

City of Miami

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

Tuesday, June 7, 2016

10:00 AM

Commission Chambers

Civil Service Board

*Lillie Harris, Chairperson
Vishwani Ramlal, Chief Examiner
Michael Dames, Board Member
Travis Lindsey, Board Member
Troy Sutton, Board Member*

PLEDGE OF ALLEGIANCE

The meeting was called to order at 10:00am, with the Pledge of Allegiance. At commencement of the meeting, attendance was as follows:

Present: Member Dames, Chairperson Harris, Chief Examiner Ramlal, Member Sutton and Member Lindsey

ADOPTION OF TODAY'S AGENDA

The Board entered a motion to adopt the Agenda with one amendment - to add "Discussion of Board Calendar". A motion was entered to adopt the Agenda as amended, which resulted as follows:

Motion by Chief Examiner Ramlal, seconded by Member Sutton, to APPROVED. PASSED by the following vote.

Aye: Lindsey, Ramlal, Chairperson Harris, Sutton and Dames

A. APPROVING THE MINUTES OF:

Regular Meeting of May 24, 2016

Motion by Member Lindsey, seconded by Member Sutton, to APPROVE. PASSED by the following vote.

Aye: Lindsey, Ramlal, Chairperson Harris, Sutton and Dames

B. PERSONNEL MATTERS**B.1**

Copy of a memorandum from Chief Maurice Kemp, Director, Department of Fire-Rescue, requesting to extend the probationary period of James Alexandre, Firefighter, for 6 additional months beyond June 1, 2016.
(DISCUSSION)

Following appearances by Captain Niorge Aragon and the employee, and statements by Member Sutton, the Board entered a motion to approve the probation extension as requested, which resulted as follows:

Motion by Chief Examiner Ramlal, seconded by Member Lindsey, that this matter be APPROVED. PASSED by the following vote.

Aye: Lindsey, Ramlal, Chairperson Harris, Sutton and Dames

B.2

Copy of a memorandum from Chief Maurice Kemp, Director, Department of Fire-Rescue, requesting to extend the probationary period of Ron S. Hedlund, Firefighter, for 6 additional months beyond June 1, 2016.
(DISCUSSION)

Following appearances by Captain Niorge Aragon and the employee, and statements by Member Sutton, the Board entered a motion to approve the probation extension as requested, which resulted as follows:

Motion by Chief Examiner Ramlal, seconded by Member Lindsey, that this matter be APPROVED. PASSED by the following vote.

Aye: Lindsey, Ramlal, Chairperson Harris, Sutton and Dames

- B.3** Copy of a memorandum from Chief Maurice Kemp, Director, Department of Fire-Rescue, requesting to extend the probationary period of Stephanie M. Plotka, Firefighter, for 6 additional months beyond June 1, 2016.
(DISCUSSION)

The Board noted that the employee was not present, and entered a motion to defer action on this matter to the June 21, 2016 meeting, which resulted as follows:

Motion by Member Sutton, seconded by Member Dames, that this matter be DEFERRED. PASSED by the following vote.

Aye: Lindsey, Ramlal, Chairperson Harris, Sutton and Dames

C. MILITARY LEAVES OF ABSENCE

D. DISCIPLINARY MATTERS

- D.1** Copy of a letter from Chief Rodolfo Llanes, Director, Department of Police notifying Walter Lewis, Police Officer of his 10-hour forfeiture, effective May 25, 2016. (NOTIFICATION)
NOTIFIED

E. GENERAL ITEMS

- E.1** Civil Service Board's Calendar (DISCUSSION)

Item addition

Chair Harris reminded the Board members that an upcoming meeting, July 5, 2016, would occur following a major holiday, and asked if the members would be opposed to cancelling this meeting. Following discussion, the Board entered a motion to cancel the meeting of July 5, 2016, which resulted as follows:

Motion by Chief Examiner Ramlal, seconded by Member Sutton, that this matter be APPROVED. PASSED by the following vote.

Aye: Lindsey, Ramlal, Chairperson Harris, Sutton and Dames

Due to the lateness of the day, the Board entered a motion to defer further discussion of the Board's Calendar on the Agenda for the June 21, 2016 meeting, which resulted as follows:

Motion by Chief Examiner Ramlal, seconded by Member Lindsey, to APPROVE. PASSED by the following vote.

Aye: Lindsey, Ramlal, Chairperson Harris, Sutton and Dames

F. REPORTS

- F.1** Pending Hearings as of June 7, 2016. (NOTIFICATION)
PRESENTED

G. REQUESTS FOR HEARINGS

- G.1** Request for an Investigation hearing pursuant to Civil Service Rule 16.1, from Osnat K. Rind, Attorney on behalf of Ana Valdeon and Ulisses Garcia, alleging a violation of Civil Service Rule 5.4 - Disqualification and Section 36 of the City's Charter, as it relates to their ineligibility determination for the classification of Sanitation Inspector II. (DISCUSSION)

Osnat K. Rind, Attorney on behalf of the employees, appeared before the Board and confirmed that the employees are requesting a hearing because they qualified for the position in question, and were wrongly deemed ineligible.

Kevin Jones, Assistant City Attorney, appeared before the Board and responded that the department disagrees with Attorney Rind's recitation of the facts. He went on to say that should the Board grant a hearing, they will find that there is no merit to this complaint.

Chair Harris asked Attorney Rind if she could provide the basis of the employees' disqualification. Attorney Rind responded that their position is that the employees met the qualifications and were deemed ineligible.

Member Lindsey asked if the employees were given a reason as to why they were deemed ineligible. Attorney Rind responded that she had seen a reason why, but she is not sure whether that is the ultimate reason why.

Member Dames confirmed that the Eligible Register had been established, and asked whether the process had moved beyond that step. Attorney Rind responded that to her knowledge it had not. Member Dames stated that he thinks that the Chief Examiner should conduct an investigation into this matter and report back to the Board. Chair Harris read Rule 5.4 into the record, then asked Attorney Rind whether she would prefer a preliminary investigation or a hearing, to which she responded that they would like a hearing, to determine the department's justification for deeming her clients ineligible.

Following further discussion, the Board entered a motion to grant the hearing as requested. Further, the Board will direct the Chief Examiner to conduct a preliminary investigation and issue a report to the Board. The motion on the floor resulted as follows:

Motion by Chief Examiner Ramlal, seconded by Member Lindsey, that this matter be APPROVED. PASSED by the following vote.

Aye: Lindsey, Ramlal, Chairperson Harris, Sutton and Dames

Following the vote, the Board entered a motion to have the Chief Examiner present her report at the next meeting, which resulted as follows:

Motion by Member Dames, seconded by Member Sutton, to APPROVE. PASSED by the following vote.

Aye: Lindsey, Ramlal, Chairperson Harris, Sutton and Dames

- G.2** Request for an Investigation hearing pursuant to Civil Service Rule 16.1, from Osnat K. Rind, Attorney on behalf of all affected employees, alleging Abuse of Power by the City Manager related to the process by which he implements the terms of an Agreement between AFSCME Local 1907 and the City of Miami. (DISCUSSION)

Osnat K. Rind, Attorney on behalf of all affected employees, appeared before the Board and confirmed that she is requesting that a hearing be held expeditiously on the merits of their case. She explained the union filed a unit clarification petition with PERC, and that prior to the PERC determination, an Agreement was entered into between the City and the union; and that this Agreement was approved by the City Commission, and a copy of it was included in the request to the Board. She continued that as a result of the Agreement, employees holding certain classifications were deemed to be part of the bargaining unit covered by AFSCME, Local 1907. Attorney Rind explained that two months later, the city manager issued a memorandum stating that the employees, who had previously been Unclassified, some of whom for 20 or more years, would have to apply and compete for the classifications that were now Classified, and covered by AFSCME. She further opined that case law that she has deems that the classifications which were listed as Unclassified by the City, per the City Charter, should have been Classified, the incumbents are entitled to all of the protections of the Classified service, and it is an abuse of power for the city manager to require they submit to [the hiring] process, including not being forced to apply for their positions.

Kevin Jones, Assistant City Attorney, appeared before the Board and stated that Ms. Rind is asking the Board to do something that they have no jurisdiction to do. He went on to ask Special Counsel for a legal opinion, to which she replied that based on her review, the Board does not have such jurisdiction. He went on to explain that the reason he asked for the Board's Special Counsel's opinion, is that the Agreement in question is between the City and AFSCME, Local 1907, and the Board does not have the authority to intervene in that Agreement. He went on to say that the City Charter and Code mandate what the Board is required to do, and [the ability to intervene is not included], as the Agreement is outside of the Board's purview. Assistant City Attorney Jones further stated that Ms. Rind is arguing two distinct concepts - one is union participation, and the other is a classification system of the City. He stated that the two concepts usually travel together for most of the positions in the City; however, the Rules are very clear concerning how a person becomes a member of the Classified service - competing, serving probation, and the Board's actions earlier with the probation extensions of the firefighters confirm that. He asked to reserve the right to provide additional information if warranted.

Chair Harris reminded that the Board that they would continue to hear what they can and cannot do as a Board, but that it is all up to interpretation; and that the members would have to make a good faith effort to do due diligence of understanding the Rules and being able to articulate and defend that. She further asked that everyone be respectful of the process and letting the process work, and not be presumptuous as to how they think the process should work.

Attorney Rind reiterated that they are asking the Board to determine whether there is an abuse of power by the city manager through his actions, particularly as it relates to violation of Section 36 of the Charter and sections of Rule 14.2, which is all that the Board needs to know about their jurisdiction. She went on to say that she challenges any of the members to review the Agreement and find where the term "classified service" appears, because the two ideas are separate and distinct.

Member Ramlal asked for the number of employees affected by this Agreement, to which Attorney Rind responded approximately 171. Member Ramlal asked whether possible terminations or rollbacks would affect greater numbers, to which Attorney Rind responded in the affirmative. Member Ramlal stated that this bothers her as there are so many people who are at risk for their jobs.

Chair Harris asked for Attorney Rind to confirm the Rules under which she is travelling

and which are alleged to have been violated. Attorney Rind responded that she is travelling under Rule 16.1 and 16.2 alleging violation of Section 36 of the City Charter and Rule 14.2 (b), (h), (l), (k) and (r). Chair Harris asked for Board Members to review the stated sections in their consideration regarding whether to grant the hearing requested. She then asked for Assistant City Attorney Jones for rebuttal.

Assistant City Attorney Jones requested clarification that Attorney Rind is not only requesting that a hearing be granted, but that the hearing takes place today, which brings up due process concerns for the department. He further stated that he and Attorney Rind do agree that union participation and classified service are two different things, which is what he said earlier; however, she has argued that when someone comes into the City, if they are not listed as unclassified, that they are de-facto classified. He went on to say that what the [Martinez-Esteve] case does not speak to is how to take an employee from the unclassified service, when they came in, to the classified service, and the City Charter is clear that one would have to compete for the position and complete a probationary period. He concluded by saying that Rule 14 does not apply to the city manager as he is not a classified employee, and under Rule 16.2, which he read a portion of, assuming that the Board does have a hearing, the report issued by the Board is to be forwarded to the city manager for consideration of a proper remedy, if necessary, which he believes would be a futile act. He reiterated that [this request for hearing] stems from a Settlement Agreement between two parties, and the Board has no ability to get in between that.

Chair Harris stated that the Board Members must look at their role as the watchdogs over the Rules, which is why she specifically asked Attorney Rind which Rule she was travelling under. She went on to say again that she respects everyone's role and hopes that things are not taken personally. She further stated that in America we have a process, where we consider all sides, which should be trusted and not be influenced by presumptions. She asked that Assistant City Attorney Jones stop using Special Counsel and Executive Secretary to influence the process, though he may feel that he is not doing that, and present his argument without them. She went on to say that it does not reflect well when she has tried to set the tone of protecting the process, since the very first meeting, and to her, it borders on not respecting the board members' ability to act in good faith.

Assistant City Attorney Jones responded that he has only asked for Special Counsel's opinion twice, and that is on those occasions that the Board is being asked to do something that they do not have the authority to do, and he believes that at least 2-3 of the members would not believe him if he gave that legal opinion, but may believe the Board's own counsel. Chair Harris responded that her point is that Assistant City Attorney Jones is making assumptions as to what the Board thinks.

Special Counsel Barrow stated that to clarify, her role is to help the Board to stay in line to ultimately make decisions that stick. She further stated that Rule 16.2 requires that an employee bring forth the request for hearing, not a representative. She went on to advise that in accordance with the Rules and the scenarios presented, if at the end of the day, the parties to the Agreement do not reconcile their issues, there may be situations where certain identified employees may come before the Board to appeal or grieve what they feel is an improper termination. She suggested that the process would not be cut off to the employees, but it seems that the request at this time might be premature, in that there is an Agreement to which the Board is not a party, representative parties present versus employees themselves and the Board is here to hear their grievances and problems and try to make resolutions. She concluded that she is not trying to keep the Board from doing what they want to do, but is trying to assist the Board in ensuring that the process is in accordance with the Rules so that their decisions stick.

Chair Harris responded that she understood what Special Counsel was doing, but that she should not be presumptuous in thinking that the Board Members were not already thinking that.

Member Ramlal asked whether competing in a selection process was discussed during formulation of the Agreement, to which Attorney Rind responded in the negative. Member Ramlal stated that she was still unclear about the selection process, especially as it concerned rollback considerations for the large number of potentially affected employees.

Member Dames asked if the City acknowledged that the employees affected are Classified, to which Assistant City Attorney Jones responded in the negative. Attorney Rind responded that the City disputes that the employees are classified, although [the titles] are not listed in the Charter.

Following further discussion, the Board entered a motion to GRANT a hearing pursuant to Rule 16.1, alleging that the city manager violated Section 36 of the Charter and Rule 16.2, alleging violation of Rules 14.2 (b), (h), (l), (k) and (r).

Motion by Chief Examiner Ramlal, seconded by Member Dames, that this matter be APPROVED. PASSED by the following vote.

Aye: Lindsey, Ramlal, Chairperson Harris, Sutton and Dames

Following the approval, Chair Harris asked Attorney Rind if there was anything else she wished to request. Attorney Rind asked that the hearing be held today, and as expeditiously as possible as employees are very concerned about having to compete for these positions. Chair Harris responded that the City does have a point regarding due process and the opportunity to prepare to respond. Attorney Rind replied the City has had notice of their request and that they wanted the case heard today. Chair Harris responded that the City had notice that a request for hearing was being made today and she wants to be fair in the process. She further stated that just as they want the City to fairly notice employees of their alleged infractions, even though it is not always done to their satisfaction, so to should the employee fairly provide notice. Attorney Rind replied that the matter must be resolved and cannot wait, so they are requesting that the hearing take place at the Board's next meeting.

Member Sutton asked Mr. Moy what the intent of the Settlement Agreement was. Sean Moy, President, AFSCME, Local 1907, appeared before the Board and relayed the process leading up to the Agreement, which started in 2014. Member Sutton and Member Ramlal asked additional questions, to which Attorney Rind responded.

Following further discussion, Chair Harris asked that the Board refocus and clarify what was being discussed. The Board entered a motion to add the Investigation and Grievance Hearings to the Agenda for the next meeting, which resulted as follows:

Motion by Chief Examiner Ramlal, seconded by Member Dames, to APPROVED. PASSED by the following vote.

Aye: Lindsey, Ramlal, Chairperson Harris, Sutton and Dames

H. TODAY'S HEARINGS

H.1 Hearing of appeal on behalf of Adalgisa Rose, Project Accountant, concerning her 10-day suspension, effective January 11, 2016.

The Board entered into the Appeal hearing, pursuant to Rule 14.3, on behalf of Analgisa

Rose, concerning her 80-hour suspension, effective January 11, 2016.

The Appellant represented herself. The Department of Finance was represented by Barbara Diaz, Assistant City Attorney and Kevin Jones, Assistant City Attorney, Supervisor, Office of the City Attorney.

Opening statements were provided by both sides. The following witnesses were called to testify at the request of the department:

- 1. Jennifer Moy, Senior Finance Analyst, Department of Finance. Questions were posed to witness Moy by Members Ramlal, Dames and Lindsey.*
- 2. Victoria Rojas, Finance Manager, Department of Finance. Questions were posed to witness Rojas by Member Dames*
- 3. Jose Fernandez, Director, Department of Finance. Questions were posed to witness Fernandez by Members Lindsey, Harris and Dames.*
- 4. Recall of Jennifer Moy. Questions were posed to witness Moy by Members Lindsey, Harris and Dames.*

The Department rested.

The following witness testified on behalf of the Appellant:

- 1. Analgisa Rose, Appellant. Questions were posed to witness Rose by Members Dames and Harris.*

Both the Appellant and the Department provided closing arguments, then the Board entered into deliberations.

Having reviewed and considered testimony, exhibits and argument of counsel, motions regarding the charges were entered and resulted as follows:

A motion was made to find Appellant GUILTY of violating CSR 14.2 (e) 2, Breach of Proper Discipline, which resulted as follows:

Motion by Member Sutton, seconded by Member Lindsey, that this matter be APPROVED. PASSED by the following vote.

Aye: Lindsey, Chairperson Harris and Sutton

No: Ramlal and Dames

A Motion to find Appellant GUILTY of violating CSB. 14.2 (h), Insubordination or Disgraceful Conduct was entered by the Board, which resulted as follows:

Motion by Member Sutton, seconded by Member Dames, to APPROVE. PASSED by the following vote.

Aye: Lindsey, Ramlal, Chairperson Harris, Sutton and Dames

A Motion to find Appellant GUILTY of violating CSR 14.2 (i), Wantonly Offensive in Conduct or Language, was made by Member Sutton, which died for lack of a second.

A Motion to find Appellant NOT GUILTY of violating CSR 14.2 (i), Wantonly Offensive in Conduct or Language was entered by the Board, which resulted as follows:

Motion by Member Dames, seconded by Chief Examiner Ramlal, to APPROVE. PASSED by the following vote.

Aye: Lindsey, Ramlal and Dames

No: Chairperson Harris and Sutton

A Motion was entered to find Appellant GUILTY of violating CSR 14.2 (r), Antagonistic toward Superiors or Employees, which resulted as follows:

Motion by Member Lindsey, seconded by Member Dames, to APPROVE. PASSED by the following vote.

Aye: Lindsey, Ramlal, Chairperson Harris, Sutton and Dames

The Board was presented with the Appellant's Official Employee File, and argument of Counsel and the Appellant concerning a recommended penalty.

Following discussion, the Board entered a Motion to recommend that the Director's penalty be reduced to a Reprimand Only, in lieu of the 10-day suspension, which resulted as follows:

Motion by Chief Examiner Ramlal, seconded by Member Lindsey, to APPROVE. PASSED by the following vote.

Aye: Lindsey, Ramlal, Chairperson Harris and Dames

No: Sutton

ADJOURNMENT

Breaks were taken between: 11:30am - 11:40am; and 1:59pm - 2:03pm.

Prior to adjournment, Member Dames announced that ACA Jones was again turning over his assignment regarding the Civil Service Board meetings, and thanked him for his service.

There being no further business before the Board, a motion was entered to adjourn the meeting at 2:47 pm, which resulted as follows:

Motion by Chief Examiner Ramlal, seconded by Member Sutton, to APPROVE. PASSED by the following vote.

Aye: Lindsey, Ramlal, Chairperson Harris, Sutton and Dames

SIGNATURE:

Lillie Harris, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary

