

City of Miami

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

Tuesday, June 9, 2015

10:00 AM

Commission Chambers

Civil Service Board

*Javier Baños, Chairperson
Troy Sutton, Chief Examiner
Lillie Harris, Board Member
Vishwani Ramlal, Board Member
William W. Riley, Board Member*

PLEDGE OF ALLEGIANCE

The meeting was called to order at 10:07 a.m. with the Pledge of Allegiance. At the commencement of the meeting, Roll Call was as follows:

Present: Chairperson Baños, Chief Examiner Sutton, Member Harris, Member Ramlal and Member Riley

A. APPROVING THE MINUTES OF:

Regular Meeting of May 26, 2015.

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

Aye: Baños, Sutton, Harris, Ramlal and Riley

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

- D.1 Copy of a letter from Chief Rodolfo Llanes, Director, Department of Police, notifying Stephanie Rubio, Police Officer, of her 10-hour forfeiture, effective June 6, 2015. (NOTIFICATION)

NOTIFIED

- D.2 Copy of a letter from Chief Rodolfo Llanes, Director, Department of Police, notifying Wilfredo Alfonso, Police Officer, of his 10-hour forfeiture, effective May 26, 2015. (NOTIFICATION)

NOTIFIED

- D.3 Copy of a letter from Chief Rodolfo Llanes, Director, Department of Police, notifying Cedric Philippe, Police Officer, of his 10-hour forfeiture, effective June 4, 2015. (NOTIFICATION)

NOTIFIED

- D.4 Copy of a Memorandum from the City Manager relative to the Appeal Hearing on behalf of Jean Marie Jean-Philippe, Police Officer, reversing the decision of the Chief of Police. Officer Jean-Philippe's 160-hour suspension, effective January 19, 2013 shall be reversed. (NOTIFICATION)

NOTIFIED

E. GENERAL ITEMS

- E.1 Copy of Findings of Fact concerning the Hearing of Appeal on behalf of

Ryan Smith, Police Officer, relative to his 10-hour suspension, effective June 15, 2014. (DISCUSSION)

Chair Banos asked if there were objections to the Findings as submitted regarding this matter. Being there were no objections, the Board voted as follows:

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

Aye: Baños, Sutton, Harris, Ramlal and Riley

F. REPORTS

F.1 Pending Hearings as of June 9, 2015. (NOTIFICATION)

PRESENTED

G. REQUESTS FOR HEARINGS

H. TODAY'S HEARINGS

H.1 Hearing of appeal on behalf of Daniel Fernandez, Police Officer, relative to his termination, effective November 6, 2010.

The Board entered the appeal hearing of Daniel Fernandez, former Police Officer (Appellant).

Attorney Ronald J. Cohen of Rice, Pugatch, Robinson & Schiller, P.A. (Atty. Cohen) represented the Appellant. Assistant City Attorney Stephanie Panoff (ACA Panoff) represented the Department of Police.

Atty. Cohen requested to invoke the Rule of Witnesses. Chair Banos instructed all witnesses in this case to leave the chambers until they were called to testify and not to discuss the case. ACA Panoff advised the Board that based on a previous request from Atty. Cohen, she had a written witness list and provided the list to Atty. Cohen.

Both parties presented opening statements.

The following witnesses appeared on behalf of the Department, were sworn in and provided testimony:

(1) Orlando Benitez, Police Officer, City of Miami, Department of Police. Questions were posed by Board Members Harris, Sutton and Ramlal, and Chair Banos.

(2) Ihosvany Cuervo, Police Officer, City of Miami, Department of Police. Questions were posed by Board Member Harris.

(3) Jorge Colina, Assistant Chief, City of Miami, Department of Police. Questions were posed by Member Harris and Chair Banos.

(4) Amy Klose, Director, City of Miami, Department of Human Resources. Questions were posed by Chair Banos, Member Harris and Member Riley.

(5) Robin Starks, Police Sergeant, City of Miami, Department of Police. Questions were posed by Member Harris.

During testimony Atty. Cohen objected to the submission of an exhibit, and requested the Chair to recess the hearing to allow him time and the opportunity to retrieve an un-altered document from the Courthouse. Chair Banos asked Special Counsel to provide an opinion on the issue raised by Atty. Cohen regarding the authenticity of altered (redacted to remove a witness' name) exhibits being introduced on behalf of the Department. The Board briefly recessed to confer with Special Counsel regarding Atty. Cohen's concern. Special Counsel advised that the Board must determine the credibility and authenticity of any documents submitted, since this is a civil matter and the Rules of Evidence do not apply. ACA Panoff and Atty. Cohen presented opinions regarding the introduced exhibit. Chair Banos ruled to not allow a recess, and resumed the hearing.

The City rested its case.

There were no witnesses called to testify on behalf of the Appellant. The Appellant rested its case.

Prior to closing argument, Member Harris requested to address the Board regarding testimony heard and the documented charges. Member Harris stated that certain testimony provided new information; and pursuant to ACA Panoff the charges presented to the Board do not include or are not based on the liquor store incident. Chair Banos advised that he believes both incidents (unlawful eviction and liquor store incidents) are addressed in the charges based on the Reprimand and the information presented to the Board. ACA Panoff reiterated that the charging document addresses both incidents. ACA Panoff reviewed and read to the Board Civil Service Rule 14.4(h) and referred to and recommended that the Board consider adding violation of the City's APM 1-90, if considering amending the charges. Chair Banos overruled the position of amending any of the charges and instructed that all charges would remain as presented to the Board in the charging document.

Both sides presented closing arguments. The Board began with review, deliberation and decision on each charge.

The Board entered a motion to find the Appellant GUILTY of violating Departmental Order 1, Chapter 11.6.13.1 - Responsibility of Members.

Under discussion, Member Harris explained that she heard both sides and when considering the charges she does critical thinking; that she has a job to do and she must be fair and weigh the evidence. She continued that her motion of guilty was based on the Order that states that "members shall observe the laws" which includes both civil and criminal. Member Riley concurred with Member Harris.

Member Sutton stated that he had concerns as to why the City didn't call the three presently employed officers as witnesses in the proceeding. Chair Banos responded that the reasons the City decided not to call the additional officers as witness could vary, and advised that the Board must address the evidence and testimony given. Member Harris responded that Board members cannot tell either side who to call as witnesses or what evidence to introduce. She stated that the burden of proof is on the parties to prove their case, and based on the evidence introduced and the testimony presented, the City proved violation of the charge (DO 1, Chapter 11.6.13.1) thus her vote of Guilty. Chair Banos stated that he was disappointed that the 3 witnesses were not called, and that his perspective is based on the video and testimony of Detective Benitez, he feels that the City met its burden.

Following discussion, the vote on the motion on the floor resulted as follows:

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

Aye: Baños, Harris, Ramlal and Riley

No: Sutton

The Board entered a motion to find the Appellant GUILTY of violating Departmental Order 1, Chapter 11.6.13.8 - Conduct Unbecoming, which resulted as follows:

Motion by Member Ramlal, seconded by Member Riley, to APPROVE. PASSED by the following vote.

Aye: Baños, Harris, Ramlal and Riley

No: Sutton

Member Ramlal stated the reason for her guilty vote on this charge (DO 1, Chapter 11.6.13.8) was that she felt the officer was in violation based on witnesses testimony and review of the departmental order.

The Board entered a motion to find the Appellant GUILTY of violating Departmental Order 1, Chapter 11.6.17.7 - Conduct Unbecoming a Police Officer. Under discussion, Member Harris reread the Order and made statements regarding Florida laws relating to evictions. She also cautioned that Police Officers must be careful not to overreach their authority. She stated that another concern she has is that (had the Appellant completed) the Outside Employment Request (it) might have been denied based on a conflict of interest.. Following discussion, the motion on the floor resulted as follows:

Motion by Member Ramlal, seconded by Member Riley, to APPROVE. PASSED by the following vote.

Aye: Baños, Harris, Ramlal and Riley

No: Sutton

The Board entered a motion to find the Appellant NOT GUILTY of violating Departmental Order 1, Chapter 11.6.17.17 - Making a False Statement, which resulted as follows:

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

Aye: Baños, Sutton, Harris, Ramlal and Riley

The Board entered a motion to find the Appellant NOT GUILTY of violating Departmental Order 1, Chapter 11.6.17.32 - Immorality, which resulted as follows:

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

Aye: Sutton, Harris, Ramlal and Riley

No: Baños

A motion to find the Appellant NOT GUILTY of violating Departmental Order 1, Chapter 11.6.29.3 - Members to Conform, was made by Member Sutton, but died for lack of a second.

The previous motion having failed, the Board entered a motion to find the Appellant GUILTY of violating Departmental Order 1, Chapter 11.6.29.3 - Members to Conform, which resulted as follows:

Motion by Member Riley, seconded by Member Ramlal, to APPROVE. PASSED by the following vote.

Aye: Baños, Harris, Ramlal and Riley

No: Sutton

A motion to find the Appellant NOT GUILTY of violating Departmental Order 2, Chapter 3.4.7 - Private Life, was made by Member Sutton, but died for lack of a second.

The previous motion having failed, the Board entered a motion to find the Appellant GUILTY of violating Departmental Order 2, Chapter 3.4.7 - Private Life, which resulted as follows:

Motion by Member Riley, seconded by Member Ramlal, to APPROVE. PASSED by the following vote.

Aye: Baños, Harris, Ramlal and Riley

No: Sutton

A motion was made to find the Appellant NOT GUILTY of violating Civil Service Rules and Regulations 14.2 (d) - Willfully Violated Rules, by Member Sutton, which died for lack of a second.

The previous motion having failed, the Board entered a motion to find the Appellant GUILTY of violating Civil Service Rules and Regulations 14.2 (d) - Willfully Violated Rules, which resulted as follows:

Motion by Member Riley, seconded by Member Ramlal, to APPROVE. PASSED by the following vote.

Aye: Baños, Harris, Ramlal and Riley

No: Sutton

The Board entered a motion to find the Appellant NOT GUILTY of violating Civil Service Rules and Regulations 14.2(e)(2) - Breach of Proper Discipline, which resulted as follows:

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

Aye: Sutton, Ramlal and Riley

No: Baños and Harris

A motion to find the Appellant NOT GUILTY of violating Civil Service Rules and Regulations 14.2(h) - Disgraceful Conduct, was made by Member Sutton, which died for lack of a second.

The previous motion having failed, the Board entered a motion to find the Appellant GUILTY of violating Civil Service Rules and Regulations 14.2(h) - Disgraceful Conduct, which resulted as follows:

Motion by Member Riley, seconded by Member Ramlal, to APPROVE. PASSED by the following vote.

Aye: Baños, Harris, Ramlal and Riley

No: Sutton

The Board entered a motion to find the Appellant NOT GUILTY of violating Civil Service Rules and Regulations 14.2 (k) - Incompetent/Negligent, which resulted as follows:

Motion by Chief Examiner Sutton, seconded by Chairperson Baños, to APPROVE. PASSED by the following vote.

Aye: Baños, Sutton and Ramlal

No: Harris and Riley

Chair Banos stated his vote is Not Guilty on the charge of Civil Service Rules & Regulations 14.2(k) because the officer's behavior did not rise to the level of incompetence or negligence.

At the request of Chair Banos the Executive Secretary recalled all charges with the vote of GUILTY.

Atty. Cohen asked for the Board to move to find the Appellant Not Guilty of all Guilty charges. Chair Banos denied the motion.

Having found the Appellant guilty of several charges, the Board entered into discussion of a penalty recommendation to the City Manager. Chair Banos asked both parties if they had any additional evidence or testimony to present to the Board. ACA Panoff responded that Board should rely on the evidence presented and heard. Atty. Cohen responded that he had no further testimony. Atty. Cohen asked that the Board review the Appellant's disciplinary history. Member Harris stated that the employee does have an exemplary disciplinary history and asked ACA Panoff to clarify the Department's position. ACA Panoff responded that the Chief of Police found the officer's actions, once relieved of duty, to be egregious.

Member Sutton stated that he is frustrated and upon review of the Officer's history, he is having a difficult time with the charge of making the Officer appear as a disgraceful employee.

Chair Banos stated that in his perspective as a citizen, business owner and a property owner in the City of Miami, the officer's actions put the City at risk and in a law suit. However, his recommendation is to set aside the termination and recommend a strong degree of punishment.

Member Ramlal stated that her votes today were based on testimony and evidence presented to the Board. She went on to state that everyone makes mistakes and feels that the termination was harsh and suggested reinstatement of the officer minus back pay. She reiterated that upon review of his disciplinary history, the officer should at least be reinstated without retroactive pay.

Member Riley agreed that the officer should not have been terminated, and went on to state that the officer's record is exemplary as a valued police officer and his past performance carries a lot of weight. He concluded that the officer should be given a second chance; however some of the charges were egregious and the Board should send a strong message.

Member Harris stated that she respects the position of her fellow Board members in this case; however, even crack addicts should be evicted properly too. She further stated that the officer's actions did cause harm to the City; however, she feels that progressive discipline is a good faith practice and this matter did not rise to a termination but agreed

there should be a strong penalty.

Chair Banos asked the Executive Secretary if the Board could recommend that the employee be reinstated forfeiting backpay and emoluments. The Executive Secretary responded in the affirmative. Member Sutton made further statements and made the recommendation to reinstate the officer forfeiting any retroactive pay with no rights to past promotional exams. Member Sutton further recommended to grant the officer his seniority for the absent years with rights to future promotional exams.

Chair Banos reiterated Member Sutton's recommendation. Following discussion, the Board entered a motion to recommend that the Appellant be reinstated only, not to include any reinstatement benefits, which may have been provided during the time of separation, with the exception of seniority.

Following discussion, the motion on the floor resulted in the following:

Motion by Chief Examiner Sutton, seconded by Chairperson Baños, to APPROVE. PASSED by the following vote.

Aye: Baños, Sutton, Harris, Ramlal and Riley

ADJOURNMENT

The Board recessed from 11:18 a.m. - 11:27 a.m., 12:30 p.m. - 1:30 p.m. (lunch) and 3:10 p.m. - 3:20 p.m.

The meeting adjourned at 4:50 p.m.

SIGNATURE:

Javier Banos, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary