

City of Miami

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

Tuesday, March 19, 2013

9:00 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

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

A. APPROVING THE MINUTES OF:

Regular Meeting of March 5, 2013.

**Motion by Chief Examiner Moy, seconded by Member Baños, 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 Lamont Kelly, Waste Equipment Operator, Department of Solid Waste, to return to his former classification of Waste Collector Operator I, Department of Solid Waste, effective March 11, 2013. (NOTIFICATION)

NOTIFIED

C. MILITARY LEAVES OF ABSENCE

- C.1** Genesis Troutman, Park Ranger, requests Active Duty Military leave without pay from March 16, 2013 through October 29, 2013. Copy of Orders submitted. (DISCUSSION)

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

Aye: Silverman, Moy, Baños, Gomez and Harris

D. DISCIPLINARY MATTERS

- D.1** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying John Askew, Police Officer, of a 10-hour suspension, effective March 2, 2013. (NOTIFICATION)

NOTIFIED

- D.2** Copy of a letter from Ricardo Falero, Director, General Services Administration Department, notifying Jorge L. Torres, Mason, of a 3-week suspension, effective March 7, 2013. (NOTIFICATION)

NOTIFIED

- D.3** Copy of a letter from Chief Manuel Orosa, Department of Police, notifying Osmar Martinez, Police Officer, of a 160-hour suspension, effective January 11, 2013. (NOTIFICATION)

NOTIFIED**E. GENERAL ITEMS****F. REPORTS**

F.1 Pending Hearings as of March 19, 2013. (NOTIFICATION)

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

H.1 Hearings on behalf of F.O.P Miami Lodge #20, pursuant to Civil Service Rule 16.1 - Investigation by the Board and Armando Alvarez, pursuant to 16.2 - Complaint by Employee, alleging a violation of Civil Service Rule 7.3- Duration of Registers, as it relates to the Eligible Register for Police Sergeant.

The Chairman called for the hearing, and the attorneys stated their presence for the record.

Ronald J. Cohen, appeared on behalf of the FOP and Armando Alvarez.

Janeen Richard, Assistant City Attorney appeared on behalf of the Department.

Prior to beginning the hearing, Attorney Cohen asked if he could be heard on a procedural issue, which is his request sent to the Board yesterday, regarding this matter being heard by the Chief Examiner as opposed to the Board as a whole. He went on to say that on closer examination of this issue, the proper way to proceed is to have it placed before the Chief Examiner, which is in accordance with the City Charter [section 36(d)], which reads in part: "The chief examiner shall provide examinations in accordance with regulations of the board and maintain lists of eligibles of each class of the services of those meeting the requirements of said regulations." Attorney Cohen went on to say that the Charter has always provided that authority, and even when the Rules were changed to create the Department of Human Resources, the department, the Board and the Commission understood that this responsibility remained under the authority of the Chief Examiner. He went on to say that the City Code explains that the term "provide examinations" means to assure that eligible registers are established and maintained by the Department of Human Resources under the provisions of Rule 7, and that the matter before the Board should therefore be entirely before the Chief Examiner.

Chairman Silverman stated that the issue Attorney Cohen is bringing is whether the matter concerning the termination of the Police Sergeant's Register is properly before the Board or should be before the Chief Examiner only, and asked if Special Counsel would state her opinion.

Cynthia Everett, Special Counsel, stated that in terms of what has been placed before the Board, meaning the hearings requested and granted pursuant to Rules 16.1 and 16.2, they have not been withdrawn. She went on to say that she agrees with Attorney Cohen's statements regarding the provisions of the City Charter and Code, however they do not relate to the granted hearings pursuant to Rule 16, which are challenging the

register that is already in existence, rather than the creation of a Register. She further stated that she does not see within the Rules a provision for the Chief Examiner to hear a matter and render a decision on his own, rather than the Board as a whole.

Attorney Cohen stated that this matter has to do with maintaining a list of eligibles and ensuring therefore that positions are filled in accordance with Rule 8, which has to do with certifying names for vacancies. He went on to say that they are happy to withdraw their requests for Rule 16 hearings if the Chief Examiner makes a decision on the matter (whether or not the Register is terminated); and that the Charter, which is the Constitution of the City, clearly leaves this issue up to the Chief Examiner and not to the Civil Service Board.

Chairman Silverman asked if the department wished to state an opinion on the request.

Assistant City Attorney Richard appeared before the Board and stated that she was very surprised to receive Attorney Cohen's letter yesterday afternoon, less than 24 hours before today's hearing, which he requested of the Board pursuant to Rule 16. She went on to say that the Board not only granted the investigation and grievance hearings, but agreed to Attorney Cohen's urgent request, and his request to accommodate his schedule and start the meeting one hour earlier than usual. She further stated that she does not agree with Attorney Cohen's interpretation of the Rule, and that she reads the Rule to mean that the Chief Examiner serves as an "overseer" to ensure that registers are established and maintained in accordance with the Rules; and that the Chief Examiner makes sure that the Department of Human Resources conducts a fair examination process. She went on to say that the issue before the Board today is whether the life of the register was properly impacted by a hiring freeze. She further stated that nowhere in the Rules is there a provision for the Chief Examiner to conduct a hearing that would be binding on the Board; however, under Rule 16.2, he can conduct a preliminary investigation and make a recommendation to the entire Board prior to holding a hearing. She went on to say that the City is prepared to move forward today with these hearings before the entire Board, so that the issue can be decided today and promotions can continue.

Attorney Cohen stated that they are also ready to have the matter heard today; however, there is nothing in the Rules that state that the entire Board should hear this matter. He went on to say the Charter authorizes the Chief Examiner to make this decision.

Chairman Silverman stated to the Members that a legal issue was before the Board and that the issue appears to be whether the Board should hear this matter or should the Chief Examiner review it. He went on to say that in the past, the Chief Examiner has conducted an investigation and it is usually a recommendation to the Board, which the Board acts on. He asked whether any Member wished to give an opinion.

Member Harris stated that she agreed with the City's position; and that this case needs to be heard and heard today. She went on to say that the union requested a hearing and the Board granted it, but unfortunately, at that meeting, a very important voice was not heard, and that was [the voice of] the remaining candidates on the Register, since they were not at the meeting. She went on to say that the most important voice, that of the public, was also not heard. She further stated that this matter is about more than a list, it is about public safety and fiscal responsibility, and the case needs to be heard today.

Chairman Silverman stated that the matter of concern now is whether the Board should hear this case or should the Chief Examiner only hear it, and asked if anyone else wished to speak on that issue, and if not, they would take a vote on that issue.

Special Counsel Everett stated that to properly frame the issue, the Board was asked to hear matters pursuant to Rule 16, which are hearings before the entire Board.

Attorney Cohen stated that he understands that if the Board cannot hear this matter, then the Board cannot hear it, regardless of what he or anyone else says. He went on to say that if he had filed this case in state court in Oregon, they could not hear it. He further stated that this is not a case about fiscal responsibility or anything other than the creation, maintenance and promotion of eligible registers, and the people of the city have said that the decision is made entirely by the Chief Examiner. He went on to say that if the Chief Examiner wants to consult with the Board and bring his recommendation, then he can do that; however, the Charter says that the decision is made by the Chief Examiner and no one else matters in this. He went on to say that this is not about what is right for the public, or what is right for the budget, it is only about the Civil Service Rules & Regulations, and the people of the city say that the Chief Examiner makes the decision.

Member Harris stated that with all due respect to Attorney Cohen, what he stated was his interpretation, and the City gave a different interpretation of the same Rule. She went on to say that he came before the Board to request a hearing and a hearing was granted.

Following discussion, the Board entered a motion to DENY the request of the FOP and Officer Alvarez, to have only the Chief Examiner render a decision on the investigation and grievance hearings, which resulted as follows:

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

Aye: Silverman, Moy, Baños, Gomez and Harris

The employee's request for referring the matter to the Chief Examiner having been denied, the Board entered into the scheduled hearings pursuant to Rule 16.1 and 16.2.

Member Gomez, citing a conflict of interest, recused herself from voting in this matter.

Ronald J. Cohen, Attorney at Law, represented the Grievant.

Janeen Richard, Assistant City Attorney, represented the Department.

Both attorneys presented opening statements and all witnesses were sworn in individually. Witnesses for the Grievant appeared in the following order:

1. Javier Ortiz, President, Fraternal Order of Police, Local 20. Questions were posed by Members Baños, Harris and Silverman during the testimony of Javier Ortiz.

2. Armando Alvarez (Grievant), Police Officer, Department of Police. Questions were posed by Member Harris during the testimony of Armando Alvarez.

The Grievant rested its case.

The Department filed a motion to dismiss claimants' grievances, citing that the employee and the FOP had not proven their cases. The motion was denied by the Board and the hearing continued.

Witnesses for the Department appeared in the following order:

- 1. Terrella Johnson, Records Supervisor, Department of Human Resources. Questions were posed by Members Baños and Harris during the testimony of Terrella Johnson.*
- 2. Armando Aguilar, Jr., Executive Assistant to the Chief, Department of Police.*
- 3. Jorge M. Valladares, Police Personnel Manager, Department of Police. Questions were posed by Members Baños and Harris during the testimony of Jorge M. Valladares.*
- 4. Carlos Mendez, Police Officer, Department of Police. Questions were posed by Member Moy during the testimony of Carlos Mendez.*
- 5. Orestes Guas, Police Officer, Department of Police.*
- 6. Alex Cooper, Police Officer, Department of Police.*
- 7. Rafael Muina, Police Officer, Department of Police. Questions were posed by Member Harris during the testimony of Rafael Muina.*
- 8. Armando Aguilar, Jr. was recalled as a witness.*

The Department rested its case. Both attorneys presented closing arguments.

Following final argument, Chairman Silverman reiterated the purpose of the hearings requested under Rules 16.1 and 16.2, and read section 16.2(D) into the record. He then called for discussion.

Member Harris stated that she wanted to say something regarding the role of the Board in conducting its quasi-judicial function. She went on to say that one of the primary functions of the Board is being the "watchdog" over the Rules, and while she appreciated the interpretations and arguments of the attorneys, it appeared that the one thing both sides agreed on is that the city manager had the final say. She went on to ask why the FOP was involved if the president believed that the city manager had the ultimate say-so in this issue. She further read from Rule 7.3 and stated that it puts the power into the hands of the human resources director and the City manager. Member Harris stated that she disagreed with one statement made by the union attorney - that this decision is not about what is in the best interest of the city - and she wholeheartedly disagreed with that, because that is another main purpose why this Board was established by the public. She went on to say that public safety and fiscal responsibility are in the best interest of the city and the public, as well as addressing our attrition rate. She went on to say that although the union attorney kept referring to having an additional memo regarding a continuation of the hiring freeze, that the first memo was the [only necessary] memo until such time as the freeze was lifted. She further stated that we must understand the spirit and intent of that (2009) memo, with which most parties except the union agree, as well as considering past practice, as evidenced by the 1986 memo from Angela Bellamy (former Human Resources Director) entered by the city attorney. She went on to say that in the memo from the Chief (requesting removal of sworn police positions from the hiring freeze), he even acknowledges that. Member Harris stated that she believes it is the Board's role to support the city manager in his decision making, and she concurred with that decision.

Member Baños stated that in law as with the Board, whose job it is essentially to defend the civil service, we have choices with what we do; and as such, though he agreed with

the legal argument of Mr. Cohen, he questioned the wisdom of the FOP in bringing the matter forward, especially in light of the detrimental effect it will or could potentially have on its members. He went on to read section 7.3 and stated that his problem is with the memo issued in August 2010, wherein the Police Chief asked for consideration and stated "your authorization to fill these positions will be a positive budgetary effect", which contradicts the reason for which the extension was granted. He went on to say that based on this memo and a reading of the Rule, his interpretation is that the Register was reopened and would therefore [terminate] August 3, 2012.

Chairman Silverman asked if anyone else wished to speak on the matter. Hearing none, he stated that the Board has the option of two motions; that there was no violation of Civil Service Rules & Regulations 16.1 and 7.3 and therefore the Board recommends no action be taken by the City Manager, or in the alternative, find that there has been a violation of Rule 16.1 and 7.3 and therefore the Board recommends some action by the manager.

Following discussion, Member Baños made a motion that there was a violation and to state that the Register expired on or about August 3, 2012, which FAILED for lack of a second.

Following further discussion, the Board entered a Motion to find that there was no violation of Rule 16.1 or 7.3, which resulted as follows:

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

Aye: Silverman, Moy and Harris

No: Baños

Abstain: Gomez

Following the vote, Member Harris asked whether the Board would be making a recommendation(s) to the Manager.

Following discussion, the Board made a motion to concur with the Manager's decision, and to recommend that the Eligible Register for the classification of Police Sergeant remain active until October 19, 2013, which resulted as follows:

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

Aye: Silverman, Moy and Harris

No: Baños

Abstain: Gomez

H.2

Hearing of Appeal on behalf of Terrel Cheever, Communications Assistant, concerning his Termination, effective October 31, 2012.

Due to the lateness of the day, Chairman Silverman asked if the employee was amenable to continuing his hearing and rescheduling it to the Board's next meeting.

Michael Braverman, Attorney on behalf of Terrel Cheever, responded in the affirmative.

Without objection, Chairman Silverman instructed the Executive Secretary to add the Appeal hearing on behalf of Terrel Cheever to the Agenda of April 2, 2013.

CONTINUED

- H.3** Hearing of Appeal on behalf of Marly Saldarriaga, former Public Service Aide, concerning her termination, effective July 10, 2012.

Noting that Ms. Saldarriaga had not appeared for her hearing, without objection, Chairman Silverman instructed the Executive Secretary to reschedule the Appeal hearing to another date.

CONTINUED

- H.4** Hearing of Appeal on behalf of Wilfredo Alfonso, Police Officer, concerning his 10-hour forfeiture, effective September 13, 2012.

Noting that Mr. Alfonso had not appeared for his hearing, Chairman Silverman asked whether the staff had heard from him. The Executive Secretary responded that Mr. Alfonso had not contacted the office at all regarding his hearing, since he filed for the appeal. Without objection, Chairman Silverman instructed the Executive Secretary to reschedule the Appeal hearing to another date.

CONTINUED

- H.5** Hearing of Appeal on behalf of Osmar Martinez, Police Officer, concerning his 10-hr suspension, effective September 30, 2012.

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.6** Hearing of Appeal on behalf of Verlish Randle, Police Officer, concerning a 40-hour suspension, effective September 20, 2012.

This matter was continued pending submission of a Settlement Agreement.

CONTINUED**ADJOURNMENT:**

The meeting ADJOURNED at 3:17pm. Breaks were taken at: 9:35 - 9:38am, 10:35-10:40am, 12:24 - 12:31pm, 12:35-1:40pm (LUNCH), and 2:53 - 3:00pm.

SIGNATURE:

Gerald Silverman, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary