

City of Miami

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

Tuesday, August 4, 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 10:01 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 July 21, 2015.

**Motion by Chief Examiner Sutton, seconded by Member Riley, 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 Kevin M. Kirwin, Director, Parks and Recreation Department, notifying Lewis Mahoney, Park Manager II, of his 14-day suspension, effective July 30, 2015. (NOTIFICATION)

NOTIFIED

- D.2 Copy of a Judgment from the City Manager concurring with the Board's findings concerning the Appeal hearing of Javier Herbello, Police Officer, relative to his 40-Hour suspension, effective September 26, 2014. It is ordered and adjudged that the decision of the Chief of Police to suspend Officer Herbello for 40-hours is hereby reversed.(NOTIFICATION)

NOTIFIED

E. GENERAL ITEMS

- E.1 Civil Service Board Policies and Procedures. (DISCUSSION)

The Executive Secretary stated that in the past the Board simply adjourned meetings when there were no remaining agenda items to discuss, however, with the Board's decision to operate under Robert's Rules, accordingly, the proper procedure for a meeting adjournment requires a motion, a second and a vote.

Member Harris asked if the Board's Special Counsel was present at the meeting. The Executive Secretary responded that Special Counsel was not present due to no hearings being conducted at the meeting. Member Harris requested clarification of the role of the Board's Special Counsel. She recalled that at the Board's last meeting she asked Special Counsel a question regarding the way the meeting was adjourned and the Chair walking out of the meeting, and Special Counsel seemed to be unable to answer the question regarding proper procedure. She went on to reiterate that according to Robert's Rules in order to adjourn a board meeting, a motion, a second and

a vote is required, and added that the Board's Special Counsel should act as a parliamentarian since the Board has adopted and now operates under Robert's Rules.

The Executive Secretary advised that the main duties of Special Counsel are to prepare the Board's Findings and Recommendations for submittal to the City Manager for final judgement and to represent the Board in litigation cases. Member Harris suggested that a motion be made to have the Board's Special Counsel also act as Parliamentarian for the Board. She further stated that the focus should be that the process is properly followed.

Member Ramlal stated that she was very disappointed with the way Chair Banos conducted the last meeting. She went on to say that the Board members are all on the same level and the members are there to do what they were elected or appointed to do; and she feels that Chair Banos was disrespectful to the Board and all in attendance.

Chair Banos responded that he was disappointed at what Attorney Cohen wanted from the Board and while he was explaining to Attorney Cohen that [approval of the Findings] was not the time for the case to be re-argued, he was repeatedly interrupted. Chair Banos continued that he admits that Attorney Cohen got under his skin but that does not excuse his inappropriate behavior. Chair Banos acknowledged that he sent an apology via e-mail and he is apologizing to the Board in person.

Member Ramlal remarked that regardless of what happens, the Board is one unit.

Member Harris stated that the Board's obligation is to maintain a fair process, to ease the burden of the courts, to provide a process of appeals and provide closure on both sides. She went on to state that Attorney Cohen was passionate and before the Board to fight for his client's case.

Chair Banos recalled events of the hearing and stated that he explained to Attorney Cohen the proper way would be to appeal the Board's Findings in court; not surprise the Board with a document that the Board had not reviewed, nor ask the Board to make a determination that his client is not guilty and essentially suggest that the Board's decision (in the initial case) was wrong. Member Harris again stated that the Role of the Chair is to protect the process and under Robert's Rules to allow input from everyone. She reminded the Board that its deliberation is important and its decisions help to shape the future of the City.

Member Riley stated that he appreciates the Board's comments and feels that the issue of the adjournment is resolved. He explained that Attorney Cohen was asking the Board to agree to case law that the Board did not render. Member Riley suggested that the Board's Special Counsel review the facts and decide if it is procedurally proper. He stated that to preserve the process the Board should rely on its Special Counsel for guidance and clarification of legal procedural issues and it should not be incumbent upon the Chair or the Board to provide clarification of such issues. Member Harris reiterated her request for clarification of the role of Special Counsel and suggested that at a future meeting the Board have a discussion on the role of Special Counsel. Chair Banos agreed with member Riley's suggestion regarding the guidance of Special Counsel.

The Executive Secretary reminded the Board that in accordance with Civil Service Rule 14, the Board makes its Findings and Recommendations and forwards them to the City Manager. She went on to state that the Board's Findings of Fact and Recommendations is a report of what occurred at the hearing, and includes what [evidence or testimony] the Board relied on to make decisions, which does not include case law unless the information was presented during of the hearing. She stated that [either side in a

hearing] may prepare and forward a document to the City Manager, to be considered in conjunction with the Board's Findings, however, the Findings should not contain case law especially if case law was not presented at the hearing.

Chair Banos made further comments regarding the preparation and approval of the Board's Findings, and asked if the Board was required to hear from either side before approval. The Executive Secretary responded that the Board's Findings are reviewed and approved by the Board, and it is preferable to not have various versions. She stated that the history of the Board has been to have each party state if they disagree with the inclusion or wording of a particular Finding and the Board make a decision as to modification of the Findings.

Member Sutton stated that the Board should have asked the Special Counsel to decide on the Findings and made further comments.

Member Riley stated that his review of Attorney Cohen's document contained case law that suggested that testimony provided did not rise to substantial competent evidence. Member Riley went on to state that Special Counsel should provide the Board with legal guidance advising the Board if it is proper to approve the Findings or if the Board should make a motion to rehear the matter and obtain additional evidence for the Findings.

Member Harris reiterated her position regarding protecting the process and the importance of the Board's deliberation for historical purposes.

DISCUSSED

E.2

Notice of a Request to Continue from Eugene Gibbons, Attorney, on behalf of Nathalie Lanau, Police Officer concerning her 120-hour suspension, effective January 25, 2015. Stephanie Panoff, Assistant City Attorney, expressed no objection to the request. Hearing is scheduled for today.

Chair Banos asked for the status of this matter. Attorney Eugene Gibbons, Buschel Gibbons, P.A. appeared on behalf of the Appellant, requesting a continuance in this matter. Assistant City Attorney Stephanie Panoff appeared on behalf of the Department and stated she had no objections to a continuance. The Board voted to GRANT THE CONTINUANCE which resulted as follows:

Motion by Member Riley, 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 August 4, 2015. (NOTIFICATION)

PRESENTED

G. REQUESTS FOR HEARINGS

H. TODAY'S HEARINGS

H.1

Hearing of Appeal on behalf of Nathalie Lanau, Police Officer concerning her 120-hour suspension, effective January 25, 2015.

A continuance was granted at today's meeting.

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

Aye: Baños, Sutton, Harris, Ramlal and Riley

ADJOURNMENT

The meeting adjourned at 10:35 a.m.

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

Aye: Baños, Sutton, Harris, Ramlal and Riley

SIGNATURE:

Javier Banos, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary