

# **City of Miami**

*City Hall  
3500 Pan American Drive  
Miami, FL 33133  
[www.miamigov.com](http://www.miamigov.com)*



## **Meeting Minutes**

**Tuesday, July 22, 2014**

**10:00 AM**

**Commission Chambers**

## **Civil Service Board**

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

**PLEDGE OF ALLEGIANCE**

*The meeting commenced at 10:01 a.m. with the Pledge of Allegiance. At the commencement of the meeting, the Roll Call was as follows:*

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

**Absent:** Member Ramlal

**A. APPROVING THE MINUTES OF:**

Regular Meeting of July 8, 2014.

*The Board entered a motion to approve the minutes of the July 8, 2014 meeting which resulted as follows:*

**Motion by Member Baños, seconded by Chief Examiner Sutton, to APPROVE.**

**PASSED by the following vote.**

**Aye:** Riley, Baños, Sutton and Harris

**Absent:** Ramlal

**B. PERSONNEL MATTERS**

- B.1** Copy of a memorandum from Amy Klose, Director, Department of Human Resources, notifying Ricardo Novas, Broadcast Engineer, of his reinstatement/reassignment to the Film and Entertainment Office, effective July 14, 2014. (NOTIFICATION)

**NOTIFIED**

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

- D.1** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Diyango Fernandez, Police Officer, of his 40-hour forfeiture, effective July 17, 2014. (NOTIFICATION)

**NOTIFIED**

- D.2** Copy of a letter from Erica Paschal, Interim Director, Department of Solid Waste, notifying Clarence Graves, Waste Collector Operator, of a one (1) day suspension, effective July 2, 2014. (NOTIFICATION)

**NOTIFIED**

- D.3** Copy of a letter from Erica Paschal, Interim Director, Department of Solid Waste, notifying Michael Williams, Waste Collector Operator, of an eight (8) hour forfeiture, effective July 1, 2014. (NOTIFICATION)

**NOTIFIED**

**E. GENERAL ITEMS**

- E.1** Hearing of Appeal on behalf of Francisco Sallano, Police Officer, concerning his 10-hr forfeiture, effective December 6, 2012. (DISCUSSION)

Rescheduled pursuant to continuance policy; pending settlement since June 24, 2014.

*Chairperson Harris asked for the status of the hearing on Francisco Sallano.*

*Eugene Gibbons, Attorney on behalf of Officer Sallano, appeared before the Board and advised that a settlement agreement in this matter is being routed (for signature). Diana Vizcaino, Assistant City Attorney (ACA Vizcaino) on behalf of the Department, appeared before the Board and confirmed that the settlement agreement is awaiting the signature of Officer Sallano. Attorney Gibbons stated that he will check on the status of Officer Sallano's signature.*

*Chairperson Harris asked if this matter should be moved to the next agenda. The Executive Secretary stated that if there is no objection, the matter will be carried over in accordance with the Board's continuance policy. Chairperson Harris asked how long this had case been going on. ACA Vizcaino responded that this matter was set for hearing at the last Board meeting and it was represented that there was an agreement.*

**DISCUSSED : 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.**

- E.2** Hearing of Appeal on behalf of Silvia Benitez, Emergency Dispatcher, relative to her 120-hour suspension, effective May 27, 2013. (DISCUSSION)

Rescheduled pursuant to continuance policy; pending settlement since March 4, 2014.

*Chairperson Harris asked for the status on the case of Emergency Dispatcher Sylvia Benitez. Attorney Osnat K. Rind appeared before the Board on behalf of Ms. Benitez and stated that a settlement agreement has been filed with the Board at this meeting. Assistant City Attorney Vizcaino affirmed that a settlement was reached and the Executive Secretary confirmed possession of the settlement agreement.*

**SETTLED :Case will be closed and removed from the Board's docket.**

- E.3** Hearing of Appeal on behalf Jose Rilo, Parks Operations Coordinator, concerning his 3-day suspension, effective March 24, 2014. (DISCUSSION)  
Carried over from the meeting of July 8, 2014 per Board's request; pending settlement.

*Chairperson Harris asked for the status on the hearing on behalf of Jose Rilo. Assistant City Attorney Diana Vizcaino (ACA Vizcaino) appeared before the Board on behalf of the Department and responded that at the July 8th Board meeting it was represented that the parties entered into an agreement. She stated that the agreement has been conveyed and executed by Mr. Rilo and that it is pending the signature of the City Manager.*

*Without objection, Chairperson Harris instructed the Executive Secretary to carry the case over pending receipt of the settlement agreement.*

**DISCUSSED :** 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.

## **F. REPORTS**

**F.1** Pending Hearings as of July 22, 2014. (NOTIFICATION)

**PRESENTED**

## **G. REQUESTS FOR HEARINGS**

**G.1** Copy of a Request for hearing from Osnat K. Rind, Attorney, on behalf of Lewis Mahoney, Park Manager II, pursuant to Civil Service Rule 16.1- Investigation by the Board, concerning an alleged Abuse of Power by Lara De Souza, Deputy Director, or 16.2- Complaint by Employee, concerning an alleged violation of Civil Service Rule 14.1(a), 14.2(h), (i), (k) and (r). (DISCUSSION)

*Chairperson Harris asked if anyone was present for this matter regarding Lewis Mahoney.*

*Osnat K. Rind, Attorney on behalf of Mr. Mahoney, appeared before the Board and responded that she submitted correspondence to the Board dated July 16, 2014 but she does not know if the Board read the correspondence. She went on to state that this is a request for a hearing under Rules 16.1 and 16.2, for an investigation under the Civil Service Rules, alleging an abuse of power by the Department (Parks and Recreation). Attorney Rind advised that she would go into the facts and the background of the case but wanted to inform the Board as she informed Assistant City Attorney Diana Vizcaino (ACA Vizcaino), that the new Director of Parks has approved Mr. Mahoney's second job. She went on to state that she does not know if that information would make a difference on the dispute.*

*ACA Vizcaino confirmed that Attorney Rind shared the information before the meeting; however, she is requesting that the Board continue the matter to give her a chance to speak with the Director of Human Resources (HR) who has the ultimate authority and approval of all outside employment according to the City's Administrative Policy. ACA Vizcaino stated that she will meet with the HR Director who will explore the matter with the new Parks Department Director. Attorney Rind stated that she appreciates (ACA Vizcaino's comments) and that this case might be a moot issue by the next meeting if it is approved by the Parks Director. She went on to say that she suspects that the City will not object.*

*Attorney Rind requested that the matter be set for hearing for the next meeting due to a time constraint. Member Baños asked Attorney Rind if she was asking for a hearing to be set because the employee is a teacher who works for the school system and since the school year starts soon it will impact his ability to work. Member Baños stated that if the matter is solved it would be great. Attorney Rind responded in the affirmative. Member Baños offered a motion to GRANT the request for a hearing and to have the case put on an agenda for some time in August if feasible. ACA Vizcaino reiterated her request that the matter be reset for the (Board to consider the) Request for Hearing. She went on to say that if the Board is going to address the Request for Hearing she would raise an objection. She stated that she does not want to raise the objection now because she wants to give the employee the benefit of the doubt and give the new*

*Parks Director the opportunity to further explore this issue with the HR Director. ACA Vizcaino went on to state that there is currently an appeal hearing set for October of this year on very similar allegations stated in Attorney Rind's correspondence dated July 16th. ACA Vizcaino stated that she does not want to go into all the objections for a Request for Hearing regarding Rule 16 and that is why she is asking that the matter be rolled over so that the parties can discuss the issue of the outside employment request.*

*Member Baños asked the Executive Secretary if it was feasible to roll this matter over once and schedule the hearing for the last meeting in August. The Executive Secretary responded in the affirmative, and added that there are 2 meetings in August and gave the Board an update on the scheduled August hearings. Chairperson Harris stated that she understands Attorney Rind's request and asked Attorney Rind if working it out with the other side would jeopardize (her October hearing) if a hearing is set based on what ACA Vizcaino stated. Attorney Rind responded that she does not think the City would retaliate against the employee for having a hearing set. She went on to say that Mr. Mahoney has to report for work on August 6th and school starts on August 18th so she is not sure that is sufficient time to consider the matter. Attorney Rind stated that she is prepared now to argue if there is a dispute over whether a hearing should be set on Rule 16. She went on to say that she is willing to roll the matter over if there is another day to have a decision but having a decision on August 5th and then having to wait on the City Manager for his decision on the issue puts the employee in jeopardy. Attorney Rind further stated that she is loath to agree with ACA Vizcaino's request, not because she does not respect ACA Vizcaino's request because she does understand it, but the employee also has a concern.*

*Member Baños stated that his motion is to have the hearing set, but he would like to hear the City's objections, with timing being the primary concern. Member Baños went on to say that he would like the matter put on the Agenda in early August so that Mr. Mahoney gets an opportunity to represent his case and that he wants to hear what the objections are if Attorney Rind has made all the arguments she will present. Attorney Rind stated that it would be easier for her to respond to the City's objections. ACA Vizcaino stated that her objection for the hearing under Rule 16 is that Mr. Mahoney currently has a hearing under Rule 14 scheduled for October, and that the allegations that Mr. Mahoney is appealing in the October hearing are the same issues raised in the July 16th correspondence to the Board, for which the underlying issue is the outside employment request. She went on to say that Mr. Mahoney wants to be allowed to work for the School Board at the same time [that he is scheduled to work as] a City of Miami employee. ACA Vizcaino further stated that she is unclear how the Board can move forward on a Rule 16 hearing alleging violations of Rule 14. She went on to say that Mr. Mahoney's current (Rule 14) Appeal hearing filed with the Board would be the disciplinary action concerning his 5-day suspension on allegations stemming from the outside employment. ACA Vizcaino reiterated that these are her reasons to object to the Request for Hearing under Rule 16. She went on to state that this matter may be resolved based on the email she received earlier this morning but she cannot make the representation to the Board without approval of the HR Director.*

*Member Baños stated that the October hearing can be moved up sooner. Attorney Rind stated that she disagrees with what ACA Vizcaino stated. She went on to state that the portion of the 5-day suspension that tangentially relates to this issue is an allegation that Mr. Mahoney did not show up to certain isolated meetings scheduled during the period of time he was working (at his outside employment) which is something completely different. She went on to say that the City has told him his schedule has changed and this is not about showing up to a meeting rather this is a whole scale modification of his working hours.*

*Member Baños asked ACA Vizcaino for her response to what Attorney Rind stated and*

*gave a brief summary of how the (issue) qualifies under Rule 16. ACA Vizcaino stated in her opinion they are resulting out of the same underlying issue which is the outside employment. She went on to say that she does not see how this Board can have a Rule 16 hearing traveling under a violation of Rule 14 when there is a current Rule 14 hearing pending. She stated that she has never seen it happen before and she would ask the Executive Secretary/Director if it has ever happened before.*

*Member Baños referred to Special Counsel Clyne and the Executive Secretary. Special Counsel Clyne responded that what the Board could do is move the October hearing to an earlier date in August. Attorney Rind responded that moving the October hearing up sooner would in no way resolve the issue because it does not deal with the same issue. She went on to say that Mr. Mahoney's discipline was actually issued to him prior to his schedule change. She stated that it is not the same facts or action by the City and that the act by the City being grieved is an act for which he has not been disciplined. Attorney Rind went on to say that [Mr. Mahoney's superiors] have in fact threatened him [by saying] that if he doesn't show up for his scheduled hours in the future that he will be disciplined. She further stated that they take their word for that but it is a completely separate act of the City that they are grieving under this rule. Attorney Rind stated that there is nothing that she knows of under the Civil Service Rules, even if they were related in some way, that they couldn't go forward with the Rule 16. She went on to say that there is nothing that prevents it and she does not think it will resolve the issue of whether there has been an abuse of power by changing the work schedule.*

*Special Counsel Clyne stated that he was unsure as to Attorney Rind's request, as the employee is appealing an action and grieving an action, and (the issues) are interrelated. Attorney Rind responded that they (issues) are related only tangentially. She went on to state that Mr. Mahoney has a second job and the department's approval or disapproval of the second job had nothing to do with the discipline. Attorney Rind further stated that they set certain meetings during the time that Mr. Mahoney was approved to work a second job and he didn't show up but it had nothing to do with their approval or disapproval of a second job. She stated that he was already approved for a second job and that's why he did not show up. Attorney Rind went on to say that now they have rescinded the approval and changed his working hours and that's the act that is being grieved. She further stated that he has not been disciplined for failure to show up during those working hours because during the summer months he's been showing up.*

*Chairperson Harris suggested that the Board place a motion on the floor but before doing so, she wished to comment on the matter. She went on to state that the Rule 14 hearing scheduled for October was brought (because of an action) by the City against Mr. Mahoney, and therefore, these are two different cases as in the grievance, the burden of proof would be on Mr. Mahoney. Attorney Rind agreed.*

*Member Baños reiterated that the issue is whether it is proper for Attorney Rind to bring a Rule 16 hearing alleging violations of Rule 14. He went on to say that Attorney Rind might wish to amend her request but he wants to be sure that the Board can actually hear the case without violating the Rules. Member Baños stated that he understands the grievance and he is inclined to vote for an expedited Rule 16 hearing; however his concern is what Rules Attorney Rind is traveling under. He went on to say the Board can't hear the case in such a fashion where Attorney Rind would be traveling under the same rules (Rule 16) for which Mr. Mahoney has a separate hearing (Rule 14) in October. Attorney Rind stated that if the issue goes past August 6th, Mr. Mahoney will get terminated and then the Board will have a[n appeal hearing].*

*Following discussion, the Board entered a motion to GRANT the employee's request for a Rule 16 hearing and that it be set for the August 5th Agenda, which resulted as*

follows:

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

**Aye:** Riley, Baños, Sutton and Harris

**Absent:** Ramlal

*Following the vote, ACA Vizcaino asked if the (actual) Rule 16 hearing will be scheduled for August 5th. Chairperson Harris responded in the affirmative. The Executive Secretary asked if the Board granted the hearing pursuant to Rule 16.1, Abuse of Power. Chairperson Harris responded in the affirmative.*

*ACA Vizcaino stated that there is no need to expedite this matter because at the end of the day, although the burden of proof is on the employee under a Rule 16 hearing, it's a recommendation from this Board that the City Manager can either accept or reject and he can take as long as he wants [to issue his decision]. Member Baños responded that the Board understands that, but it is trying to be as fair as possible and given the time constraints, the Board wants to allow the City Manager as much flexibility as possible.*

## H. TODAY'S HEARINGS

### H.1

Hearing of Appeal on behalf of Yatha Legrand, Police Officer, concerning her 30-hour suspension, effective January 25, 2012.

*Chairperson Harris asked for the status of Police Officer Yatha LeGrand's case. Assistant City Attorney Diana Vizcaino (ACA Vizcaino) appeared before the Board on behalf of the Department and stated that she consulted with Attorney Gibbons and it is her understanding that this matter was tried before a four-member Board in October of last year and [the vote on the charges] resulted in a 2 - 2 tie vote. ACA Vizcaino went on to say that pursuant to an opinion from the Eleventh Circuit Appellate Panel, when there is a tie vote from a four-member panel, it means that the City did not meet its burden, and that based on her review of the case law, Officer LeGrand was not guilty. She stated that the next step is for Findings to be done and ultimately a final judgment signed by the City Manager where Officer LeGrand will receive her 30 hours back. Attorney Gibbons stated that he agreed with ACA Vizcaino.*

*Member Banos stated that according to what he read, the specific wording used by the Court is that [the Board] essentially allowed for an acquittal. He asked would this be likened to a hung jury where the employee gets a second bite of the apple or is it a situation where it is a complete acquittal and they have no right to bring it back [before the Board]. Special Counsel Clyne responded that the way the 11th Circuit looked at it was that a tie vote means that the City has the burden of proof that the discipline given was appropriate and the City did not meet that burden, so it is equivalent to a not guilty verdict. Special Counsel Clyne read a line from the Opinion in support of his position. ACA Vizcaino stated that she agrees with Special Counsel Clyne's interpretation and recalled a similar case which was brought to the Board's attention in support of her position.*

*Member Banos moved that the report be written for the Board's approval, that the matter be removed from the Board's calendar, and the record be amended with a finding of not guilty on the tie votes. Special Counsel Clyne stated that the Findings should be done and sent to the City Manager outlining that whenever there is a tie vote, based on case law [the tie vote] renders a not guilty verdict and that the City Manager's judgment will conclude the matter. Member Banos amended his motion to mirror Special Counsel*

*Clyne's recommendation [for closing this matter.]*

*Following discussion, the Board entered a motion instructing Special Counsel Clyne to prepare the Findings and reflect the opinion of the Eleventh Circuit thereby reporting a finding of not guilty on the tie votes. The motion resulted as follows:*

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

**Aye:** Riley, Baños, Sutton and Harris

**Absent:** Ramlal

## H.2

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

*Chair Harris asked for the status on the Rhausser Charles case. Attorney Eugene Gibbons appeared before the Board on behalf Officer Charles and stated that on Friday (July 18, 2014), an in-depth settlement discussion began with the City. He went on to say that he is requesting a continuance in this case in order to relay the settlement offer to Officer Charles to resolve the matter amicably. Assistant City Attorney Diana Vizcaino did not object to the continuance. Following discussion, the Board entered a motion to grant the employee's request for a CONTINUANCE which resulted as follows:*

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

**Aye:** Riley, Baños, Sutton and Harris

**Absent:** Ramlal

**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.

## ADJOURNED

*The meeting adjourned at 10:29 a.m.*

## SIGNATURE:

---

**Lillie Harris, Chairperson**

## ATTEST:

---

**Tishria L. Mindingall, Executive Secretary**