

# **City of Miami**

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## **Meeting Minutes**

**Tuesday, November 27, 2012**

**10:00 AM**

**Commission Chambers**

### **Civil Service Board**

*Gerald Silverman, Chairperson  
Sean Moy, Chief Examiner  
Lillie Harris, Board Member  
Christine Gomez, Board Member  
Javier Baños, Board Member*

**PLEDGE OF ALLEGIANCE**

*The meeting was called to order at 10:18 a.m. The roll call at the commencement of the meeting was as follows:*

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

**Note:** Board Member Carlos Lago resigned from the Board effective November 15, 2012 and Javier Baños was appointed by the Commission as his replacement. Member Baños sat for his first meeting today.

**A. APPROVING THE MINUTES OF:**

Regular Meeting of November 13, 2012.

*The Board entered a motion to APPROVE the minutes of November 13, 2012 which resulted as follows:*

**Motion by Member Harris, seconded by Member Gomez, to APPROVE. PASSED by the following vote.**

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

**B. PERSONNEL MATTERS**

- B.1** Copy of memorandum from Beverly Pruitt, Director, Department of Human Resources, confirming the request of Terry Kwong, Assistant Director, Department of Finance, to return to her former classification of Chief Accountant, Department of Finance, effective November 9, 2012. (NOTIFICATION)

**NOTIFIED**

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

- D.1** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Veronda Mack, Police Officer, of her 20-hour suspension, effective November 15, 2012. (NOTIFICATION)

**NOTIFIED**

**E. GENERAL ITEMS**

- E.1** Notice of a Request to Continue from Jon Kreger, Attorney, Ronald J. Cohen P.A., on behalf of Favian Rodriguez, Police Officer, relative to his 40-hour suspension, effective January 3, 2009. Janeen Richard, Assistant City Attorney, expressed no objection to the continuance request. (DISCUSSION)

Appeal Hearing is scheduled for today.

*Attorney Kreger stated that his client is out of the country so he would ask that the Board grant a continuance of his client's hearing that is scheduled for today. Chairman*

Silverman asked opposing counsel if she had an objection to Attorney Kreger's request. Assistant City Attorney (ACA) Richard responded in the negative.

Chairman Silverman asked if there were any questions from Board Members on this matter. Member Harris responded in the affirmative and asked for the number of times Officer Rodriguez' case had been continued. Chairman Silverman stated that according to the Pending Hearings List, one continuance was granted by the Board on behalf of Officer Rodriguez.

Following discussion, the Board entered a motion to APPROVE the employee's request for a continuance. The motion resulted as follows:

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

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

## E.2

### Possible Rule or Procedure Manual Amendment (DISCUSSION)

Chairman Silverman asked Member Harris if she wished to speak on this item today or if she wanted to defer the matter. Member Harris responded that she preferred to defer matter to give Member Baños an opportunity to become familiar with what she proposed to the Board at the last meeting. Member Baños responded that he did review the minutes on this particular item so he would have no problem if the Board wanted to entertain the matter today or if it was deferred to the next meeting.

Member Harris stated that discussion on this item at the last meeting had to do with a possible rule amendment; however, it was brought to her attention that perhaps starting with an amendment to the Board's Procedural Manual (to include procedures for a pre-hearing discovery) would be quicker than a rule amendment. She went on to say that ultimately the Civil Service Rules might be amended to include discovery procedures and that this action would require Commission approval. Member Harris further stated that the purpose (for the amendment) would be to add some form of discovery to the Board's process for hearing cases.

Member Baños stated when he discussed this matter with staff, he thought it was something along the line of what he saw in family law cases known as voluntary disclosure. He went on to say that in such court matters, both sides are forced to give their documents prior to the case being heard and asked Member Harris if this is what she was entertaining.

Member Harris responded in the affirmative. She went on to say that as this matter was discussed at the last meeting, Chairman Silverman expressed concern that the discovery process not slow down Board proceedings since the design of the Civil Service process is to speed up and not burden the Board's calendar. Member Harris further stated that in line with the Chairman's concern, her goal is to help speed up the process by adding a discovery process.

Chairman Silverman suggested that Member Harris meet with Special Counsel Everett to come up with language for what she would like to change and bring it back for the Board's review and discussion. Member Harris responded that she was in agreement with the Chairman's suggestion.

**DEFERRED :** Item will be rescheduled to a future meeting upon receipt of a written document from Member Harris detailing the proposed discovery process for the Board's review.

**E.3**

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 Board entered a motion to APPROVE the Findings of Fact and Recommendations Report as presented. The motion resulted as follows:*

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

**Aye:** Silverman, Gomez and Harris

**No:** Moy

**Abstain:** Baños

**F. REPORTS****F.1**

Pending Hearings as of November 27, 2012. (NOTIFICATION)

**PRESENTED**

**G. REQUESTS FOR HEARINGS****H. TODAY'S HEARINGS****H.1**

Grievance Hearing on behalf of Ricardo Novas, Broadcast Engineer, pursuant to Rule 16.2, concerning a violation of Rule 12, Layoff, Resignation, and Reinstatement.

*The Board entered into the scheduled grievance hearing on behalf of Ricardo Novas, the Grievant.*

*Michael Braverman, Attorney, represented the Grievant.*

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

*Opening statements were presented by both attorneys. Following opening statements, all witnesses were sworn in individually. Witnesses appearing at the request of the Grievant appeared in the following order:*

*1. Sandra Carballosa, Administrative Assistant I, City of Miami, Department of Human Resources. Questions were posed by Board Members Moy and Harris during the testimony of Sandra Carballosa.*

*2. Jessica Pacheco, Private Citizen. Questions were posed by Board Members Moy, Harris, and Baños during the testimony of Jessica Pacheco.*

*3. Daniel Alfonso, Director, City of Miami, Department of Strategic Planning, Budgeting & Performance. Questions were posed by Board Members Harris and Baños during the testimony of Daniel Alfonso.*

*4. Ricardo Novas, former Broadcasting Engineer, City of Miami, Office of Communication.*

*The Grievant rested his case. Witnesses appearing at the request of the Department appeared in the following order:*

*1. Ricardo Martinez, Classification & Pay 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 and the Board proceeded to closing arguments, which were presented by both attorneys. Following final argument, the Chairman read into the record Rule 16.2(d) which is the procedure the Board follows for grievance hearings. The Chairman then called for Board discussion on this case.*

*Member Harris stated there is a distinct difference between classified and unclassified employees. She went on to say that she understood that a new director would want to bring in his/her own people, but when dealing with classified employees, the director must use caution because they are protected by Civil Service Rules. Member Harris further stated that she thought (dealing appropriately with classified employees) was within the spirit and intent of the rules.*

*Member Harris stated there was some alarming testimony presented today and what stood out to her was the City put in place an expert, Jessica Pacheco, Assistant Director of Human Resources in charge of the Office of Labor Relations, who in her opinion, stepped out on the limb at the risk of her own position which was an at-will, unclassified and unprotected position. She went on to say that Ms. Pacheco was given specific information about Mr. Novas' position as it related to reorganizing the Office of Communications and she recommended not to (eliminate his position) based upon the fact that Mr. Novas held a classified position.*

*Member Harris further stated that Ms. Pacheco indicated that her recommendation was based upon her following Civil Service Rules and that budgetary constraints was never given as a reason for wanting to eliminate the position. She stated each time she asked the go-to-person or expert, which was the Budget Director, he could not give her a clear answer on whether the elimination of Mr. Novas' position was due to budgetary reasons; however, he did narrow his response to sometime between September 15-27, 2011 that he would have received information about Mr. Novas' position.*

*Member Harris went on to say what was more alarming to her about the Budget Director's testimony was when he stated there was a mandate not to layoff employees. She further stated even if she was to accept the Budget Director's testimony about when he received information concerning Mr. Novas' position, in her opinion whenever there is a mandate, there is a thought process that should take place so she wondered what was the thought process for the time period of September 15-27, 2011 (when considering the elimination of Mr. Novas' position.) Member Harris stated that she would hate to think (the thought process) was retaliatory reasons, but it was curious to her that Employee Exhibit #17 which was a documented letter Mr. Novas prepared on January 20, 2011 concerning him being questioned about the content of a DVD that was given to him to play at a Commission meeting coincided with the first time that Mr. Zayon inquired of Ms. Pacheco about Mr. Novas' position that also occurred in January, 2011. She went on to say not only did Mr. Zayon inquire in January about Mr. Novas' position but the testimony was that he continued (going back to Ms. Pacheco) to inquire. Member Harris further stated she did not want to think Mr. Zayon continued to inquire about Mr. Novas' position because he was not getting the response he wanted but she would have to say, in her opinion, that it was very curious that he would do so. She stated that of all the people who were making the recommendation (of eliminating Mr. Novas' position), Ms. Pacheco, who tried to be impartial about the situation put someone else in her place to be an independent set of eyes who came back with the same*

recommendation as Ms. Pacheco. Member Harris went on to say that when the City made the argument about the temporal proximity of the situation, the people who would have properly kept the proximity could not voice their recommendation of it not being a good idea (to eliminate Mr. Novas' position) because sometime in June 2011, they were no longer City employees. She further stated she felt the City's actions were not in the intent and spirit of the Civil Service Rules & Regulations particularly in how the layoff rule was supposed to be applied and she just had the feeling there was a circumventing of the rules.

Member Baños stated in this particular proceeding, the burden is on the employee so it was Mr. Novas' responsibility to bring forth enough evidence to convince the Board (of his claim.) He went on to say that he had a hard time seeing the connective tissue of what occurred with Mr. Novas' wife and Mr. Zayon in January 2011 and what ultimately happened on or around September 23, 2011. Member Baños further stated contrary to what Attorney Braverman stated but according to the testimony he heard, on September 15, 2011 when the first budget hearing concerning collective bargaining was completed, an increase in cost (to the City's budget) aroused which caused a \$600,000 shortfall. He stated the real question is why was Mr. Novas' position eliminated and not someone else's position, but at the end of the day, there was going to be a cost and someone's position had to be eliminated. Member Baños went on to say secondly, was there an alleged retaliatory act that was taken against Mr. Novas' spouse back in January, 2011 to cause Mr. Novas to be removed from his position rather than someone else being terminated. He further stated that he did not see any evidence to his satisfaction within that period of time of there being a connective tissue (to suggest retaliation or Mr. Novas being a target.) Member Baños stated it seemed to him there was a big budget crunch for the City and it was a time of painful thoughts because where he worked before they had to lay off the entire Information Technology Department. He went on to say that he understood this was a Civil Service matter, which has different procedures, but what he explained was what the evidence showed.

Member Moy stated he thought this case was about Mr. Zayon having a personal vendetta against two of his employees (Ricardo Novas/Sandra Carballosa). He went on to say it seemed Mr. Zayon liked to have his way or it was the highway. Member Moy further stated that according to Ms. Pacheco's testimony, Mr. Zayon was not satisfied with the information provided to him, which was the reason he continued to return to her on the same issue. He stated that it was alarming to him that Mr. Zayon just wanted to have his way so it appeared to him that he was an arrogant person. Member Moy went on to say what happened in this case did not pass the nose test and that it smelled horrible. He further stated Mr. Zayon was subpoenaed three times to appear at Mr. Novas' hearing and today he was not present to defend himself, which spoke volumes that he might have something to hide.

Member Moy stated that it was troublesome to learn the Communications Technical Operator position was opened and an opportunity was not offered to Mr. Novas (to apply for this position.) He went on to say that the issue regarding the videotape, it was just another attempt to terminate Mr. Novas and regards employment, Mr. Mario Riquelme (who was also present during the time of the videotaping) had his salary reduced but Mr. Novas' employment was terminated without a reason other than it being retaliatory.

Member Moy further stated that he truly believed the testimony of Mr. Novas' wife because she truly had nothing to hide. He stated that Ms. Carballosa testified that Mr. Zayon accused her of stealing and she had to call the police. Member Moy went on to say that whether the Board believed Ms. Carballosa's testimony about the Public Service Aide informing her that Mr. Zayon accused her of stealing, she also testified that the Public Service Aide also informed her that Mr. Zayon became upset with her because she would not write the report the way he thought it should be written, which

again showed that (according to Mr. Zayon) everything has to be done his way. He further stated he was not going to look the other way on this case because there was overwhelming evidence and the only way to make this situation better was to reinstate Mr. Novas with full benefits and pay.

Chairman Silverman stated that he would like for the findings of fact to include that whenever a department director fails to honor a subpoena, the Board has the right to assume or infer that his/her testimony would not justify the City's position because there is no justification for a department director not to appear before this Board. He went on to say he thought that was very telling that Mr. Zayon did not appear to defend his position. Chairman Silverman further stated he thought the Board should become leery whenever a position is abolished because it might be a true abolishment of a position or a way to get around Civil Service protection of employees. He stated a department head cannot just fire or terminate a classified employee by using the gimmick that the employee's name would be placed on some list that does not exist. Chairman Silverman went on to say that it would not matter what position was advertised because the (employee that was laid off) would not be able to apply for the position because the laid off employee can only qualify for the position that was eliminated. He further stated (this way of doing business) was not fair or proper and that is not the way to treat employees so he did not believe Mr. Novas was treated fairly. Chairman Silverman stated the Board did not really know the time frame for the shortfall in the budget, which employee was going to remain employed and which one would be terminated, and it was not clear whether Mr. Novas was selected (to lose his job) because he made too much money or whether he was released due to internal issues, or some other reason. He went on to say whatever the reason, he did not think it was a good pattern for the City so he thought Mr. Novas should be reinstated. Chairman Silverman further stated the City Manager does not have to accept the Board's recommendation but he strongly recommends that he does.

Chairman Silverman closed discussion in this matter and read into the record Civil Service Rule 16.2(d) which states, "The Board shall consider the matter, and promptly present its findings and recommendations to the City Manager for his/her consideration of a proper remedy, if a remedy is necessary." Following the reading of this rule, the Chairman called for a motion of the Board's finding and recommendation in this case.

The Board entered a motion to find that the City violated Civil Service Rule 12 and that Mr. Novas be reinstated with backpay. The motion 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

**No:** Baños

## H.2

Hearing of Appeal on behalf of Samaly Rodriguez, Personnel Services Representative, concerning her two-week suspension, effective November 7, 2011.

Attorney Braverman stated he was not prepared to go forward today on Ms. Rodriguez' case and would ask that the Board grant his request to continue this matter. Chairman Silverman asked opposing counsel if she had an objection to Attorney Braverman's request for a continuance. ACA Richard responded in the negative.

Following discussion, the Board entered a motion to CONTINUE the hearing and charge the continuance to the employee, which resulted as follows:

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

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

**H.3**

Hearing of Appeal on behalf of John Kocur, Police Officer, relative to his 10hr suspension, effective July 9, 2012.

*Officer Kocur asked that the Board grant his request for a continuance because he needed time to seek legal representation. Chairman Silverman asked opposing counsel if she had an objection to Officer Kocur's request. ACA Richard responded in the negative. She stated that Officer Kocur advised her that he might be seeking counsel so she had no objection allowing him additional time to do so.*

*Following discussion, the Board entered a motion to CONTINUE the hearing on behalf of the employee. The motion resulted as follows:*

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

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

**H.4**

Hearing of appeal on behalf of Favian Rodriguez, Police Officer, relative to his 40-hour suspension, effective January 3, 2009.

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

**CONTINUED**

**ADJOURNMENT:**

*The meeting ADJOURNED at 3:43 p.m. Breaks were taken at 10:38-10:42 a.m., 11:36-11:42 a.m., and 1:35-1:47 p.m.*

**SIGNATURE:**

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**Gerald Silverman, Chairperson**

**ATTEST:**

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**Tishria L. Mindingall, Executive Secretary**