that it already has considering the City is under a hiring freeze.

Chairman Silverman stated that Ms. Esquijarosa's position is that Mr. Fraser should have been terminated instead of her. He went on to say that Mr. Fraser is an unclassified employee and that she never had an opportunity to compete for his job (Assistant to the Director) which is like talking "apples and oranges". He went on to say that this Board is not a budget committee in that it is not left up to the Board to decide what is good additional revenue or how many employees a department should have and nor is the Board to act as the City Manager. Chairman Silverman further stated the Board's responsibility is to determine if any of the rules were violated and that he did not see where the Civil Service Rules were violated.

Special Counsel Everett stated that perhaps it might aid the Board if each of the alleged rule violations were considered individually along with discussion to see if possibly a consensus could be reached one way or the other. In accordance with Special Counsel Everett's suggestion, Chairman Silverman called for a motion to either report to the City Manager that there was or was not a violation of Rule 12.1, Layoff Procedures. Hearing none, Chairman Silverman stated that he did not think Special Counsel's suggestion would work. He went on to say that unless there was some indication that one of the Board Members wished to reconsider their vote, he was going to call it a day with this case.

Member Harris stated it was her understanding that because of the tie-vote, the Grievant could have her case reheard before a full Board and asked what was the process for rehearing the case. Hearing no response, Chairman Silverman asked if anyone wished to say something not on the merits of the case, but the procedures. ACA Richard responded that procedurally when she travelled under Rule 14, the department had the burden and if the vote resulted in a tie, she would lose the case thus not having met her burden of proof, because she did not receive a majority of the votes. She went on to say that she thought the same would apply under Rule 16 in that the Grievant did not meet her burden of proof of there being a rule violation because of the tie vote. ACA Richard further stated that the majority of the Board did not find that the Grievant proved her case so she did not understand why the case had to be retried since the Grievant had an opportunity to prove her case and a majority of the Board was not convinced.

Chairman Silverman responded that the advice from the Board's Special Counsel was that a case resulting in a tie-vote had to be retried. He went on to say that before he terminated the hearing he wanted to hear from Special Counsel Everett if this was correct. Special Counsel Everett responded that before adjourning, she would ask the Board one more time to see if there was any will among Board Members to have a discussion. She stated the matter before the Board is a grievance and unlike a Rule 14 appeal case, the Board ultimately makes a recommendation to the City Manager but there is bit more teeth in what the Board does because of the provisions of that Rule (14) and the issues that are at stake. Special Counsel Everett reminded the Board that even if one of its Members was not in the majority in terms of what his/her position was

about on this matter, Board Member(s) still would be in a position to make detailed findings and recommendations to the City Manager. She stated that the Board's findings and recommendation report is reviewed by the City Manager and sometimes the recommendations are accepted and sometimes they are not so this still was an option. Special Counsel Everett went on to say that whatever decision each Member reaches in this case, it would not necessarily change anything immediately for either party.

Chairman Silverman asked if it was conceivable to submit a report to the City Manager with a tie-vote for his consideration of the case without further testimony or retrying the case. Special Counsel Everett responded that the majority of the Board Members have to agree upon what would be reported to the City Manager. Chairman Silverman asked if it would be acceptable to submit a report to the City Manager advising him of the tie-vote and identifying how each Member voted. Special Counsel Everett responded in the affirmative. She went on to say that if this is the will of the Board, she would have to come up with the wording to use in the findings.

Ms. Esquijarosa asked that the rule violations be listed individually in the report that would be submitted for the City Manager's consideration. Chairman Silverman responded that the Board could either retry the case before a full Board or file a report with the City Manager that the Board could not reach a consensus vote and indicate in the report how each Board Member voted. He asked what was the Board's preference in this matter. Member Moy moved to have the case retried. Hearing no second to the motion, the Board entertained discussion. Member Harris stated that the purpose of the hearings is to provide swift justice for closure to happen as quickly as possible for both the department and the employee, and for the public's resources. She went on to say that she was in agreement with the Grievant (and Special Council) that the Board review each violation individually so that it is clear in the findings and recommendation report that is submitted to the City Manager.

Following discussion, the Board entered a motion to consider each alleged violation (Rules 12.1, 14.1, 17) and submit the findings and recommendation report to the City Manager for his review. The motion resulted as follows:

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

Aye: Silverman, Gomez and Harris

No: Moy

Absent: Lago

The motion having passed to consider the alleged violations individually, the Board entered a motion to find there was a violation of Rule 12.1. Under discussion on the motion, Member Harris stated that she did not feel that the (layoff) process was followed correctly particularly since the document listed the Grievant as a probationary employee and testimony (by the Grievant) indicated that she was not. She went on to say that if that particular document was reviewed during the layoff process, she felt that it was very important (to correctly indicate the status of each employee whose name appeared on that report.)

Following discussion, the motion on the floor to find there was a violation of Rule 12.1, Layoff Procedures, resulted as follows:

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

Aye: Moy and Harris

No: Silverman and Gomez

Absent: Lago

The Board entered a motion to find that the Grievant failed to prove a violation of Civil Service Rule 14.1, Power of Suspension, Removal, Fine or Demotion. The motion resulted as follows:

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

Aye: Silverman and Gomez

No: Moy and Harris

Absent: Lago

The Board entered a motion to find that the department violated Rule 17, Prohibited Practices. The motion resulted as follows:

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

Aye: Moy and Harris

No: Silverman and Gomez

Absent: Lago

Following conclusion of the hearing, Member Moy asked how many meetings a Board Member could fail to attend before some action takes place. Chairman Silverman deferred to the Board's Executive Secretary and suggested that she provide the answer at the Board's next meeting.

ADJOURNMENT:

The meeting adjourned at 1:46 p.m. Breaks were taken at 11:24-11:28 a.m. and 12:48-12:56 p.m.

SIGNATURE:

Gerald Silverman, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary