

City of Miami

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

Tuesday, June 25, 2013

10:00 AM

Commission Chambers

Civil Service Board

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

PLEDGE OF ALLEGIANCE

The meeting was called to order at 10:08 a.m. The roll call at the commencement of the meeting was as follows:

Present: Chairperson Silverman, Member Harris and Member Baños

Absent: Chief Examiner Moy

A. APPROVING THE MINUTES OF:

Special Meeting of June 3, 2013.

The Board entered a motion to APPROVE the minutes of the June 3, 2013 meeting which resulted as follows:

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

Aye: Silverman, Baños and Harris

Absent: Moy

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

- D.1** Copy of an Agreement between the City of Miami and Gilberto Gomez, Police Sergeant, relative to his 40-hour forfeiture, effective January 14, 2008. (NOTIFICATION)

NOTIFIED : Case will be closed and filed in the employee's official personnel file.

- D.2** Copy of an Agreement between the City of Miami and Jean Marie Jean-Philippe, Police Officer, concerning his 80-hour suspension, effective March 29, 2010. (NOTIFICATION)

NOTIFIED : Case will be closed and filed in the employee's official personnel file.

- D.3** Copy of an Agreement between the City of Miami and Johnny Brutus, Police Officer, relative to his 20-hour suspension, effective September 10, 2011. (NOTIFICATION)

NOTIFIED : Case will be closed and filed in the employee's official personnel file.

- D.4** Copy of an Agreement between the City of Miami and Dermis Hernandez, Police Officer, relative to his 40-hour suspension, effective September 5, 2012. (NOTIFICATION)

NOTIFIED : Case will be closed and filed in the employee's official personnel file.

- D.5** Copy of an Agreement between the City of Miami and Verlish Randle, Police

Officer, concerning her 40-hour suspension, effective September 20, 2012.
(NOTIFICATION)

NOTIFIED : Case will be closed and filed in the employee's official personnel file.

- D.6** Copy of a Judgment from the City Manager concurring with the Board's findings concerning the Appeal hearing of Workmond Napoleon, Police Officer, relative to his 80-hour suspension, effective January 4, 2013. It is ordered and adjudged that the Chief of Police's decision to suspend Officer Napoleon is modified to a 40-hour suspension. (NOTIFICATION)

NOTIFIED : Case will be closed and filed in the employee's official personnel file.

- D.7** Copy of a Memorandum from the City Manager concerning the Grievance Hearing on behalf of Paul Hernandez, Chief Mechanical Inspector, pursuant to Civil Service Rule 16.1, Abuse of Power and 16.2, Complaint by Employee concerning a violation of 14.10 Reduction in Pay.
(NOTIFICATION)

NOTIFIED : Case will be closed and filed in the employee's official personnel file.

E. GENERAL ITEMS

- E.1** Copy of Findings of Fact concerning the Appeal hearing of David Carpenter, Police Officer, relative to his 10-hour forfeiture of earned time, effective May 25, 2011. (DISCUSSION)

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

Aye: Silverman, Baños and Harris

Absent: Moy

- E.2** Copy of Findings of Fact concerning the Appeal hearing on behalf of Osmar Martinez, Police Officer, relative to his 160-hour suspension, effective January 11, 2013. (DISCUSSION)
Deferred from the meeting of June 3, 2013.

The Board entered a motion to defer this item to the Board's next meeting for consideration which resulted as follows:

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

Aye: Silverman, Baños and Harris

Absent: Moy

F. REPORTS

- F.1** Pending Hearings as of June 25, 2013. (NOTIFICATION)

PRESENTED

G. REQUESTS FOR HEARINGS**H. TODAY'S HEARINGS****H.1** Hearing of Appeal on behalf of David Anderson, Police Officer, concerning his 20-hour suspension, effective June 28, 2012.

Chairman Silverman asked both attorneys if they were prepared to go forward with this case today. ACA Cohen responded in the affirmative and Attorney Gibbons stated that he would ask that his client's case be continued.

Chairman Silverman asked Attorney Gibbons to provide the Board with the reason he was asking for a continuance. Attorney Gibbons responded that his client was not present, he did not know what happened to him so he was asking for a continuance. He went on to say that this case was transferred to him less than a month ago so he did not know if it was continued when assigned to Attorney Cohen. Chairman Silverman asked Attorney Gibbons if he spoke with his client and if so, how long ago? Attorney Gibbons responded that he spoke with his client approximately five days ago. Chairman Silverman asked Attorney Gibbons if his client knew about his scheduled hearing today. Attorney Gibbons responded in the affirmative.

Chairman Silverman asked for the department's position on the continuance request. ACA Cohen responded she was not in agreement with the continuance since it had already been continued once, the Rules allow for it to go forward, and the department is prepared to move forward.

Chairman Silverman asked Attorney Gibbons if there was anything else he wished to say before the Board voted on the matter of his continuance request. Attorney Gibbons responded that he did not know what happened to his client but it is a simple request that he is asking the Board to grant. He went on to say he did not think the case was continued before, nor did he think the department would be prejudiced in any way, shape, or form if it is continued.

Member Harris asked which side was granted a continuance in this case. The Executive Secretary responded that the Board granted one continuance and it was on behalf of the employee. Attorney Gibbons reiterated that this case file was transferred to him from Attorney Cohen's Office so he did not know if that continuance request was made on behalf of Attorney Cohen or the employee.

Member Banos stated he did not want to create the impression that the Board is prejudicing Attorney Gibbons' client because of the exchange that took place earlier today so if the Board was willing, he would break his rule and continue this hearing one more time.

Following discussion, the Board entered a motion to approve the employee's request for a CONTINUANCE which resulted as follows:

Motion by Member Baños, seconded by Chairperson Silverman, that this matter be CONTINUED. PASSED by the following vote.

Aye: Silverman, Baños and Harris

Absent: Moy

H.2 Hearing of Appeal on behalf of Reginald Williams, Police Officer, relative to

his 260-hour suspension, effective November 6, 2012.

Prior to hearing Officer Williams' case, ACA Cohen stated that the parties reached a settlement of this case.

Chairman Silverman asked Attorney Gibbons if he was in agreement with ACA Cohen's statement regarding a settlement in this case. Attorney Gibbons responded in the affirmative.

SETTLED : Case will be closed and removed from the Board's docket upon receipt of a written settlement agreement or rescheduled in accordance with the Board's Continuance Policy.

H.3

Hearing of Appeal on behalf of Eddy Rodriguez, Police Officer, concerning his 10-hour suspension, effective January 3, 2013.

The Board entered into the scheduled hearing on behalf of Officer Eddy Rodriguez ("the Appellant").

Casey Cohen, Assistant City Attorney (ACA), represented the Department.

Eugene Gibbons, Attorney at Law, represented the Appellant.

ACA Cohen presented opening statements and Attorney Gibbons deferred opening statements. All witnesses were sworn in individually. Witnesses for the department appeared in the following order:

- 1. Raimundo Socorro, Lieutenant, City of Miami, Department of Police. Questions were posed by Board Members Harris and Banos during the testimony of Lt. Socorro.*
- 2. Eddy Rodriguez, Police Officer, City of Miami, Department of Police. Questions were posed by Board Members Harris and Banos during the testimony of Officer Rodriguez.*

The Department rested its case and Attorney Gibbons presented opening statements. Upon completion of his opening statements, Attorney Gibbons proceeded with the calling of witnesses. Witnesses for the Appellant appeared in the following order:

- 1. Jose Fernandez, Sergeant, City of Miami, Department of Police.*

The Appellant rested his case and the Board proceeded to closing arguments that were presented by both attorneys. Following final argument, the Board entered a motion to find the Appellant NOT GUILTY of Charge #1 - Departmental Order 5.4.4.3 - Attendance.

