

City of Miami

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

Tuesday, November 13, 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 10:06 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 October 30, 2012.

The Board entered a motion to APPROVE the minutes of October 30, 2012 which resulted as follows:

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

Aye: Silverman, Moy, Gomez and Harris

Absent: Lago

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 the Appeal Hearing of Deborah Hudson, Typist Clerk III, relative to her 80-hour suspension, effective January 31, 2011. It is ordered and adjudged that the decision of the Chief of Police to suspend Officer Hudson for 80-hours is hereby reversed. (NOTIFICATION)

NOTIFIED : Case closed and forwarded to the Department of Human Resources for filing in employee's official personnel file.

- D.2** Copy of a Judgment from the City Manager concurring with the Board's findings concerning the Appeal Hearing of Candace Jones, Police Officer, relative to her 10-hour forfeiture and 1-month suspension of take home vehicle, effective February 12, 2011. It is ordered and adjudged that the decision of the Chief of Police to forfeit 10-hours is hereby reversed. (NOTIFICATION)

NOTIFIED : Case closed and forwarded to the Department of Human Resources for filing in employee's official personnel file.

- D.3** Copy of a Judgment from the City Manager concurring with the Board's findings concerning the Appeal Hearing of Carlos Jimenez, Structural Engineer/Plans Examiner, relative to his 3-day suspension, effective July 18, 2011. It is ordered and adjudged that the decision of the Department's Director to suspend Mr. Jimenez is hereby sustained.(NOTIFICATION)

NOTIFIED : Case closed and forwarded to the Department of Human Resources for filing in employee's official personnel file.

- D.4 Copy of a Judgment from the City Manager concurring with the Board's findings concerning the Appeal Hearing of Marcel Jackson, Police Officer, relative to his 30-hour suspension, effective March 23, 2012. It is ordered and adjudged that the Chief of Police's decision ordering Officer Jackson to be suspended for 30-hours is hereby sustained.(NOTIFICATION)

NOTIFIED : Case closed and forwarded to the Department of Human Resources for filing in employee's official personnel file.

- D.5 Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Rolando Rodriguez, Police Officer, of his termination, effective October 30, 2012. (NOTIFICATION)

NOTIFIED

- D.6 Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Reginald Williams, Police Officer, of his 260-hr suspension, effective November 6, 2012 and a copy of a request to appeal from Officer Williams. A hearing will be scheduled in accordance with Civil Service Rules and Regulations. (NOTIFICATION)

RECEIVED AND FILED

E. GENERAL ITEMS

- E.1 Copy of a Report in the Whistleblower hearing on behalf of Glenn Marcos, former Director of Purchasing, pursuant to Florida Statute 112.3187. (DISCUSSION)
- The Executive Secretary stated that she received notice from Attorney Berkowitz that he would not be available today and asked that this item be moved to the next agenda. Without objection from other Board Members, the Chairman instructed the Executive Secretary to reschedule this matter to the Board's next meeting.*

DEFERRED TO THE BOARD MEETING OF NOVEMBER 27, 2012.

- E.2 Hearing of Appeal on behalf of Jean Marie Jean-Philippe, Police Officer, concerning his 80-hour suspension, effective March 29, 2010. (DISCUSSION)

Rescheduled pursuant to continuance policy; pending settlement since October 16, 2012.

Chairman Silverman asked for the status of Officer Jean Philippe's case. Assistant City Attorney (ACA) Richard responded that the Police Department and the employee entered into a settlement agreement. She went on to say at this time they are waiting for the agreement to be signed by the Police Chief.

DISCUSSED : 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.

- E.3** Hearing of Appeal on behalf of Johnny Brutus, Police Officer, relative to his 20-hour suspension, effective September 10, 2011. (DISCUSSION)
Rescheduled pursuant to continuance policy; pending settlement since September 4, 2012.

Jon Kreger, Attorney on behalf of Officer Brutus, stated that he and opposing counsel finally agreed on language so he is in the process of executing the settlement agreement and forwarding it to ACA Richard.

Chairman Silverman asked if what Attorney Kreger represented to the Board was correct. ACA Richard responded in the affirmative.

DISCUSSED : 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.

- E.4** Notice of a Request to Withdraw from Ajit Chabbra, Budget Analyst, relative to his 2-day suspension, effective May 11, 2012. (NOTIFICATION)

Hearing was scheduled for today; case will be closed and removed from the Board's docket.

WITHDRAWN

- E.5** Notice of a Request to Continue from Michael Braverman, Attorney, on behalf of Paul Hernandez, Chief Mechanical Inspector, concerning the Grievance hearing pursuant to Civil Service Rule 16.1, violation of 14.10 Reduction in Pay. (DISCUSSION)

Grievance hearing is scheduled for today.

The Executive Secretary stated that Attorney Braverman was not able to attend today's meeting, but he did send a letter indicating that opposing counsel expressed no objection to his request to continue the hearing of Paul Hernandez.

Member Moy asked for the scheduling history of Mr. Hernandez' case. The Executive Secretary responded that the Board approved one continuance on behalf of the employee. Following discussion, the Board entered a motion to APPROVE the employee's request for a second continuance which resulted as follows:

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

F. REPORTS

- E.6** Rule Amendment (DISCUSSION)
Item Addition

This item did not appear on today's printed agenda for discussion but was brought up from the floor by Member Harris concerning a possible Rule amendment.

Member Harris stated that in light of Member Lago's absence today, she thought to bring up the matter today and possibly consider and vote on it at the next meeting if all Board Members are present. She went on to say that what she had in mind was to include something in the Rules about discovery because she feels it may help to facilitate how cases are brought before the Board. Member Harris further stated that whenever she hears cases, she always feels like she is missing something or that there could have been better preparation. She stated that she takes her role as a Board Member seriously because the decisions Board Members make will affect the future of the City. Member Harris went on to say that she likes to be as prepared as possible and she likes to see that both sides are also as prepared as they could possibly be (when presenting their cases before the Board). She further stated this issue (of discovery) came up at the last meeting in the matter of Glen Marcos and not that she would have voted differently but there was evidence introduced by the City and the other side indicated that they did not have an opportunity to review the item which would have better prepared them to rebut a claim made by the opposing side. Member Harris stated that she is asking that a provision be added in the rules about discovery because she feels this would facilitate how cases are brought before the Board, provide less of a burden to the docket, and perhaps more cases could possibly be worked out (or settled) when each side sees what documents the other has. She stated another concern she had was the matter of public record requests. Member Harris went on to say that the employee has requested records from the City and they were not received, which constantly happens, so by adding language in the Rules about discovery, she thinks this would also help in the area of public record requests. Member Harris went on to say that while this matter was not included on today's agenda, she wanted to disclose it in order to get each Board Member's thoughts flowing so they would be prepared for when it is discussed at the next meeting.

Chairman Silverman stated his understanding (of the process) for a rule change is that the language has to be prepared first, then a public hearing, and assuming that the Board approves the rule change, the matter would still have to go before the City Commission for adoption of the rule change. He went on to say that he would like to hear from the Board's Special Counsel so she can clarify whether what he explained was accurate. Cynthia A. Everett, Special Counsel to the Board, responded that the rule change process explained by the Chairman was accurate. She went on to say that as soon as the full Board is able to flush out exactly what it wants to do, she could better advise the Board of the ultimate proceeding because right now the Board is not governed by the rules of evidence as is done in court and there is no formal discovery requirement. Special Counsel Everett further stated she was aware that the issue of public records come up continuously, but there is an entire body of law and process (that can be reviewed and followed) if that is indeed an issue. She stated that if one side were to make a public records request and it was not responded to, there is a very quick and summary procedure in court to address this matter. Special Counsel Everett went on to say (in regards to Board proceedings), this body as the rule sets out right now under Rule 14.4(c) states, "The admission of the evidence shall be governed by the Board's rulings, with the advice of the Board's counsel, if such be available. Strict rules of evidence, as in courts of law, shall not apply. Evidence is to be admitted at the discretion of the Board and pertinent information considered for the purpose of substantial justice for all parties." She went on to say if there is something the Board were to deem unfair or unfit for the proceeding, the Board has the discretion to exclude it and by the same token the Board can consider whatever it thinks is appropriate. Special Counsel Everett further stated the whole purpose (of the proceedings) is to have a fair process for both parties so she believes that once she is able to narrow down what Member Harris' issue is and what the best course of action to take is, then it can be determined whether it is a formal policy change or action that requires notice going to a public hearing and consideration by the Commission.

Chairman Silverman stated he did not want to put words in Member Harris' mouth, but he thinks she wants to investigate whether a prehearing discovery would be appropriate for this Board to adopt. Member Harris stated that the language specified in Rule 14.2(c) that Special Counsel read into the record was ambiguous so she would like to clear up the language and make it more pointed. She went on to say it was not just with the issue of enforcing the public record requests but even more so knowing ahead of time the information because when she is sitting on the dais hearing cases, she has always felt that she was missing something or that she could have gotten more information sooner. Member Harris further stated that one role of a Board Member is to make recommendations and if necessary, recommend a rule change or addition. She stated historically she did not know how often (a rule change/addition) took place, but nevertheless, it is in the Rules that the Board can make recommendations if it is found to be necessary. Member Harris went on to say that Chairman Silverman's explanation of what she wants was correct and it would also include the other points she made.

Special Counsel Everett stated based upon what she was hearing from Member Harris, she would want a formal procedure which would ultimately be approved by the City Commission if she wanted to institute some type of discovery procedure. She went on to say that one of the things she might suggest to both sides is that the issue is raised but it never gets fully discussed. Special Counsel Everett reiterated if there is a public records issue, there is a remedy, but in discussions that she hears before this Board, the Board has never gotten to the point of whether that remedy was pursued which would have provided the information that was supposedly not turned over (to the requestor). Member Harris responded that instituting a rule addition would provide for the immediate enforcement of public record requests and more so it has a lot to do with getting through the cases as efficiently as possible. She went on to say that if during the process, things get worked out between both sides, this would lessen the burden of the docket. Member Harris further stated she was prepared to provide whatever paperwork necessary and go through the process, but bringing this matter today was for the purpose of getting everyone's thoughts flowing and being prepared to hopefully arrive at a decision.

Special Counsel Everett suggested that she consult with Member Harris to work out some details in order to come up with some proposals for the Board to consider at a future meeting. Chairman Silverman responded that Special Counsel's suggestion was a great idea. He went on to say that he personally was not in favor of having full discovery as it is done in court because the whole idea is to make the cases move. Chairman Silverman further stated if the Board was to consider having full discovery, then it would be talking about months or even years before the case would come to trial. He stated this is not arbitration but the theory of arbitration is fast when it comes to resolving problems otherwise every case would go to court.

DEFERRED : Chairman Silverman instructed Special Counsel Everett to consult with Member Harris for the purpose of coming up with proposals for the Board's consideration at its meeting of November 27, 2012.

F.1 Pending Hearings as of November 13, 2012. (NOTIFICATION)

PRESENTED

G. REQUESTS FOR HEARINGS

H. TODAY'S HEARINGS

H.1 Grievance Hearing on behalf of Lewis Mahoney, Park Manager II, pursuant

to Rule 16.1, Abuse of Power by his Supervisor, Donald Lutton, Superintendent, Parks and Recreation Department and 16.2, Complaint by Employee.

NOTE: Although Mr. Mahoney requested a hearing pursuant to Rules 16.1 and 16.2, however, the Board voted at the time of request, to hear the matter pursuant to Rule 16.1 - Abuse of Power.

The Board entered into the scheduled investigation hearing on behalf of Lewis Mahoney, the Complainant.

Sean Langton, Attorney, represented the Complainant.

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

Both sides presented opening statements. The Rule of Witnesses was invoked and all witnesses were sworn in individually. The Chairman instructed the witnesses not to discuss their testimony and that each witness would be called individually to testify. The Witnesses for the Complainant appeared in the following order:

- 1. Desiree Higgs-Jenkins, Private Citizen.*
- 2. Gwendolyn Cooper, Private Citizen.*
- 3. Lewis Mahoney, Park Manager II, testified on his own behalf. Questions were posed by Board Members Moy and Harris during the testimony of Lewis Mahoney.*

The Complainant rested his case.

Witnesses for the Department appeared in the following order:

- 1. Wesley Carroll, Recreation Coordinator, City of Miami, Parks and Recreation Department. Questions were posed by Board Member Moy during the testimony of Wesley Carroll.*
- 2. Donald Lutton, Superintendent, City of Miami, Parks and Recreation Department.*

The Department rested its case and the Board proceeded to closing arguments which were presented by both sides. Following final argument, Chairman Silverman read into the record Civil Service Rule 16 which are the procedures the Board follows for investigation hearings. The Board then called for Board discussion.

Member Harris stated she understood the witness testimony given by both sides. She went on to say that with regards to the department's side, Mr. Lutton expressed concerns about Mr. Mahoney's deficiencies and on the other hand, Mr. Mahoney expressed his frustrations over manpower and resource issues concerning the parks. Member Harris further stated that after hearing from them both, she believed everyone (involved) missed the bigger picture which was the seriousness of the situation. She stated that sitting through the testimony from both sides, it was very disturbing to hear this type of situation had been going on since 2008. Member Harris went on to say that in her opinion, the City did not follow the Workplace Violence Policy to the fullest which really concerned her. She further stated when you have a situation that is being articulated on both sides where both individuals feel they were victims of workplace violence to some degree, it is alarming and also the responsibility of management to ensure that such action does not occur.

For the Board's edification, Member Harris read into the record a portion of the City's Workplace Violence policy which described the purpose of the policy and the definition of violent behavior. She went on to say that from the three characteristics that define violent behavior (use of physical force, acts of threat, sabotage), she could identify at least one characteristic that both Mr. Lutton and Mr. Mahoney articulated that they experienced. Member Harris further stated one of the things Mr. Mahoney expressed when she asked what would he had like to see happen (when going through his ordeal with Mr. Lutton), he replied that he wanted someone from management to address the issue. She stated according to what Mr. Mahoney wanted to happen is exactly what the policy indicated should happen in such situations. Member Harris went on to say that according to the policy the City is also required to take certain actions other than just writing things down on paper. She further stated that one of the things that was alarming to her and she heard it from both sides was, Mr. Lutton made the comment when relating to an April 2012 situation with Mr. Mahoney, "I expected this would occur because it occurred often with Mr. Mahoney." Member Harris stated that Mr. Lutton also made the comment, "When Mr. Mahoney swung at my head, I was in fear!" She went on to say that such comments as made by Mr. Lutton needed to be addressed because neither of the two men should have to work in such situations. She went on to say not only is it important according to the Work Place Violence policy that management address such situations but it was particularly important in this case because a member of the management chain was also involved. Member Harris further stated one comment made by Mr. Mahoney was that he did not want to see the situation escalate any further and it is management's responsibility to see to it that does not escalate. She stated that she thinks we should feel lucky in this case because the alarm was rung by both the employee and the superintendent before the fire began.

Member Harris stated that she wanted to thank Mr. Mahoney for his persistence in trying to let management know the seriousness he was feeling even if it was a perception because most policies are based on perception. She went on to say that she also thanked Mr. Mahoney for taking responsibility in acknowledging his behavior in the office that particular day (with his superiors). Member Harris further stated that she noticed Mr. Mahoney continued to say that it was difficult for him to go to his supervisor, Mr. Lutton, to make requests because he would always say no; however, she would suggest to Mr. Mahoney that he try to build a rapport with his boss and perhaps he would not often say no. She suggested that Mr. Mahoney learn to accept that Mr. Lutton is his boss because in the long run, the boss is going to win and that he also try to develop interpersonal skills so that we can all get along in the workplace.

Member Harris stated she thinks it is the ultimate responsibility of management to ensure that a stop be put to workplace violence before it escalates to a level beyond control. She went on to say there was plenty of warning and written documents, but she did not see anything to suggest that something concrete was done. Member Harris further stated that she understood the Office of Labor Relations investigated the matter and reached an inconclusive finding, but that did not mean something did not happen because her understanding of an inconclusive finding is there was not sufficient evidence to prove or disprove what was alleged to have occurred. She stated that according to the report prepared by Labor Relations, it articulated that something did happen and it needs to stop. Member Harris went on to say in order to stop workplace violence, the responsibility rests on the shoulders of management.

Chairman Silverman asked if there was any other discussion from Board Members. Member Moy responded in the affirmative. He went on to say that he had a concern with Mr. Mahoney missing a great majority of his meetings. He went on to say that Mr. Mahoney did not know what was going on in the department so he needed to make himself available for those meetings so that he would have a better understanding of

what management was doing. Member Moy further stated that Mr. Lutton mentioned that he scheduled 34 meetings (during the year) and that Mr. Mahoney missed the majority of the meetings so he would suggest Mr. Mahoney get to the meetings, so he'd know what was going on in the department. He stated that he listened to testimony from both sides and he had to agree with the City this time because he felt Mr. Carroll's testimony was clear. He went on to say that Mr. Carroll testified that Mr. Mahoney would always go to Ms. Kinchen for everything, but he felt Mr. Mahoney should utilize the chain of command when making requests or seeking direction. Member Moy further stated whether Mr. Mahoney likes it or not, the chain of command is in place for a reason. He stated that he listened to Mr. Lutton's testimony and Mr. Mahoney did not refute any of his claims. Member Moy went on to say that he thinks Mr. Mahoney is privileged to be working for the City of Miami so he needs to take his job seriously. He further stated that taking into consideration Mr. Mahoney's tardiness and the allegations he made just did not add up so he just could not believe his testimony. Member Moy stated the department accommodated Mr. Mahoney by placing him in various parks and assigning him to different supervisors, but in the end it always came back to Mr. Mahoney's inability to get along with his supervisors. He went on to say that Mr. Mahoney needs to make a better effort to get along with management because management will be around for a long time.

Member Moy stated that with regards to workplace violence, whether Mr. Mahoney swung at Mr. Lutton or not, that was over the top and should have never happened. He went on to say that Mr. Mahoney has to learn to meet on common ground and he can only reiterate the fact that when issues arise that an independent person such as the department director is contacted to resolve the issue. Member Moy further stated that he thinks Mr. Mahoney is a good employee; however, he has conflicts with certain people. He went on to say that at the same time the department cannot continue to rotate Mr. Mahoney to different parks for the purpose of accommodating his situation; rather, Mr. Mahoney needs to accommodate the department by doing what is asked of him to do.

Chairman Silverman stated this is an unusual case. He went on to say that the Board normally reviews cases when the employee is disciplined and how management handled the discipline but this case was in the reverse. Chairman Silverman further stated that he could not recall an abuse of power case such as this case put on today but he could say that he did not think Mr. Mahoney substantiated the charges. He stated that this case should have been resolved long before coming to the Board but Mr. Mahoney has a right to be before the Board. Chairman Silverman reiterated that he did not think Mr. Mahoney substantiated his charges.

Following discussion, the Board entered a motion to find that the City did not violate any Civil Service Rules which resulted as follows:

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

The Board entered a motion to recommend to the City Manager that the Workplace Violence Policy be thoroughly followed, which resulted as follows:

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

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

NO ACTION TAKEN : The Board took no action on this case because according to Item E.4 the employee withdrew his appeal request.

H.3 Grievance Hearing on behalf of Paul Hernandez, Chief Mechanical Inspector, pursuant to Civil Service Rule 16.1, violation of 14.10 Reduction in Pay.

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

CONTINUED : Hearing will be rescheduled to a future meeting date.

ADJOURNMENT:

The meeting ADJOURNED at 1:11 p.m. Breaks were taken at 10:20-10:25 a.m., 11:02-11:07 a.m., 11:09-11:16 a.m. and 12:35-12:43 p.m.

SIGNATURE:

Gerald Silverman, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary