City of Miami

City Hall 3500 Pan American Drive Miami, FL 33133 www.miamigov.com



Meeting Minutes

Tuesday, March 31, 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 commenced at 10:05 a.m. At the commencement of the meeting attendance was as follows:

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

A. APPROVING THE MINUTES OF:

Regular Meeting of March 3, 2015. (Deferred from meeting of March 17, 2015)

The Board entered a motion to approve the minutes of the March 3, 2015 meeting, which resulted as follows:

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

Aye: Baños, Sutton, Harris, Ramlal and Riley

Regular Meeting of March 17, 2015.

The Board entered a motion to approve the minutes of the March 17, 2015 meeting, which resulted as follows:

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

Aye: Baños, Sutton, Harris, Ramlal and Riley

B. PERSONNEL MATTERS

C.1

C. MILITARY LEAVES OF ABSENCE

Elijah Taylor, Police Officer, requests Active Duty Military Leave, without pay, from April 13, 2015 through April 12, 2016. Copy of Orders submitted. (DISCUSSION)

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

Aye: Baños, Sutton, Harris, Ramlal and Riley

D. DISCIPLINARY MATTERS

D.1 Copy of a letter from Chief Rodolfo Llanes, Director, Department of Police, notifying Justin Garcia, Police Officer, of his termination, effective March 13, 2015. (NOTIFICATION)

NOTIFIED

D.2 Copy of a Memorandum from the City Manager relative to the Appeal Hearing on behalf of Quateca Kirksey, Police Officer, reversing the decision of the Chief of Police. Officer Kirksey's 20-hour suspension, effective April 2, 2014 shall be rescinded. (NOTIFICATION)

NOTIFIED

D.3

Copy of a Memorandum from the City Manager relative to the Appeal Hearing on behalf of Lewis Mahoney, Park Manager II, sustaining the decision of the Department Director. Mr. Mahoney's 5-day suspension, effective March 4, 2014 is hereby sustained. (NOTIFICATION)

NOTIFIED

D.4

Copy of a Memorandum from the City Manager relative to the Investigation Hearing on behalf of Carlos Mendez, Police Sergeant, concerning his eligibility to take the Police Lieutenant's Promotional Exam. (NOTIFICATION)

NOTIFIED

D.5

Copy of a Memorandum from the City Manager advising the Board that an Appeal has been filed in Circuit Court challenging the Board's Findings of Fact and Conclusions of Law, concerning the matter of Carlos Antunez, Police Officer, relative to his 40-hour suspension, effective June 1, 2009. This will delay the Manager's Judgment until the conclusion of the Appeal. (NOTIFICATION)

NOTIFIED

E. GENERAL ITEMS

E.1

Notice of a Request to Continue from Stephanie Panoff, Assistant City Attorney, concerning the Appeal Hearing of JeanPaul Guillot, Police Officer, relative to his 160-hour suspension, effective October 15, 2013. Eugene Gibbons, Attorney, expressed no objection to the request. Hearing rescheduled for July 21, 2015. (DISCUSSION)

Assistant City Attorney Stephanie Panoff appeared on behalf of the Department and requested a continuance due to possibly scheduling Officer Guillot's termination arbitration in May. Following discussion the Board voted as follows:

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

Aye: Baños, Sutton, Harris, Ramlal and Riley

E.2

Copy of Findings of Fact in the Appeal Hearing of Larry E. Hagan Jr., Police Officer, relative to his 120-Hour suspension, effective November 12, 2013. (DISCUSSION)

Attorney Eugene Gibbons appeared before the Board on behalf of the Appellant. and stated that he believes that the emotions got the best of everyone including himself in the Hagan Appeal hearing. Attorney Gibbons requested that the Board review the Facts in the Findings which are straight forward and are not in dispute. Attorney Gibbons went on to say that he feels the Conclusions do not support the facts and the alleged violations as related to the collective bargaining agreement and the use of sick time. He went on to reiterate the language of the bargaining agreement related to sick time and

testimony from the appeal hearing regarding feigning illness, and stated that he does not understand how the Board reached the Conclusions in the Findings. He further stated that he believes that the recommendation of the Board to uphold the 120-Suspension is completely unjust and unfair to Officer Hagan, and requested that the 120-hour penalty be reconsidered by the Board.

Assistant City Attorney Panoff stated that she trusts the Board in making credibility determinations. She reminded the Board of their unanimous vote agreeing to a policy of not reconsidering and changing votes after meetings have adjourned. She further stated that in terms of the discipline which is a recommendation to the City Manager, the Officer may meet with the [city manager] to request a lesser punishment.

Chair Banos confirmed that Attorney Gibbons did not agree with the Conclusions in the Findings but did agree with the Facts stated in the Findings. ACA Panoff stated that during a telephone conference they both agreed to the Facts in the Findings before the Board. Attorney Gibbons stated that he still disagrees with the Fact regarding feigning illness. Chair Banos stated that he understood Attorney Gibbons' position, and went on to state that ACA Panoff is correct regarding the Board's decision not to reconsider votes.

Following discussion, Chair Banos asked for a motion to approve the Findings as presented by Special Counsel. Member Ramlal asked for clarification as to whether the Board would reconsider the 120-hour penalty. Chair Banos responded in the negative, and reminded Member Ramlal that the Board found Officer Hagan guilty and voted that the 120-hour penalty was appropriate. Member Sutton also reiterated that the Board voted to not reconsider votes once they have left the dais. Chair Banos again asked for a motion to approve the Findings. Following continued discussion, the motion resulted as follows:

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

Aye: Baños, Sutton, Harris, Ramlal and Riley

Hearing of Appeal on behalf of Rhausser Charles, Police Officer, concerning his 40-hour suspension, effective November 7, 2013. (DISCUSSION)

Pending Settlement since February 17, 2015.

Assistant City Attorney Panoff reported that a proposed settlement agreement was forward to Attorney Eugene Gibbons to present to Officer Rhausser Charles. Attorney Gibbons responded that Officer Charles is not interested in the proposed settlement. Without objection, Chair Banos advised that the case will be rescheduled for a hearing and placed on the Board's calendar.

DISCUSSED

F. REPORTS

F.1 Pending Hearings as of March 31, 2015. (NOTIFICATION)

PRESENTED

G. REQUESTS FOR HEARINGS

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E.3

H. TODAY'S HEARINGS

H.1

Hearing of Appeal on behalf of Jean Marie Jean-Philippe, Police Officer, relative to his 160-hour suspension, effective January 19, 2013.

The Board entered into the appeal hearing of Officer Jean Marie Jean-Phillippe. The Rule of Witnesses was invoked. Chair Banos instructed witnesses to leave the chambers and not to discuss their testimony with anyone. Assistant City Attorney (ACA) Stephanie Panoff represented the Department of Police. Attorney Eugene Gibbons of Buschel Gibbons, P. A, represented the Appellant. ACA Panoff provided an opening statement and Attorney Gibbons reserved his opening statement.

The following witnesses were sworn in and provided testimony:

- 1. Jonathan Yavneh, Police Lieutenant, City of Miami Department of Police. Questions were posed to witness Yavneh by Chair Banos, Member Harris and Member Riley.
- 2. Norbert Bonderenko, Police Sergeant, City of Miami Department of Police. Questions were posed to witness Bonderenko by Member Ramlal.
- 3. Benjamin Payen, Police Sergeant, City of Miami Department of Police. Questions were posed to witness Payen by Member Harris.
- 4. Orlando Benitez, Police Officer, City of Miami Department of Police. Questions were posed to witness Benitez by Chair Banos and Member Harris.

The Department rested its case.

Attorney Gibbons waived his opening statement. The following witnesses were sworn in and provided testimony:

- 1. Orlando Benitez, Police Officer, City of Miami Department of Police. Questions were posed to witness Benitez by Member Ramlal.
- 2. Jean Marie Jean-Phillippe, Appellant testified on his own behalf. Questions were posed to Apppellant by Member Riley.

Appellant rested his case.

Both sides presented closing arguments. The Board entered into discussion regarding the charges.

Under discussion, Member Harris stated her concerns that the City relied on an Internal Affairs (I.A.) statement taken (from Appellant) as a witness/victim statement and later used to support a disciplinary action in the form of a reprimand with 120-hours suspension against the officer. Member Harris wenht on to say that she doesn't understand why it took Lt. Yavneh five months to write a reprimand in this matter if he had enough information to support the charges, and she feels the reprimand should have been done immediately after the incident occurred with Lt. Yavneh and his contact with Appellant. Member Harris went on to state that the City referenced constantly the I.A. investigation, and stated that the statements changed referring to the Reprimand. She read a portion of the reprimand reviewing statements made by witnesses. Member Harris stated that she does not know if it is more of the weight on believing the

employee or whether the City proved its case which is why she offered the aforementioned motion of Not Guilty.

Member Riley stated that he is supporting the motion of Not Guilty but not based on the assumption of why the lieutenant waited to issue a reprimand five months later. He further stated that he does not give credence or weight to that issue but feels that under the circumstanced and what he has heard today that Count 1, the charge of Conduct Unbecoming, has not been proven.

Member Ramlal stated that she agrees with Member Harris regarding the statements made by Officer Jean-Phillippe concerning the paragraph of the Reprimand about whether or not the employee had the device, and checking the vehicle, which is why she supports the motion of Not Guilty.

Chair Banos stated that he feels the City more than proved its case, and recalled testimony of Lt. Yavneh and the other three witnesses regarding the recording device which was stated to be both audio and visual. Chair Banos went on to say that he feels the City met the burden of violation of Conduct Unbecoming because you have to tell the truth when doing an investigation. Chair Banos stated that he also understands and agrees with what Member Harris stated about how this issue turned against an officer who complained about another officer, and then the City reprimands him for not being truthful to his superior officer about a recording device. Chair Banos also stated that it is also troubling to him that when a superior officer asks an officer to do something the officer should do it. Following discussion the Board voted as follows:

The Board entered a motion to find the Appellant NOT GUILTY of violating Departmental Order 1, Chapter 11, Section 11.6.17.7 - Conduct Unbecoming.

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

Aye: Sutton, Harris, Ramlal and Riley

No: Baños

The Board entered a motion to find the Appellant NOT GUILTY of violating Departmental Order 1, Chapter 11, Section 11.6.17.17 - Making a False Statement About Audio/Video Recording Equipment which resulted as follows:

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

Aye: Sutton, Harris and Ramlal

No: Baños and Riley

The Board entered a motion to find the Appellant NOT GUILTY of violating Departmental Order 1, Chapter 11, Section 11.6.53.1 Members and Civilian Employees to be Truthful which resulted as follows:

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

Aye: Sutton, Harris and Ramlal

No: Baños and Riley

The Board entered a motion to find the Appellant NOT GUILTY of violating Departmental Order 1, Chapter 11, Section 11.6.41.2 - False Statement or Report to a Superior Officer, which resulted as follows:

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

Aye: Sutton, Harris and Ramlal

No: Baños and Riley

The Board entered a motion to find the Appellant NOT GUILTY of violating Departmental Order 1, Chapter 11, Section 11.6.41.3 - Filing False Report, which resulted as follows:

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

Aye: Sutton, Harris and Ramlal

No: Baños and Riley

The Board entered a motion to find the Appellant NOT GUILTY of violating Departmental Order 1, Chapter 11, Section 11.6.29.3 - Members and Civilian Employees to Conform, which resulted as follows:

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

Aye: Sutton, Harris and Ramlal

No: Baños and Riley

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

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

Aye: Sutton, Harris and Ramlal

No: Baños and Riley

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

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

Aye: Sutton, Harris, Ramlal and Riley

No: Baños

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 Member Ramlal, seconded by Member Harris, that this matter be APPROVED. PASSED by the following vote.

Aye: Baños, Sutton, Harris, Ramlal and Riley

H.2

Hearing of Appeal on behalf of Javier Herbello, Police Officer, relative to his 40-Hour suspension, effective September 26, 2014.

The Board proceeded into the hearing of Javier Herbello, Police Officer.

Assistant City Attorney Stephanie Panoff appeared on behalf of the Department and provided an opening statement. Attorney Eugene Gibbons of Buschel Gibbons, P.A., appeared on behalf of the Appellant, and provided an opening statement.

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

- 1. Kimberly Caruso, Police Sergeant, City of Miami Department of Police. Questions were posed to Sgt. Caruso by Chair Banos.
- 2. David Sanchez, Police Major, City of Miami Department of Police.

The Department rested.

The following witness appeared on behalf of the Appellant, was sworn in and gave testimony:

Appellant, Javier Herbello, testified on his own behalf. Questions were posed to Appellant by Members Riley, Harris, Sutton and Chair Banos.

The Appellant rested.

The Board entered into discussion on the charges as cited in the charging document. Chair Banos conferred with the Board regarding how to consider the charges. Member Ramlal suggested that the Board combine all charges and offered a motion of Not Guilty on all charges. Member Harris concurred with Member Ramlal's suggestion. Member Harris went on to remind the Board that during the hearing phase of appeal proceedings the Appellant's past disciplinary record should not be discussed. She went on to say that the disciplinary record should only be discussed during the penalty phase, if there is one.

Member Riley stated that unfortunately he would be voting guilty on a few charges. He went on to say that he would not vote Not Guilty on all charges due to his concern with one of the charges regarding the Hit and Run citation, which the Officer did not think it was a Hit and Run. He went on to say that the Officer did a good job; however. he believes that the City proved its case on that point and he would be voting guilty on other charges. Member Harris proposed that Member Riley identify the charges on which he would be voting Guilty. Member Riley read a portion of one of the charges and discussed the reason why he would be voting guilty on the charge and that [voting guilty on] the charges created a domino effect.

Member Sutton stated that he believes that Officer Herbello made a subjective decision. Member Sutton went on to state his position on the alleged violation of the charge of Hit and Run and added he would voting Not Guilty.

Special Counsel Clyne confirmed that the Board can break up the charges as suggested by Member Harris. The Board proceeded to review and vote on the listed charges.

Following discussion, the Board entered a motion to find the Appellant NOT GUILTY on violating Departmental Order 1, Chapter 11.6.1.2 - Members to Know Rules, which resulted as follows:

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

Aye: Sutton, Harris and Ramlal

No: Baños and Riley

The Board entered a motion to find the Appellant NOT GUILTY on violating Departmental Order 12, Chapter 4.4.7.9 - Hit and Run, which resulted as follows:

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

Aye: Sutton, Harris and Ramlal

No: Baños and Riley

The Board entered a motion to find the Appellant NOT GUILTY on violating Departmental Order 11, Chapter 16.4.10 - Notice to Appear Arrests, which resulted as follows:

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

Aye: Sutton, Harris and Ramlal

No: Baños and Riley

The Board entered a motion to find the Appellant NOT GUILTY on violating Departmental Order 1, Chapter 11.6.13.1 - Responsibility of Members, which resulted as follows:

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

Aye: Sutton, Harris, Ramlal and Riley

No: Baños

The Board entered a motion to find the Appellant NOT GUILTY on violating Departmental Order 1, Chapter 11.6.28.3 - Members to Conform, which resulted as follows:

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

Aye: Sutton, Harris, Ramlal and Riley

No: Baños

The Board entered a motion to find the Appellant NOT GUILTY on violating Departmental Order 12, Chapter 4.4.2 - Responsibilities, which resulted as follows:

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

Aye: Sutton, Harris, Ramlal and Riley

No: Baños

The Board entered a motion to find the Appellant NOT GUILTY on violating

Departmental Order 12, Chapter 2.4 - Traffic Enforcement: Procedures, which resulted as follows:

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

Aye: Sutton, Harris, Ramlal and Riley

No: Baños

The Board entered a motion to find the Appellant NOT GUILTY on violating Departmental Order 12, Chapter 2.4.1 - Warnings, which resulted as follows:

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

Aye: Sutton, Harris, Ramlal and Riley

No: Baños

The Board entered a motion to find the Appellant NOT GUILTY on violating Departmental Order 12, Chapter 2.4.1.5 - Accidents, which resulted as follows:

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

Aye: Sutton, Harris, Ramlal and Riley

No: Baños

The Board entered a motion to find the Appellant NOT GUILTY on violating Departmental Order 11, Chapter 16.3 - Arrest Procedures: Responsibilities, which resulted as follows:

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

Aye: Sutton, Harris, Ramlal and Riley

No: Baños

The Board entered a motion to find the Appellant NOT GUILTY on violating Departmental Order 11, Chapter 16.3.4 - Completing Arrest Affidavit, which resulted as follows:

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

Aye: Sutton, Harris, Ramlal and Riley

No: Baños

The Board entered a motion to find the Appellant NOT GUILTY on violating Departmental Order 11, Chapter 16.4.10.1 - Sufficient Identification, which resulted as follows:

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

Aye: Sutton, Harris, Ramlal and Riley

No: Baños

The Board entered a motion to find the Appellant NOT GUILTY on violating Departmental Order 11, Chapter 16.4.10.3 - Community Ties of Accused, which resulted

as follows:

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

Aye: Sutton, Harris, Ramlal and Riley

No: Baños

The Board entered a motion to find the Appellant NOT GUILTY on violating Departmental Order 11, Chapter 16.4.10.9 - In Lieu of Physical Arrest, which resulted as follows:

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

Aye: Sutton, Harris, Ramlal and Riley

No: Baños

The Board entered a motion to find the Appellant NOT GUILTY on violating Departmental Order 11, Chapter 16.4.9.1 - Residence in Community, which resulted as follows:

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

Aye: Sutton, Harris, Ramlal and Riley

No: Baños

The Board entered a motion to find the Appellant NOT GUILTY on violating Departmental Order 11, Chapter 16.4.9.2 - Family Ties, which resulted as follows:

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

Aye: Sutton, Harris, Ramlal and Riley

No: Baños

The Board entered a motion to find the Appellant NOT GUILTY on violating Departmental Order 11, Chapter 16.4.9.3 - Employment Record, which resulted as follows:

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

Aye: Sutton, Harris, Ramlal and Riley

No: Baños

The Board entered a motion to find the Appellant NOT GUILTY on violating Departmental Order 11, Chapter 16.4.9.5 - Past Conviction Record, which resulted as follows:

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

Aye: Sutton, Harris, Ramlal and Riley

No: Baños

The Board entered a motion to find the Appellant NOT GUILTY on violating
Departmental Order 11, Chapter 16.4.9.6 - History of Court Appearance, which resulted

as follows:

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

Aye: Sutton, Harris, Ramlal and Riley

No: Baños

The Board entered a motion to find the Appellant NOT GUILTY on violating Departmental Order 11, Chapter 16.4.9.8 - Process of Will Appear Arrests, which resulted as follows:

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

Aye: Sutton, Harris, Ramlal and Riley

No: Baños

The Board entered a motion to find the Appellant NOT GUILTY on violating Civil Service Rules and Regulations 14.2(d) - Willfully Violated Rules, which resulted as follows:

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

Aye: Sutton, Harris, Ramlal and Riley

No: Baños

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

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

Aye: Sutton, Harris, Ramlal and Riley

No: Baños

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

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

Aye: Sutton, Harris, Ramlal and Riley

No: Baños

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ADJOURNMENT

A break was taken at 12:11-1:36 pm (Lunch). The meeting adjourned at 5:50 pm.

SIGNATURE:	
	Javier Banos, Chairperson
ATTEST:	
	Tishria L. Mindingall, Executive Secretary