

City of Miami

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

Tuesday, August 5, 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 was called to order at 10:00 a.m. At the commencement of the meeting, Roll Call was as follows:

Present: Chairperson Harris, Member Baños and Chief Examiner Sutton

Absent: Member Riley and Member Ramlal

A. APPROVING THE MINUTES OF:

Regular Meeting of July 22, 2014.

The Board entered a motion to approve the minutes of the July 22, 2014 meeting, which resulted as follows:

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

Aye: Baños, Sutton and Harris

Absent: Ramlal and Riley

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

- D.1** Notice of a resignation from Judith Marsie-Hazen, Senior Project Representative. Pursuant to Rules 14.6, Resignation Before Appeal and 14.11, Resignation, her appeal hearing has been removed from the Civil Service Board's Docket. (NOTIFICATION)

NOTIFIED

- D.2** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Justin Garcia, Police Officer, of his 20-hour suspension, effective July 24, 2014. (NOTIFICATION)

NOTIFIED

- D.3** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Roshan Milligan, Police Officer, of his 40-hour forfeiture, effective July 29, 2014. (NOTIFICATION)

NOTIFIED

E. GENERAL ITEMS

- E.1** Copy of Findings of Fact concerning the Hearing of Appeal on behalf of Yatha Legrand, Police Officer, regarding her 30-hour suspension, effective January 25, 2012. (DISCUSSION)

Chair Harris asked if there were any objections from the attorneys, or discussion regarding the Findings of Fact of the Yatha LeGrand case. Hearing none, the Board moved to approve the Findings of Fact which resulted as follows:

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

Aye: Baños, Sutton and Harris

Absent: Ramlal and Riley

F. REPORTS

F.1 Pending Hearings as of August 19, 2014. (NOTIFICATION)

PRESENTED

G. REQUESTS FOR HEARINGS

H. TODAY'S HEARINGS

H.1 Investigation hearing 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.

The Board entered into the Investigation hearing on behalf of Lewis Mahoney.

Diana Vizcaino, Assistant City Attorney, Office of the City Attorney (ACA Vizcaino) represented the Department. Attorney Osnat K. Rind, Phillips, Richard and Rind (Atty. Rind) represented Mr. Mahoney.

Atty. Rind distributed her client's exhibits. Member Baños asked ACA Vizcaino if she had any objections to the exhibits. ACA Vizcaino responded that she has not seen Ms. Rind's exhibits other than a letter dated July 31, 2014, which is the Board's exhibit. Atty. Rind asked that the City's exhibits be presented at the same time, and specifically asked for one email exchange of July 28, 2014 and July 30, 2014. Special Counsel Clyne asked if Atty. Rind was introducing the documents as a composite exhibit. Atty. Rind responded in the negative, but added that she could if the Board preferred. She went on to state that numbering the exhibits would make it easier. Member Baños suggested that Atty. Rind make her opening statement and number her exhibits.

Chair Harris reminded the Board that under this type of hearing, Rule 16.1, the burden of proof is on the employee/complainant. ACA Vizcaino renewed her objection stating that this hearing was unauthorized pursuant to the Rule 16.1. She went on to explain that the allegations are not that Mr. Mahoney has been laid off, demoted, suspended or removed without justification. She stated Mr. Mahoney has been a City of Miami Parks employee and continues to be; that Mr. Mahoney has not been demoted or received a reduction in grade and therefore her objection is renewed. Chair Harris stated that the issue was previously discussed and voted on and that ACA Vizcaino's objection at this time is moot. Chair Harris reminded the Board their decision would be a report to the City Manager, with a recommendation for a remedy, if required.

Both attorneys presented opening statements, which were followed by the calling of the Complainant's witnesses. Witnesses for the Complainant were sworn in individually and appeared in the following order:

1. Mr. Charlie P. Cox, IV, President, AFSCME, Local 1907 (Retired).
2. Lewis Mahoney, Complainant, testified on his own behalf. Questions were posed by Members Baños and Sutton during the testimony of Lewis Mahoney.
3. Sean Moy, President, AFSCME, Local 1907.

The Complainant rested his case. Witnesses for the Department were sworn in individually and appeared in the following order:

1. Amy Klose, Director, Department of Human Resources. Questions were posed by Members Baños, Sutton and Harris during the testimony of Amy Klose.

The Board proceeded to closing argument, which was presented by both attorneys. Following final argument, Board discussion took place.

Member Baños asked Special Counsel Clyne questions regarding the exhibits. Member Baños stated that because the Board originally granted the hearing based on allegations of constructive termination by the change of hours and now the Board is getting data, emails and documentation evidence dating from the July 22nd meeting to the present, he wondered if the documents could be considered part of the record because he does not want to make a decision based on information that theoretically the Board should not be viewing because the original reason for the hearing has to do with something different. Special Counsel Clyne responded that the Board's rules of evidence are liberal; the documents have already been introduced and the Board members have already seen and heard the evidence; therefore, the Board can decide what weight and credibility is given to the evidence.

Chair Harris asked Atty. Rind to clarify which rules she was alleging were violated by the City. Chair Harris stated that Atty. Rind referred to Rule 16.1 and Rule 14.1 (a), and 14.2(h), (i), (k) and (r). Atty. Rind responded that (following the July 22nd meeting) an email was sent to Civil Service subsequently amending the charge to say that the rule violations were by the Heads of the Departments or the City Manager. Atty. Rind further stated that there is a violation of Rule 14.2(a) because they used the Outside Employment Application as a form of disciplinary action, and although the forms of Disciplinary Action listed in 14.2 do not include outside employment, it is essentially an attempt to discipline without just cause.

Member Baños stated that his interpretation was that this was a violation of Rule 16.1 hearing exclusively. Member Baños asked the Executive Secretary for her recollection. The Executive Secretary responded that at the meeting of July 22, 2014, the Board approved a motion to grant a Rule 16.1 hearing which is an Abuse of Power. The Executive Secretary reviewed the requirements of Rule 16.1 and read the Rule into the record.

Member Baños stated that he takes the hearings seriously especially when there is a complaint because of a City action that has somehow deprived the employee of his Civil Service rights. Member Baños went on to say that there seems to be a degree or a hint that this may be retaliatory in nature, of being arbitrary or a squabble among employees but as in Ms. Klose's testimony, they (Parks Administration) went out of their way to really accommodate this employee; the employee has asked the City to make a significant amount of scheduling changes, etc. and it seems that based on the testimony [Mr. Mahoney's] attitude was that "this was granted to me all this time" and he is not willing to make a change. Member Baños stated that he did not hear testimony of any

changes being asked of the [Dade County School Board], especially since Mr. Mahoney travels from one school to another. He went on to say that there were accommodations made for him to attend Saturday trainings and work and he has not done so. Member Baños advised that he does not see an abuse of power issue or the departing from the basic intent of the Rules in the City's action. The City has a policy and whether [Mr. Mahoney] was exempted from it properly or not he decided to abide by the policy. Member Baños concluded that it is at the discretion of the City Manager whether or not to grant this particular provision (Off-Duty Employment).

Member Sutton stated that he is having a hard time with this issue. He thanked Ms. Klose for her testimony and added that there may be personal issues in Mr. Mahoney's department.

The Board had further discussion regarding the accommodations made for Mr. Mahoney by the Department.

Chair Harris reiterated that the Board's decision is a recommendation to the City Manager for his consideration and final decision to provide a remedy, if necessary. She went on to state that both sides made valid points and the Board is like court, a quasi-judicial Board. The Chair had further discussion with the Board regarding her concern of terms used such as "in good faith" and "past practices" in some of the documents presented to the Board, and went on to say that if there was going to be an end date, in good faith; it should have been outlined by the City. She went on to state that it concerns her that the City would not at least, for the remainder of the year, allow for the memo that was done back on July 31, 2008 for Mr. Mahoney to proceed with his retirement.

Following discussion member Baños made a motion that the Abuse of Power claim be DENIED. The motion FAILED for lack of a second.

The motion having failed, Member Sutton recommended that the City approve the request for outside employment and that Mr. Mahoney's schedule be reasonably modified. He went on to state that he has a message for Mr. Mahoney and suggested to Mr. Mahoney that he does not miss Saturdays or mandatory trainings. Member Sutton made a motion that the City Manager approve Mr. Mahoney's request for outside employment for one year. He went on to state that he feels there is an issue of an Abuse of Power.

Following further discussion the Board entered a motion to report to the City Manager, that there was an Abuse of Power by the Directors of Parks & Recreation and Human Resources by denying the Employee's Request for Outside Employment, which resulted in the following vote:

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

Aye: Sutton and Harris

No: Baños

Absent: Ramlal and Riley

H.2

Hearing of Appeal on behalf of Larry E. Hagan Jr., Police Officer, relative to his 120-hour suspension, effective November 12, 2013

Chair Harris asked for the status of the appeal hearing on behalf of Larry E. Hagan, Jr.

Assistant City Attorney Diana Vizcaino (ACA Vizcaino) appeared before the Board on behalf of the Department and stated that she and Eugene Gibbons, Attorney on behalf of Officer Hagan, have agreed to a JOINT CONTINUANCE in this matter. ACA Vizcaino explained that an offer has been presented which needs to be conveyed to the Department. Attorney Eugene Gibbons appeared before the Board and concurred with ACA Vizcaino. The Board entered a motion to GRANT a JOINT CONTINUANCE which resulted as follows:

Motion by Member Baños, seconded by Chief Examiner Sutton, that this matter be CONTINUED. 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.

PASSED by the following vote.

Aye: Baños, Sutton and Harris

Absent: Ramlal and Riley

H.3

Hearing of Appeal on behalf of Quateca Kirksey, Police Officer, relative to her 20-hour suspension, effective April 2, 2014.

Chair Harris asked for the status of the hearing of Quateca Kirksey. Attorney Eugene Gibbons (Atty. Gibbons) appeared before the Board on behalf of Officer Kirksey and stated that they are ready to go forward with the hearing. Assistant City Attorney Diana Vizcaino appeared before the Board and requested a continuance on behalf of the Department. She informed the Board that this is the Department's first request for a continuance in this matter, and stated that the request was conveyed to Atty. Gibbons who had no objections to the continuance. The Board entered a motion to GRANT the CONTINUANCE which resulted as follows:

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

Aye: Baños, Sutton and Harris

Absent: Ramlal and Riley

ADJOURNMENT

The meeting adjourned at 1:11 p.m.

SIGNATURE:

Lillie Harris, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary