

# **City of Miami**

*City Hall  
3500 Pan American Drive  
Miami, FL 33133  
[www.miamigov.com](http://www.miamigov.com)*



## **Meeting Minutes**

**Tuesday, July 24, 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 10:01 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

**A. APPROVING THE MINUTES OF:**

Regular Meeting of July 10, 2012.

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

**Aye:** Silverman, Lago, Gomez, Moy and Harris

**B. PERSONNEL MATTERS****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 Viona Browne-Williams, Police Officer, relative to her 10-hr forfeiture, effective June 28, 2011. It is ordered and adjudged that the Chief of Police's decision ordering Officer Williams to forfeit 10-hours of earned overtime is sustained. (NOTIFICATION)

**NOTIFIED**

- D.2** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying John Kocur, Police Officer, of his 10hr suspension, effective July 9, 2012. (NOTIFICATION)

**NOTIFIED**

- D.3** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Jean Barony, Police Officer, of his 80-hour suspension, effective July 8, 2012 and a copy of a request to appeal from Officer Barony. A hearing of appeal will be scheduled in accordance with Civil Service Rules and Regulations. (NOTIFICATION)

**RECEIVED AND FILED**

**E. GENERAL ITEMS**

- E.1** Copy of Findings of Fact in the Appeal Hearing of Deborah Hudson, Typist Clerk III, relative to her 80-hour suspension, effective January 31, 2011. (DISCUSSION)  
Request to defer received by Michael Braverman, Attorney on behalf of

Deborah Hudson.

*Chairman Silverman asked the department's attorney if she had an objection to Attorney Braverman's request to defer this item. Janeen Richard, Assistant City Attorney (ACA), responded in the negative. There being no objection, Chairman Silverman deferred this item for discussion at a future meeting.*

**DEFERRED**

**E.2**

Copy of Findings of Fact concerning the Grievance Hearing on behalf of Corina S. Esquijarosa, former Sr. Project Representative, pursuant to Rule 16.2, alleging a violation of Rules 12.1, 14.1 and 17, as it concerns her layoff, effective September 23, 2011. (DISCUSSION)

*Chairman Silverman stated that Ms. Esquijarosa is not present so he thinks this matter should be deferred and that Ms. Esquijarosa be notified so that she has an opportunity to be present when this matter is rescheduled.*

*Following discussion, the Board entered a motion to DEFER this matter to the Board's next meeting for consideration which resulted as follows:*

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

**Aye:** Silverman, Lago, Gomez, Moy and Harris

**F. REPORTS**

**F.1**

Pending Hearings as of July 24, 2012. (NOTIFICATION)

**PRESENTED**

**G. REQUESTS FOR HEARINGS**

**G.1**

Copy of a Request for Hearing from Teri Guttman-Valdes, Attorney, on behalf of Elba Valdes, Police Officer (retired), pursuant to Civil Service Rule 16.1 Investigation Hearing and 16.2 Grievance Hearing. (DISCUSSION)

*Teri Guttman-Valdes, Attorney at Law on behalf of Elba Valdes, stated that her client was employed as a police officer with the City of Miami Police Department for approximately 30 years. She went on to say that earlier this year, there was an internal affairs investigation that commenced and resulted in a recommended penalty of a 200-hour suspension for her client. Attorney Guttman-Valdes further stated that when Ms. Valdes was issued the disciplinary action in writing, she signed off on the reprimand and requested a Departmental Disciplinary Review Board (DDRB) hearing. She stated that prior to the scheduling of the DDRB hearing, she was advised that the Police Chief was considering increasing the discipline to termination so Ms. Valdes contacted the Fraternal Order of Police (FOP) because she had concerns regarding the possibility of the Police Chief increasing the penalty. Attorney Guttman-Valdes stated that a FOP representative spoke to the Police Chief and conveyed to Ms. Valdes a settlement offer (which included the terms) that if Ms. Valdes accepts the 200-hour suspension, a 6-month suspension of her take-home car privileges, and withdraw her request for a DDRB hearing that the Police Chief would forego terminating Ms. Valdes' employment. She went on to say that Ms. Valdes accepted the terms and (memorialized her acceptance) via a red-line memo rescinding her request for a DDRB hearing and subsequently she was advised that the Police Chief was breaching his offer and that he*

would terminate her if she did not retire by June 1, 2012. Attorney Guttman-Valdes further stated that Ms. Valdes retired under duress so they are before the Board to request a grievance hearing pursuant to Civil Service Rules 16.1, 16.2, 17 and/or a hearing pursuant to Rule 14.

Chairman Silverman asked for the department's position on this request. ACA Richard responded that she opposed Ms. Valdes' hearing request for several reasons. She went on to say that some of the facts Attorney Guttman-Valdes alleged are partly true because there was an internal affairs investigation and a reprimand that included a recommended penalty of a 200-hour suspension. ACA Richard further stated that Ms. Valdes did sign the reprimand and in doing so, agreed to the facts and the penalty; however, the penalty is solely left up to the Police Chief. She stated that Police Chief Orosa's position was always to terminate Ms. Valdes and that there was never any communication between the Police Chief and the FOP of the chief's intention to settle this case by offering a lesser penalty. ACA Richard went on to say that any representations made to Ms. Valdes by the FOP are not binding on the Chief of Police. She further stated what she found to be curious is included in Attorney Guttman-Valdes' letter requesting a hearing (before the Civil Service Board), which is a memorandum dated May 22, 2012 that was referenced to allegedly memorialize the settlement agreement. ACA Richard stated that she had not seen the alleged agreement and felt that this document should be presented to the Board before the granting of any hearing is considered. She went on to say that with regards to Ms. Valdes' "forced" retirement, she is a 30-year veteran as stated by her attorney so there was no duress exerted upon Ms. Valdes upon her retirement. ACA Richard further stated if the Board had any questions, Major Colina was available to respond as the lead Internal Affairs investigator who could testify unequivocally regarding this matter as well as Police Chief Orosa that there was no such settlement agreement and that the intention was always to terminate Ms. Valdes. She stated that she found it very interesting that the FOP was not in attendance representing Ms. Valdes today because had such a settlement agreement existed, we all could be sure that the FOP would have been present before the Board to take up this issue. ACA Richard reiterated that she opposed Ms. Valdes' request for a hearing.

Attorney Guttman-Valdes stated that they set out factual allegations that they believe supports a prima facie case for being granted a hearing to prove the facts.

Chairman Silverman asked if there were any questions from Board Members. Member Harris responded in the affirmative. She asked if a FOP representative was present. Attorney Guttman-Valdes responded that her client happened to be represented by whomever she chooses to represent her and at this time she chose private counsel. She went on to say that it is her understanding that the request for hearing was not an evidentiary hearing as they do not have the ability to subpoena witnesses. In response, Member Harris stated that she understood Attorney Guttman-Valdes' position but the point she was making is if Attorney Guttman-Valdes referenced the FOP in her argument in order to get her client a hearing, she thought it was important that the FOP be present since Attorney Guttman-Valdes communicated to the Board that there was an agreement made between the Police Chief and Ms. Valdes (on the disciplinary action as it related to the penalty). Attorney Guttman-Valdes responded if it was the Board's preference to hear from the FOP to make a determination whether to grant a hearing, she would request that the Board defer this item until a later date. Member Harris asked Attorney Guttman-Valdes if she had a copy of the settlement agreement for the Board's review. Attorney Guttman-Valdes responded that she did not have the document with her; however, the memo dated May 22, 2012 was prepared by her client rescinding her request for a DDRB hearing basically as an acceptance of the (Chief's) offer. Member Harris stated that she asked for the agreement since it was brought up by ACA Richard and she felt it would only be fair to produce the agreement prior to the Board making a

decision whether to grant a hearing. Attorney Guttman-Valdes responded that unfortunately she was in a deposition up until 6:00 p.m. last night so she did not get an opportunity to pick up her file on her way to today's meeting; however, she would again ask that this matter be deferred because she has a copy of the agreement in her file.

Chairman Silverman stated that he did not hear a time-line or dates of when this incident occurred so he would like to know how long ago did the situation involving Ms. Valdes occur. Attorney Guttman-Valdes responded that June 1, 2012 was Ms. Valdes' retirement date.

Member Harris asked if she could hear from Major Colina. Chairman Silverman responded that the issue at hand is whether or not to grant a hearing. He went on to say that he believed the employee's attorney requested to defer this matter to allow time for her to produce the memo (agreement). Chairman Silverman asked Attorney Guttman-Valdes if this was her position. Attorney Guttman-Valdes responded in the affirmative.

Member Harris stated if it is Attorney Guttman-Valdes' position that there was some communication between the FOP and the Police Chief, her recommendation to Attorney Guttman-Valdes is that she have someone from the FOP (present when this matter is considered to answer any questions the Board may have on this issue.)

Following discussion, the Board entered a motion to DEFER this matter to the Board's next meeting. Prior to the vote, Attorney Guttman-Valdes stated that she would be out of town on August 7, 2012. Chairman Silverman stated that the Executive Secretary will coordinate a date and reschedule the hearing. The motion on the floor to defer this matter resulted as follows:

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

**Aye:** Silverman, Lago, Gomez, Moy and Harris

## G.2

Copy of a Request for Hearing from Teri Guttman Valdes, Attorney, on behalf of Min-Li Nar, Process Design Analyst (former), for a Grievance Hearing, pursuant to Rule 16.1 and 16.2, alleging a violation of Rule 12, concerning a recent recruitment for the classification of Financial Information Business Process Analyst. (DISCUSSION)

Grievant has a pending Grievance hearing scheduled for today.

Attorney Guttman-Valdes stated that this is a new request for a grievance (that pertains to Ms. Nar's layoff but is a separate issue from her grievance hearing that is scheduled on today's agenda under Item H.1). She went on to say that Ms. Nar was laid off in 2011 and is supposed to remain on the layoff register for 36 months pursuant to Civil Service Rule 12.2. Attorney Guttman-Valdes further stated that recently the City of Miami announced an opening for the position of Financial Information Business Process Analyst (FIBPA) and the recruitment was restricted to City employees. She stated if the Board were to compare the FIBPA job announcement with the position (Business Design Analyst) Ms. Nar held prior to her layoff, the Board would see that the two are identical. Attorney Guttman-Valdes went on to say that they believed the City renamed Ms. Nar's classification so that it could hire someone within (the City) as opposed to calling Ms. Nar back from the layoff register.

Chairman Silverman asked for the department's position on this matter. ACA Richard responded that she just received notice of this request yesterday. She went on to say

*that this was not a new grievance but rather an amendment of what was scheduled to be heard by the Board later on today that deals with whether Ms. Nar was properly laid off pursuant to Rule 12.1 and it is the department's position that the layoff was proper. She stated that before the Board can get to the new issue for which opposing counsel contends her client should be brought back to work via the layoff register, some finding first has to be made by the Board that Rule 12 applies, that the City properly laid off Ms. Nar via Rule 12.1 and that the City is therefore required to return Ms. Nar to work via the layoff register. ACA Richard went on to say that in her opinion, this new issue and the issue that is raised in Ms. Nar's grievance hearing that is scheduled today needs to be tried together. She further stated as an example, the Board cannot get to point B which is whether Ms. Nar should be recalled from the layoff register until the Board receives the answer to point A which is whether the City properly laid off Ms. Nar which is set to go forward today. ACA Richard stated she did not see how the Board could separate the two issues into separate hearings when they are part of the same complaint regarding the same parties in the matter of Ms. Nar's layoff that occurred September 2011.*

*Chairman Silverman stated if at the conclusion of the hearing the Board finds that Ms. Nar was not properly laid off, then the other request for a hearing would be moot. He asked the grievant's attorney if this was correct. Attorney Guttman-Valdes responded that it would be correct assuming that the City Manager follows the Board's recommendation. ACA Richard responded that the opposite would also be true if the Board did in fact find that the employee was properly laid off in accordance with Rule 12.1 because then they would now have the second issue of whether under Rule 12.2 Ms. Nar needed to be brought back to work in the new position so the two issues should be heard together. Chairman Silverman stated that it seemed to him that the Board should hear the first case that is scheduled for today and postpone the new request for a hearing until the Board makes a determination on the first case. He went on to say that there may not be a second case depending upon what the Board and the City Manager does. Chairman Silverman asked if anyone else wished to say something on this matter. Attorney Guttman-Valdes stated that she believed the new issue and the issue involving the hearing scheduled today are two separate discreet violations.*

*Chairman Silverman called for Board discussion and after hearing none, the Board entered a motion to DEFER this matter until after Min-Li Nar's first case is heard by the Board which resulted as follows:*

**APPROVED**

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

### **H.1**

Grievance hearing on behalf of Min-Li Nar, Process Design Analyst, pursuant to Rule 16.2, alleging a violation of Rules 11.1 and 12.1, as it concerns her layoff, effective September 23, 2011.

*The Board entered into the scheduled grievance hearing on behalf of Min-Li Nar, the Grievant.*

*Teri Guttman-Valdes, Attorney at Law, represented the Grievant.*

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

*Neither attorney presented opening statements. All witnesses were sworn in individually. Witnesses for the Grievant appeared in the following order:*

*1. Ricardo Martinez, Classification & Pay Supervisor, City of Miami, Department of*

*Human Resources. Questions were posed by Board Members Moy and Harris during the testimony of Ricardo Martinez.*

*2. Min-Li Nar, former Process Design Analyst, testified on her own behalf. Questions were posed by Board Members Moy, Harris, and Lago during the testimony of Min-Li Nar.*

*3. Cynthia Torres, ERP Director/Interim IT Director, City of Miami, Department of Information Technology. Questions were posed by Board Members Moy, Lago, and Harris during the testimony of Cynthia Torres.*

*Ricardo Martinez was recalled to answer questions posed by Member Lago.*

*The Grievant rested her case.*

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

*Daniel Alfonso, Director, City of Miami, Department of Strategic Planning, Budgeting, and Performance. Questions were posed by Board Member Lago during the testimony of Daniel Alfonso.*

*The Department rested its case and the Grievant waived rebuttal. The Board proceeded to closing arguments which were presented by both attorneys. Following final argument, Chairman Silverman read into the record Civil Service Rule 16.2(d) which is the procedure the Board follows for grievance hearings. He asked if there was any discussion from Board Members on this case.*

*Member Harris responded that in regards to violations of Rules 11.1 and 11.2 as alleged by the Grievant, she felt that the City did its best in this case [in trying not] to lay off Ms. Nar and she just did not see where the City violated these rules. She went on to say that when she looked at the bigger picture, [being on loan to the NET Office] actually benefited Ms. Nar because it extended her employment. Member Harris further stated that according to testimony it was understood that Ms. Nar was not (officially) transferred but was on loan to another department and according to documents she reviewed, Ms. Nar was paid at a higher salary for the work she performed while on loan to the NET Office.*

*Member Moy stated that his feelings about this case is that so many things went wrong. He went on to say that Ms. Nar was transferred from her position for an indefinite period of time without her consent so he felt in good faith, she should have been notified as to what was going to happen (with the transfer) but it did not happen. Member Moy further stated that in good faith, Ms. Nar reported to the NET Office, but she was never given an opportunity (to do the job) because she was laid off after 6 months. Member Moy went on to say that we must keep in mind that there are consultants housed in the Information Technology Department (ITD) that are performing the same duties as Ms. Nar so there is something definitely wrong (with Ms. Nar being laid off). He stated that Ms. Nar was not even given an opportunity in ITD, there was no evidence presented to prove that the ITD consultants are being paid through a grant, and it is not known at this time whether Ms. Nar had the least amount of seniority in ITD (when she was laid off.) Member Moy went on to say that this case had so many turns while Ms. Nar always presented herself as a professional, a team player, and a person willing to do her job. He further stated that he worked at the Allapattah NET Office for many years and he knows the duties that are performed, but he did not see how the duties of a Process Design Analyst would fit into a NET Office which is why he believes she cried out against going to the NET Office. Member Moy stated that he also believes that Ms. Nar knew that she would be laid off which is another reason why she did not want to go to the NET Office. He went*

on to say that there are 19 consultants assigned to ITD and he is sure that Ms. Nar can perform the duties of at least one of the consultants. Member Moy further stated that the audit of Ms. Nar's position was never completed which he felt was detrimental to her. He further stated that with regards to rule violations as alleged by Ms. Nar, he felt the department violated Rule 12.1 (when it laid off Ms. Nar by not following the layoff procedure) which states, "... employees shall be laid off as follows: duration, emergency or temporary employees, probationary employees, permanent employees."

Member Lago stated that at the most there might have been a violation of good faith but not a violation of the rules. He went on to say that it was clear that Ms. Nar was on loan to the NET Office and that it was clear from the testimony that the proper layoff procedures according to Rule 12.1 were followed and that her position was no longer needed. Member Lago further stated in his opinion (the action taken by the department) delineated the (layoff) process in Rule 12.1 that was followed by seniority which is a process that is followed in most organizations that have collective bargaining so he did not think the Grievant met her burden of proof.

Member Harris stated that she was sorry Ms. Nar's position was abolished and it does not make her feel good any time she hear about layoffs because it is very disheartening. She went on to say that she does not like to see anyone lose their job; however, she was glad to hear Ms. Nar state that of her 8 years with the City of Miami she felt that she was given opportunities to compete for jobs in the City and Ms. Nar's employment history proved just that. Member Harris further stated that nothing can disturb her more than to have layoffs and not have opportunity for employees to compete for jobs or that employees are not made aware of potential layoffs, but there was overwhelming testimony that the writing was on the wall (in regards to upcoming layoffs). She stated that she was sorry Ms. Nar felt the City violated Rule 11 by assigning her to an area for an extended period of time but this just says to her that she did not think the City really wanted to eliminate Ms. Nar's position and did everything it could before eliminating her position according to documents that were reviewed. Member Harris went on to say that she felt the department properly advised Ms. Nar in writing (of the layoff) but again she was sorry that Ms. Nar lost her job.

Member Gomez stated that she did not think Ms. Nar met the burden of proving the City violated any of her Civil Service rights because she was only on loan and was never actually transferred to the department (NET Office). She went on to say that although a transfer was pending, she was terminated (laid off) before the transfer occurred. Member Gomez further stated that consultants are hired on a temporary basis so Ms. Nar's (classified, permanent) position cannot be compared to a temporary position. She stated that she did not see that there was a violation of Rule 12 because Ms. Nar was the only employee (city-wide) that held the position of Process Design Analyst and it was abolished.

Chairman Silverman stated that he did not see any violations of the rules. He went on to say that it is unpleasant when a person is laid off, but if the City does not have enough money, someone is laid off. He stated this is not a pleasant job and the Board is not a budget committee in that it does not pick and choose which employee remains employed or is laid off. Chairman Silverman reiterated that he did not see where the City violated any of the rules (as alleged by the Grievant) and since her name is on a layoff register maybe there will be a job for her in the future. He stated there was not enough money to go around, a lot of employees were laid off, so it is just a sad situation.

Following discussion, the Board entered a motion to find that the City did not violate Civil Service Rules 11.1, 11.2 and 12 as alleged by the Grievant, Min-Li Nar, which resulted as follows:

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

**Aye:** Silverman, Lago, Gomez, Moy and Harris

## H.2

Hearing of Appeal on behalf of Yatha Legrand, Police Officer, relative to her 30-hour suspension, effective January 25, 2012.

*Jon Kreger, Attorney on behalf Yatha Legrand, stated that he submitted a request to continue his client's hearing last week. Chairman Silverman asked ACA Richard if she had an objection to the continuance request. ACA Richard responded in the negative. There being no objection, the Board entered a motion to CONTINUE the hearing of Yatha Legrand and charge the continuance to the employee which resulted as follows:*

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

**Aye:** Silverman, Lago, Gomez, Moy and Harris

## H.3

Hearing of Appeal on behalf of Devell King, Waste Collection Operator II, relative to his 3-day suspension, effective February 7, 2012.

*Chairman Silverman asked if Mr. King is represented by counsel. The Executive Secretary responded in the negative, but that Mr. King was advised of his hearing date.*

*Joe Simmons, President, Sanitation Workers Union, AFSCME-Local 871, appeared before the Board and stated he and Mr. King met with the Department Director of Solid Waste last week and entered into a settlement agreement that will become effective upon receipt of a letter from Devell King withdrawing his appeal request. He went on to say that he expects to receive the withdrawal letter sometime next week.*

*Following discussion, the Board entered a motion to CONTINUE the hearing of Devell King which resulted as follows:*

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

**Aye:** Silverman, Lago, Gomez, Moy and Harris

*NOTE: Case will be closed and removed from the Board's docket upon receipt of written settlement agreement or rescheduled in accordance with the Board's Continuance Policy.*

## ADJOURNMENT:

*The meeting ADJOURNED at 1:05 p.m. Breaks were taken at 10:18-10:28 a.m., 11:13-11:19 a.m. and 12:08-12:14 p.m.*

**SIGNATURE:**

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**Gerald Silverman, Chairperson**

**ATTEST:**

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**Tishria L. Mindingall, Executive Secretary**