Under discussion on the motion, Member Banos stated the Department did not have to present perfect evidence which was somewhat of the issue he had with the department before, but his real issue was whether (the department used as concrete evidence), only the word of someone who essentially looked into a computer and determined that Officer Rodriguez was not present in court because on the other hand, there was testimony from the Appellant that he was in court. He went on to say that it was not perhaps the best testimony [given by Officer Rodriguez] but the burden was on the department. Member Banos further stated that usually when he shows up for this meeting there are usually several police officers from the same section present so he did not understand why the department did not provide evidence to corroborate its claim that Officer Rodriguez did not attend court. He stated one thing the department could have done was call the court clerk, obtain an affidavit or something more concrete than

the computer printout.

Member Harris stated that she agreed with Member Banos' position in that the evidence presented by the department did not clearly show that Officer Rodriguez did not attend court.

Member Banos stated that Officer Rodriguez may not have arrived to court on time but he did show up for court.

Chairman Silverman stated that he did not agree with what he heard from the two Board Members because the documents were clear that Officer Rodriguez did not appear for court. He went on to say that Officer Rodriguez' red-line memo did not indicate anything about his appearance at court, rather his testimony in the red-line memo was that he talked to the clerk but he did not mention that he arrived to court late.

Following discussion, the motion on the floor to find the Appellant NOT GUILTY of Charge #1 resulted as follows:

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

Aye: Baños and Harris

No: Silverman

Absent: Moy

The Board entered a motion to find the Appellant GUILTY of Charge #2 - Departmental Order 5.4.4.13 - Inability to Appear. Under discussion on the motion, Member Harris stated there was testimony given by Officer Rodriguez for which he admitted he was late for court and that the case was dismissed due to his failure to attend and he tried to speak with the Clerk to reverse the dismissal [of the case.] She went on to say that according to Departmental Order 5.4.4.13, Officer Rodriguez was required to contact Court Liaison if he was unable to attend court or was running late.

Member Banos stated that if Officer Rodriguez was running late while en route to court, he would have to call Court Liaison; however, there was really no way for Officer Rodriguez to call Court Liaison other than from his police vehicle. Member Banos further stated that he did not know how the proceedings worked for police officers [going to court] or understand how it would functionally work for Officer Rodriguez having to call so he could only rely on Member Harris' response.

Member Harris responded that she believed Traffic Court was in the same building as the Court Liaison Office. She went on to say that considering the stated reporting time of 1:21 p.m. that Officer Rodriguez listed on his worksheet, he arrived approximately 40 minutes early since his court appearance was scheduled for 2:00 p.m. Member Harris further stated if Officer Rodriguez was in the court building at that time, but was late getting into the actual court room, he would have had time to make contact with Court Liaison.

Following discussion, the motion on the floor to find the Employee GUILTY of Charge #2 resulted as follows:

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

Aye: Silverman and Harris

No: Baños

Absent: Moy

The Board entered a motion to find the Appellant NOT GUILTY of Charge #3 - Departmental Order 5.4.4.16 - Request for Change, which resulted as follows:

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

Aye: Silverman, Baños and Harris

Absent: Moy

Upon the Chairman's calling for a motion on finding the Appellant guilty or not guilty of the charge, Court Related Penalties, ACA Cohen weighed in and stated that the department's position was that this Departmental Order is a penalty schedule, and the charge was included only to verify or bolster the progressive discipline in the reprimand so she did not think it was something the Board needed to vote on.

Chairman Silverman asked ACA Cohen if she was withdrawing this charge. ACA Cohen responded in the affirmative.

This charge having been withdrawn, the Board entered a motion to find the Employee NOT GUILTY of Charge #4 - Civil Service Rule 14.2(e) 2 - Breach of Proper Discipline which resulted as follows:

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

Aye: Baños and Harris

No: Silverman

Absent: Moy

The Board entered a motion to find the Appellant NOT GUILTY of Charge #5 - Civil Service Rule 14.2(e) 3 - Loss/Injury to the City. The motion died for lack of a second. The motion having died, the Board entered a motion to find the Appellant GUILTY of Charge #5, which resulted as follows:

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

Aye: Silverman and Harris

No: Baños

Absent: Moy

The Appellant having been found guilty of some of the charges, the Board proceeded to the Penalty Phase of Officer Rodriguez' appeal hearing. The Board reviewed the Appellant's personnel file which revealed Officer Rodriguez was hired on March 22, 2004 and since that time, he received 10 commendations and 3 reprimands.

Chairman Silverman asked the department's attorney if she wished to present witness testimony as to the penalty. ACA Cohen responded in the affirmative.

Raimundo Socorro, Police Lieutenant, City of Miami, Department of Police, was recalled as a rebuttal witness on behalf of the department. The department rested on rebuttal.

Officer Eddy Rodriguez was recalled as a rebuttal witness in his own behalf. Questions

were posed by Member Harris during the testimony of Officer Rodriguez. The Appellant rested on rebuttal and the Board proceeded to closing arguments for which both attorneys presented their positions on the penalty. Following final argument, Chairman Silverman called for Board discussion on the penalty.

Member Harris stated her attempt was to actually give Officer Rodriguez the benefit of the doubt but Attorney Gibbons was not helping [due to his loud outbursts.] She went on to say that in spite of Attorney Gibbons' outbursts, she still was going to try to give his client the benefit of the doubt. Member Harris further stated that Lt. Socorro stated if evidence was presented regarding the second to the last [court-related] incident that the matter before the Board today would count as Officer Rodriguez' second court-related incident and the posted penalty would result in a reprimand only. She stated that she attempted to perform a line of questioning that might have shown that Officer Rodriguez was in fact in the hospital and under medication, but unfortunately that did not come to fruition.

Member Banos stated that he wanted to remind the Board that Officer Rodriguez was found guilty on two of the charges, one of which he was late to court and the other was for the loss of the monetary value of the [traffic] ticket issued by Officer Rodriguez. He went on to say he found the argument that went on between Member Harris and the employee's attorney was completely contemptible and a shame that it happened; however, in spite of what occurred, his thinking was that Officer Rodriguez having cost the City \$154.00 did not rise to the level of a one-day suspension. Member Banos further stated there were mitigating circumstances giving the fact that Officer Rodriguez had incurred an injury and that his supervisor [Jose Fernandez] attested to picking up Officer Rodriguez from the hospital, so he thinks the Board should take this into consideration [when determining the penalty.] He stated that given the circumstances of this case, he felt comfortable recommending that Officer Rodriguez receive a reprimand only but he wanted to hear from the other Board Members before making the motion.

Chairman Silverman stated he agreed with Member Banos that given the circumstances of this case, Officer Rodriguez should receive a reprimand only.

Member Harris stated that she was also leaning in the direction of recommending Officer Rodriguez receive a reprimand only. She went on to say that certain things get interpreted a certain way in that one may think that something is being swayed for or against his/her client, but it does not mean the Board is doing something improper. Member Harris further stated not only is it the Board's responsibility to hear both sides, the Board asks questions which becomes a part of evidence and the testimony of the employee also becomes a part of the evidence. She stated this being the case, it behooves both sides to allow for questioning to come to its fruition and let the chips fall where they may. Member Harris went on to say that [questioning by Board Members to determine the truth] can be something that works toward the benefit of one's client, but when there is an interruption of the process, which in her opinion is not only disrespectful to the Board, it is inexcusable, it can interfere with the outcome of one's case. She further stated that what she said today should be taken under consideration by both sides for future reference.

Member Banos stated that he wanted to piggy-back off of what Member Harris related because he believed the penalty would be reduced to a reprimand only. He went on to say that while he has great respect for Attorney Gibbons, he wanted to say for the record that this recommendation was being made in spite of and not because of Attorney Gibbons' conduct.

Following discussion, the Board entered a motion to recommend to the City Manager that Officer Rodriguez receive a reprimand only in lieu of the 10-hour suspension

imposed by the department director. The motion resulted as follows:

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

Aye: Silverman, Baños and Harris

Absent: Moy

ADJOURNMENT:

The meeting ADJOURNED at 12:40 p.m. Breaks were taken at 10:19 - 10:49 a.m. and 12:30 - 12:37 p.m.

SIGNATURE:

Gerald Silverman, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary