

City of Miami

*City Hall
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Meeting Minutes

Tuesday, September 4, 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 10:00 a.m. The Executive Secretary advised that she cancelled the presence of Special Counsel, due to there being no hearings scheduled. 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 August 21, 2012.

The Board entered a motion to APPROVE the minutes of August 21, 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 and Harris

Absent: Lago

B. PERSONNEL MATTERS

- B.1** Request from Booker T. Wade, to be placed on the re-employment list for Heavy Equipment Mechanic, pursuant to Civil Service Rule 12, Sec. 12.4, Resignations, and a copy of the Department Director's endorsement.
(DISCUSSION)

The Board entered a motion to APPROVE Booker T. Wade's request to have his name placed on the re-employment list for Heavy Equipment Mechanic which resulted as follows:

Motion by Member Gomez, seconded by Member Harris, 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 advising no further action is needed 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.
(NOTIFICATION)

NOTIFIED

- D.2** Copy of a letter from Chief Manuel Orosa, Director, Department of Police,

notifying John Marin, Police Officer, of his 10-hour forfeiture, effective August 24, 2012 and a copy of a request to appeal from Officer Marin. A hearing of appeal will be scheduled in accordance with Civil Service Rules and Regulations. (NOTIFICATION)

RECEIVED AND FILED

- D.3** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Dermis Hernandez, Police Officer, of his 40-hour suspension, effective September 5, 2012. (NOTIFICATION)
- NOTIFIED**
- D.4** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Nicolas Perez, Police Officer, of his 10-hour forfeiture, effective August 22, 2012. (NOTIFICATION)
- NOTIFIED**
- D.5** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Nicholas Perez, Police Officer, of his 10-hour suspension, effective August 24, 2012. (NOTIFICATION)
- NOTIFIED**
- D.6** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Stanley Mike, Police Officer, of his 80-hour suspension, effective September 1, 2012. (NOTIFICATION)
- NOTIFIED**
- D.7** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Harold Jones, Police Officer, of his 20-hour forfeiture, effective August 22, 2012. (NOTIFICATION)
- NOTIFIED**
- D.8** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Tika Jones, Police Officer, of her 20-hour forfeiture, effective August 21, 2012. (NOTIFICATION)
- NOTIFIED**
- D.9** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Raul Valdes, Police Officer, of his 10-hour forfeiture, effective August 21, 2012. (NOTIFICATION)
- NOTIFIED**
- D.10** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Juan Ortega, Police Officer, of his 20-hour forfeiture, effective August 16, 2012 and a copy of a request to appeal from Officer Marin. 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 a Request to Continue from Ajit Chhabra, Budget Analyst, concerning his 2-day suspension, effective May 11, 2012. Janeen Richard, Assistant City Attorney, expressed no objection to the continuance request. (DISCUSSION) Hearing of appeal is scheduled for today.

Chairman Silverman stated that opposing counsel expressed no objection to Ajit Chhabra's request for a continuance. He asked if anyone wished to comment on this item. Member Harris asked how many continuances were requested in this case. The Executive Secretary responded that this was the first time this hearing was scheduled and this was the first continuance requested by the employee.

Following discussion, the Board entered a motion to APPROVE Ajit Chhabra's request for a continuance 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, Moy, Gomez and Harris

Absent: Lago

- E.2** Notice of a Settlement concerning the hearing of appeal on behalf of Johnny Brutus, Police Officer, relative to his 20-hour suspension, effective September 10, 2011. (NOTIFICATION) Hearing of Appeal is scheduled for today.

NO ACTION TAKEN : The Executive Secretary confirmed that no action was required by the Board as this was a notification to the Board of a settlement reached by both attorneys in this case.

- E.3** Copy of a Memorandum to the City Manager concerning requests from the Civil Service Board. (DISCUSSION)

Chairman Silverman stated he did not know who prepared the September 4, 2012 memo addressed to the City Manager for his signature, but after reviewing it, he did not like the word "appalled" that was used in one of the sentences. He went on to say if that word is omitted, he would be happy to sign the memo.

Chairman Silverman asked if there were any other discussion on this item. Member Harris responded in the affirmative and thanked the Executive Secretary for capturing the Board's motion (made at the last meeting regarding requests for documents and including it in the memo she prepared for the Chairman's signature.)

DISCUSSED : Chairman Silverman advised that no motion by the Board was needed on this item.

- E.4** Request for an Appearance before the Board, from Mark Berkowitz, Attorney, concerning the Whistleblower Hearing on behalf of Glenn Marcos, former Director of Purchasing, relative to his untimely amended request.

(DISCUSSION) ITEM ADDITION

This item was not included on today's agenda for discussion and was taken up from the floor.

Chairman Silverman asked Attorney Berkowitz to state his purpose before the Board today. Attorney Berkowitz responded on behalf of his client, Glen Marcos, he was appealing to the Board to reinstate or implement an amendment to their complaint. He went on to say it was his understanding his client's hearing is not until October 30, 2012 and they filed the amendment on May 15, 2012; however, he would admit that the amendment was filed 10 days after the deadline that was agreed upon at the Board's April 23, 2012 meeting. Attorney Berkowitz stated with certainty the opposing side would not be prejudiced by an amendment at this point because they have plenty of time to prepare for the hearing, which was the main objection to submitting the amendment.

Chairman Silverman asked Attorney Berkowitz was he present to ask the Board to give him leave to amend his client's complaint. Attorney Berkowitz responded that they filed the amendment on May 15 and he is requesting the Board accept the amendment (although it was submitted untimely.)

Chairman Silverman asked Assistant City Attorney (ACA) Richard for her position on Attorney Berkowitz' request. ACA Richard responded that she objects to Attorney Berkowitz' request on the basis that they agreed to a date certain. She went on to say that Mr. Marcos was released by the City in 2010 so this case has been going on for over two years and since that time, there have been continuances upon continuances on the side of the employee. ACA Richard further stated the last time this matter was set for a hearing, Mr. Marcos was present to testify, but the Board did not get to his hearing due to time constraints; however, before that hearing was scheduled, two days prior she received an amendment to Mr. Marcos' complaint. Chairman Silverman intervened and asked ACA Richard how was she prejudiced in this case. ACA Richard responded she was prejudiced because these are additional complaints that have to further investigated. Chairman Silverman brought to ACA Richard's attention that she would have an entire month to prepare. ACA Richard responded that these were not simple, straight forward additional complaints that Mr. Marcos alleged. She went on to say that when this matter was last discussed, she made the same plea that she is making now, which was she needed assurance that Mr. Marcos was not going to amend his complaint again and have the City start anew in preparing its defenses. ACA Richard further stated when this matter of the amendment came up, Attorney Berkowitz asked how much time he needed and he indicated he needed 30 days to submit his amendment. She stated she did not force Attorney Berkowitz but he agreed to a 30-day window to submit his amendment and 45 days later is when he submitted his amendment.

Chairman Silverman asked Attorney Berkowitz for his position regarding opposing counsel's argument. Attorney Berkowitz responded that his client had some problems and could not get the amendment in by the deadline. Chairman Silverman asked how late was he in submitting the amendment. Attorney Berkowitz responded it was 10 days after the deadline date that he submitted the amendment. He went on to say that the City certainly has enough time to prepare, they are not going to amend the complaint again, so he did not see any prejudice to the City in this case.

Member Harris stated she needed clarification on one statement included in the Executive Secretary's May 16, 2012 letter addressed to Attorney Berkowitz. She read into the record a portion of the letter which stated, "... your client's Whistleblower claim would be accepted if they were forwarded within 30 days of the meeting date." Member Harris asked the Executive Secretary if the meeting date referred to the particular date

of April 3, 2012 that the Board met? The Executive Secretary responded in the affirmative. Member Harris asked Attorney Berkowitz if he had the same understanding. Attorney Berkowitz responded that he suggested 30 days as a convenience, but he thinks the main point was not to prejudice the other side by not having sufficient time to prepare. He stated it was clear the City would have plenty of time to prepare even with the additional allegations and therefore it is their position that they should be allowed to go forward (with the amendment to his client's complaint.)

Chairman Silverman stated the Board needed to make a decision whether to accept the Mr. Marcos' amendment to his complaint that was submitted untimely. Following discussion, the Board entered a motion to accept Mr. Marcos' amendment to his complaint which resulted as follows:

Motion by Member Gomez, seconded by Member Harris, 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 September 4, 2012. (NOTIFICATION)

PRESENTED

F.2 Copy of a Preliminary Investigation report from Sean Moy, Chief Examiner concerning the matter of Marly Saldarriaga, former Public Service Aide. (DISCUSSION)

Chairman Silverman stated he reviewed the report prepared by the Chief Examiner and that it was very well done. Chairman Silverman called for discussion on this item.

Member Harris thanked Chief Examiner Moy for the thorough job he did on the investigation into the matter of Magaly Saldarriaga. She went on to say that from the City's prospective, she wished to talk a little about saving time and energy if documents are produced. Member Harris further stated part of the reason she recommended an investigation in lieu of voting for a grievance hearing in this case was because the document was not available that the Board needed to make a determination, one way or the other, in this case. She stated she could not emphasize enough that when the Board does not have the needed documents, it hinders the Board's balanced decision because all the Board can consider is what is presented at the time of the hearing. Member Harris went on to say that considering the memo the Executive Secretary prepared for the Board which emphasized the importance of having the documents, she did not understand why there would be this hesitation to produce the documents on the part of the City when having the documents worked to the favor of the City many times. She further stated her suggestion to both sides would be to produce the documents and let the chips fall where they may. Member Harris stated that she appreciated those who cooperated with the Chief Examiner during his investigation because the Chief Examiner was able to conduct a thorough investigation, the chips fell where they may, and as a result it was determined a grievance hearing was not needed.

Chairman Silverman asked if Attorney Braverman received a copy of the Chief Examiner's investigation report. The Executive Secretary responded in the affirmative and also stated that she had not heard from Attorney Braverman on this matter as yet. Chairman Silverman stated that he did not know whether the Board should go forward

on this matter without Attorney Braverman being present and suggested that this item be carried over to the Board's next meeting for consideration.

Chairman Silverman asked ACA Richard if she wished to comment on this item. ACA Richard responded that she did not wish to comment about this particular case but about the production of documents. She stated from the City's perspective she can say that she and the individual departments that she represents try to anticipate what documents would be necessary for the Board's consideration in order for the City to prove its case. ACA Richard went on to say that in regards to the particular case (of Ansonia Chatfield) that she believed started this discussion, from the City's prospective that particular case was about insubordination so she and her client did not think they needed to produce a certain document to show proof that the supervisor who gave the direct order adjusted her own schedule. She further stated the problem the City and the departments have is they do not know what the employee's defense is going to be until the employee testifies. ACA Richard stated there is nothing that requires an employee at the time of requesting an appeal hearing to state why he/she is appealing rather the employee checks a box to indicate whether he/she agrees or disagrees with the facts and/or penalty. She went on to say that neither is there a requirement from this Board that the employee must indicate what he/she has a disagreement about at the time of requesting a hearing; and nor is there discovery or exchange of documents in these cases, so she and her clients have to try to anticipate what the employee is going to raise. ACA Richard further stated the City often times receives public record requests from the employee and in turn the City turns over its documents, but the employee is under no obligation by the Board's rules to produce any documents or to say why he/she is appealing the discipline. She stated (given these circumstances), it is sort of hard for the City to anticipate what the employee is going to raise and then have documents available to respond to those defenses. ACA Richard went on to say she did not know the solution to this problem, but she did know that the Board could establish its own rules and procedures. She further stated since the thought is to be open and fair, then at a minimum whenever an employee requests an appeal hearing, the employee should be required to state what he/she is appealing and what his/her defenses are. ACA Richard stated (she recalled) there being one hearing request where an employee referenced a settlement agreement, but the settlement agreement was not attached to the employee's request. She also stated (she recalled) a case where an employee submitted a binder with 50 documents that the City received five minutes before the start of that hearing. She went on to say she put this information on the record to show the City tries its best to anticipate what documents the Board will need to make a fair and final decision, but sometimes their hands are tied based upon the information received from the employee.

Member Harris stated with all due respect, she was not referring to the particular case referenced by ACA Richard. She went on to say there are rules in place that say both sides are supposed to submit documentation prior to the hearing. Member Harris further stated the particular case she referenced was the case (of Marly Saldarriaga) for which Chief Examiner Moy conducted an investigation. She stated to say that the employee knew what she did (as stated by ACA Richard), was not sufficient in her opinion. Member Harris went on to say although it was determined by the Chief Examiner that Ms. Saldarriaga should not be employed with the City, the employee still had a right to know (the reason for her termination.) She further stated there are rules that can be applied when an employee is terminated and the employee should be noticed in writing of these rules, but its resolve should not be, "She know what she did." Member Harris stated everyone is entitled to due process even if they are ultimately found guilty.

Chairman Silverman stated unless there is an objection from a Board Member, his suggestion would be to defer this item to the Board's next meeting in order to give Attorney Braverman an opportunity to speak since he was not present at today's

meeting.

Member Moy stated that he wished to comment and thanked the Executive Secretary for assisting him with the investigation into the matter of Marly Saldarriaga. Member Moy stated that Ms. Saldarriaga was terminated but not given a reason for the termination. Chairman Silverman respectfully interceded and suggested that Member Moy hold his comments until the time when Attorney Braverman was present otherwise it would look like the Board was making a decision in his absence.

Without objection from Board Members, this matter was deferred.

PRESENTED : The Executive Secretary was instructed to include this item on the Board's next agenda and to notify Attorney Braverman so that he is present when this item is discussed.

G. REQUESTS FOR HEARINGS

H. TODAY'S HEARINGS

H.1 Hearing of Appeal on behalf of Ajit Chhabra, Budget Analyst, relative to his 2-day suspension, effective May 11, 2012.

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

H.2 Hearing of Appeal on behalf of Johnny Brutus, Police Officer, relative to his 20-hour suspension, effective September 10, 2011.

CONTINUED : The Board took no action due to a settlement in this case. This 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:

Prior to adjourning, Chairman Silverman stated he has a trial scheduled for April 30, 2013 and asked the Executive Secretary to rearrange the schedule since he would not be available.

Following the Chair's announcement, the meeting ADJOURNED at 10:17 a.m.

SIGNATURE:

Gerald Silverman, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary