

# **City of Miami**

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



## **Meeting Minutes**

**Tuesday, August 21, 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 9:59 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 August 7, 2012.

*The Board entered a motion to APPROVE the minutes of August 7, 2012 which resulted as follows:*

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

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

**B. PERSONNEL MATTERS****C. MILITARY LEAVES OF ABSENCE**

- C.1** Gabino Soto, Firefighter, requests re-employment as a Fire Fighter following his return from military leave. Copies of his Honorable discharge submitted. (DISCUSSION)

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

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

**D. DISCIPLINARY MATTERS**

- D.1** Copy of a letter from Chief Manuel Orosa, Director, Department of Police notifying Carlos Antunez, Police Officer, of his 10-hr forfeiture, effective August 10, 2012. (NOTIFICATION)

**NOTIFIED**

- D.2** Copy of a letter from Chief Manuel Orosa, Director, Department of Police notifying Adnnan Anjum, Police Officer, of his 10-hr forfeiture, effective August 15, 2012. (NOTIFICATION)

**NOTIFIED**

- D.3** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Manuel Cabrera, Police Officer, of his 10-hr forfeiture, effective August 16, 2012 and a copy of a request to appeal from Officer Cabrera. A hearing of appeal will be scheduled in accordance with Civil Service Rules and Regulations. (NOTIFICATION)

**NOTIFIED**

- D.4 Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Jesus Infante, Police Officer, of his 20-hr forfeiture, effective August 15, 2012 and a copy of a request to appeal from Officer Infante. A hearing of appeal will be scheduled in accordance with Civil Service Rules and Regulations. (NOTIFICATION)

**NOTIFIED**

## **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)

Deferred from the meeting of July 24, 2012 and August 7, 2012.

*The Board entered a motion to APPROVE the findings of fact as amended, which 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

- E.2 Copy of Findings of Fact in the Appeal Hearing of Ansonia Chatfield, Emergency Dispatcher, relative to her 120-hour suspension, effective July 7, 2011. (DISCUSSION) **ITEM ADDITION**  
Deferred from the meeting of August 7, 2012.

*Following consideration of the proposed changes to the Findings of Fact, Member Harris stated that she wished to make some comments for the record. She stated she was somewhat appalled by the response the department's attorney received when she requested a document (P-Sheet) from the police department that the Board needed to review for purposes of making a determination in this case. Member Harris went on to say that for the police department to tell Assistant City Attorney (ACA) Richard that she needed to provide a public records request in order to obtain the document was ludicrous. She further stated she knew it was not ACA Richard's fault (for not having the document), but she just wanted her to know that had it not been for the consistent, convincing, and overwhelming testimony from Supervisor Helene Lugo, the department would have had a challenge with this case especially since there was a missing key document. Member Harris stated with regards to the missing document, one thing had nothing to do with the other, but she believed the employee's attorney tried to push certain issues and of course they had to have a basis for it. She went on to say that she respected how the employee's attorney argued the case and also how he passionately fought for his client; however, she just did not see how a case of double-dipping on the part of Supervisor Lugo as alleged by Ms. Chatfield would have any bearing on Ms. Chatfield disobeying a direct order in a paramilitary organization, when one thing had nothing to do with the other. Member Harris further stated this goes back to the old saying, "There is a time and a place for everything and how things are dealt with." She stated she feels the Board needs to be more stringent as it relates to the Board and the City's ability or inability to receive documents that are public record, especially in this case it was the attorney requesting documents from her client and was unable to do so unless she produced a public records request. Member Harris went on to say that this is a public hearing so it really looks bad when the public sees that neither the Board nor the department's attorney could obtain requested documents. She further stated the Board's main goal in how the Board conducts business, is to ensure what is in the best*

*interest of the public.*

*Member Lago stated that he was in agreement with Member Harris' comments. He went on to say that he believes the responsibility of this Board is to make findings based on all of the evidence so documents that are requested need to be made available to the Board.*

*Following discussion, the Board entered a motion to ADOPT the Findings of Fact as amended 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, Lago and Harris

*Following approval of the findings, Member Lago stated he wished to make a motion pursuant to Rule 4 that the Board send a letter to the City Manager urging him to send a communication to department heads to comply with requests for production of public records. He went on to say that he believed that as a body, the Board needs to be fully informed and it also needs the cooperation of department heads by providing all documentation necessary in order for the Board to make decisions.*

*Member Harris stated in the last hearing, the Board approved a motion to conduct an investigation into the termination of Marly Saldarriaga. She went on to say she think it is important to pass the motion because when documents are requested as Ms. Saldarriaga's case is moved along, the Board would be able to determine whether Ms. Saldarriaga should be granted a hearing.*

*Following discussion, the Board entered a motion to recommend that the City Manager send communication to department directors to comply with requests for the production of documents needed in helping the Board make determinations in Civil Service cases. 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

- E.3** Notice of Withdrawal from Devell King, Waste Collection Operator II, relative to his 3-day suspension, effective February 7, 2012. (NOTIFICATION)

File will be closed and removed from the Board's docket.

**NOTIFIED**

## **F. REPORTS**

- F.1** Pending Hearings as of August 21, 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 5-day suspension, effective July 26, 2011.

*Chairman Silverman stated that since the attorneys have agreed to hear the cases out of turn, the Board would not have sufficient time to hear the cases in the matter of Carlos Jimenez (Items H.1 and H.2). Following discussion, the Board entered a motion to CONTINUE Carlos Jimenez' hearing and charge the continuance to the Board which resulted as follows:*

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

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

## H.2

Grievance Hearing on behalf of Carlos Jimenez, Structural Engineer/Plans Examiner, 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 Chief Examiner Moy, seconded by Member Harris, that this matter be CONTINUED. PASSED by the following vote.**

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

## H.3

Grievance hearing on behalf of Alejandro Pascual, Building Inspector I, pursuant to Civil Service Rule 16.2, concerning a violation of Rule 12, Layoff, Resignation, and Reinstatement.

*The Board entered into the scheduled grievance hearing on behalf of the Grievant, Alejandro Pascual.*

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

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

*Both attorneys presented 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. Alejandro Pascual, former Building Inspector I, City of Miami, Building Department, testified on his own behalf. Questions were posed by Board Member Moy during the testimony of Alejandro Pascual.*

*2. Amarilys Perez, Chief Steward/Secretary-Treasurer, AFSCME-Local 1907.*

*The Grievant rested his case.*

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

*1. Mariano Fernandez, Director/Building Official, City of Miami, Building Department. Questions were posed by Board Members Moy, Lago, Harris, Gomez, and Silverman during the testimony of Mariano Fernandez.*

*2. Ricardo Martinez, Compensation Supervisor, City of Miami, Department of Human Resources. Questions were posed by Board Member Harris during the testimony of Ricardo Martinez.*

*The Department rested its case. Attorney Braverman recalled Alejandro Pascual as a rebuttal witness. Questions were posed by Board Members Harris and Lago. The Grievant rested on rebuttal and the Department waived rebuttal. The Board proceeded to closing argument and both attorneys presented their 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 they wished to take up concerning this case. Member Lago responded in the affirmative. He stated that while he commends Attorney Braverman for a job-well done in the handling of his client's case, there were some points with which he had disagreement. Member Lago went on to say that Department Director Mariano Fernandez testified that the reorganization of the Building Department was requested by the City Manager, approved by the City Commission and that Union representatives were included in discussions regarding the reorganization. He further stated that Compensation Supervisor Ricardo Martinez testified that the seniority process was followed in determining which employee was bumped (as a result of having the lowest seniority score) and that Mr. Pascual testified that (at the time of him being bumped from his Building Inspector I position), there were no temporary employees in the Building Department holding that same classification. Member Lago stated that he knows it is very difficult when a person loses his job so it is unfortunate that Mr. Pascual became the victim of what he considered to be an archaic bumping rule that was promulgated by the bargaining units that protects its employees. He went on to say that these are the (Civil Service) rules that the Board must follow so he did not see any type of violation committed by the department nor did he see any evidence to suggest that the department tried to circumvent the rules. Member Lago further stated that he felt (the department) followed everything correctly and that he felt bad Mr. Pascual lost his job.*

*Chairman Silverman asked if there was any other discussion. Member Harris responded in the affirmative. She stated that her gut feeling was that she did not think Mr. Fernandez intended to hurt anybody (in the process of having to make changes in his department.) Member Harris went on to say that Mr. Fernandez testified before the Board in the past and based upon her interaction with him, she always felt that he was sincere when testifying. She further stated that in her opinion, Mr. Fernandez is a good department director who has good intentions and that she commends him for what she believed to be a great vision for the City and the Building Department under these trying times. Member Harris stated that what she heard from Mr. Fernandez' testimony was successful management planning and training and development for the employees that are under his responsibility. She went on to say that she did feel, albeit intentional or unintentional, there was a circumventing of the rules. Member Harris further stated that she did not feel Mr. Fernandez intended to circumvent the rules, but after hearing all of the testimony she concluded there was a circumventing of the rules. She stated that whether there was a reorganization (as was the testimony) or a layoff, the bottom line is the result would have been the same (as to an employee having to lose their job.) Member Harris went on to say that although the department's position was that a reorganization took place, it was clear to her what took place in the Building Department was a layoff based upon the definition cited in Rule 12.1 that includes layoff elements such as reducing the number of employees within a given classification, lack of work funds, and an abolishment of positions which was indicative of what happened in this case. She further stated there were a lot of semantics used throughout this hearing, but she believed the elements that define a layoff are what needed to be considered as well as considering both sides of the equation to ensure that they are equal so as far as she was concerned, what happened in this case was equal to a layoff. She stated even in cases where Managers do not have ill-intent, they could fumble by not being aware of pertinent information as Mr. Fernandez admitted (when he reorganized his department)*

he was not aware of the existing Memorandum of Understanding (MOU). Member Harris went on to say that based upon the existing MOU, she believed Rule 12.8, entitled Accordance with Collective Bargaining Agreement, applied in this case. She further stated in the spirit of what Mr. Fernandez is advocating for his department with regards to offering employment to employees in the future, her feeling was that the Board should allow for the City to prove itself by recommending to the City Manager that a layoff did occur in the Building Department. Member Harris stated what happened in the Building Department met the elements of a layoff therefore, it should also be recommended that Alejandro Pascual's name is placed on a layoff register (for 36 months) so that he has certain rights for future employment since according to Mr. Fernandez' testimony, positions will be requested in the Building Department's upcoming budget.

Member Moy stated he has been a Code Enforcement Inspector for 12 years. He went on to say that in 2010, his department had to make cuts to its budget the same as the Building Department had to make cuts, and that was a difficult time because employees had to be laid off. He went on to say that Tamara Gilbert and Sally Delgado were temporary employees hired last into the department and they were laid off, and although they lost their jobs, the department had to make more cuts which resulted in three probationary Inspectors losing their jobs. Member Moy went on to say that Rule 12.1 was applied in that case by first terminating the temporary employees, and subsequently the probationary employees, but it was fortunate that they did not lose any permanent Inspectors. He further stated Member Harris mentioned that the elements of a layoff were evident in this case no matter how one might have tried to dress it up as something else because it was still a layoff. Member Moy stated that he requested Management provide him with a copy of an organization chart of the Building Department and he received two charts with information that did not explain what really happened when personnel changes were made in the Building Department. He went on to say that he was sure that when a police officer makes an arrest, the officer must have evidence and the motive for the arrest so the same goes when he asked Mr. Fernandez to provide documentation to prove that he was authorized by the City Manager to conduct the reorganization of the Building Department, but it was never provided. Member Moy further stated that he did have a document before him; however, it did not provide what authority Mr. Fernandez had to perform the duties of Building Official and Unsafe Structure Chief, but he did see where Mr. Fernandez could be a department director. He stated that to the credit of the City, it lifted the hiring freeze, however, private inspectors were hired recently, and a job announcement was posted for a (clerical) position in the Building Department approximately three weeks ago. He went on to say that Mr. Pascual was placed out of a job without just cause, so he felt that Rule 12 was definitely violated.

Following discussion, the Board entered a motion to report to the City Manager that Alejandro Pascual be returned to his position of Building Inspector I. Under discussion on the motion, Member Gomez stated that Mr. Pascual was actually laid off so there was a violation of Rule 12. Following discussion, the motion on the floor to return Alejandro Pascual to his position of Building Inspector I, resulted as follows:

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

**Aye:** Moy, Gomez and Harris

**No:** Silverman and Lago

**The grievance hearing on behalf of Alejandro Pascual having concluded, in accordance with Civil Service Rule 16(d) the Findings of Fact and Recommendations will be prepared for approval by the Board, and ultimately**

**forwarded to the City Manager for his consideration of a proper remedy, if a remedy is necessary.**

**H.4**

Grievance Hearing on behalf of Frank Rodriguez, Building Inspector I. pursuant to Rule 16.2, alleging a violation of Rule 12.1, as it concerns a violation of Rule 12, Layoff, Resignation, and Reinstatement.

*The Board entered into the scheduled grievance hearing on behalf of the Grievant, Frank Rodriguez*

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

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

*Attorney Braverman presented opening statements and 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. Frank Rodriguez, former Building Inspector I, City of Miami, Building Department.*

*The Grievant rested his case. Witnesses for the Department appeared in the following order:*

- 1. Mariano Fernandez, Director/Building Official, City of Miami, Building Department.*
- 2. Ricardo Martinez, Compensation Supervisor, City of Miami, Department of Human Resources. Questions were posed by Board Member Lago during the testimony of Ricardo Martinez.*

*The Department rested its case and the Grievant waived rebuttal. The Board proceeded to closing argument and both attorneys presented their positions on this case. Following final argument, Chairman Silverman read into the record, Civil Service Rule 16.2(d) which are the procedures the Board follows regarding grievance hearings.*

*Chairman Silverman called for Board discussion. Member Harris stated she felt if the department would have operated under the layoff rule, it would have had a better standing. She went on to say she was not implying in her previous ruling that had the department followed the layoff procedures that the employees probably still would have been laid off. Member Harris further stated that she asked the question several times during the previous hearing if the results would have been the same (had there been a reorganization or a layoff) and it appeared to her that the results would have been the same, but she did not want to assume so she deferred to the experts to answer her question. She stated that the fact that she believed Mr. Pascual and Mr. Rodriguez still would have lost their jobs was not the issue for her in terms of the ruling. Member Harris went on to say that upon reviewing Rule 12.1, it not only talked about those three things (reducing the number of employees due to a lack of funds, other causes, abolishment of positions) but there are other parts of this rule. She further stated even if it meant that the two employees would have lost their jobs, the question is were these employees afforded their rights under Rule 12.2 to have their names placed on a layoff register (for 36 months) to ensure them an opportunity to be recalled to work. Member Harris stated that she totally believe that Mr. Fernandez will rehire Mr. Rodriguez and Mr. Pascual but she also understood the grievants wanting to have some assurance that if there was an opportunity for them to be recalled, for example, Mr. Fernandez including additional positions in his department budget for the future that they would have the first opportunity to fill one of the positions. She went on to say that the department contended that a reorganization took place that led to Mr. Rodriguez losing his jobs, but*



*the elements of a layoff were clearly evident in this case.*

*Member Lago stated the Board heard testimony from Mr. Fernandez that this was not a layoff but a reorganization of the Building Department which he believed was the truth because when he asked him (was it a layoff or a reorganization), Mr. Fernandez testified that management needed ability through the process of a reorganization to be flexible and to adapt to change in economic downfalls. He went on to say that he would caution the Board from meddling in business decisions that allows an enterprise the necessary tools to adapt to changing times. Member Lago further stated that it is not the Board's job to overturn the operational decisions of management but it is the Board's duty to protect employees from abuse and make certain that the rules are followed. He stated this was not a matter about layoffs but another unfortunate consequence of an archaic bumping rule so he could not support a motion that overturns management's right to become a more efficient and leaner organization.*

*Member Harris stated that she heard comments before about the Board Members not being super managers and she agrees. She went on to say that her job as a Board Member is to ensure, protect, and uphold the Civil Service Rules and as it relates to this type of hearing (grievance), it is her responsibility to give the City Manager a recommendation. Member Harris further stated she provided a recommendation and the City Manager has the final say-so on this matter; however, if there is a recommendation she could provide to the City Manager that would help him or improve the City in the future that is what she has to do as one of her responsibilities as a Board Member. She stated that she was not usurping the City Manager's authority but giving him a recommendation so that he can decide whatever it is he wishes to do with this case.*

*Following discussion, the Board entered a motion to find that there was a violation of Rule 12 and to recommend to the City Manager that Mr. Frank Rodriguez be returned to his classification of Building Inspector I. The motion resulted as follows:*

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

**Aye:** Moy, Gomez and Harris

**No:** Silverman and Lago

**The grievance hearing on behalf of Frank Rodriguez having concluded, in accordance with Civil Service Rule 16(d) the Findings of Fact and Recommendations will be prepared for approval by the Board, and ultimately forwarded to the City Manager for his consideration of a proper remedy, if a remedy is necessary.**

#### **ADJOURNMENT:**

*The meeting ADJOURNED at 3:44 p.m. Breaks were taken at 10:21-10:29 a.m., 12:45-1:38 p.m. (Lunch) and 2:47-2:52 p.m.*

**SIGNATURE:**

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**Gerald Silverman, Chairperson**

**ATTEST:**

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**Tishria L. Mindingall, Executive Secretary**