

# **City of Miami**

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## **Meeting Minutes**

**Tuesday, August 6, 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 10:04 a.m. The roll call at the commencement of the meeting was as follows:*

**Present:** Chairperson Silverman, Chief Examiner Moy, Member Harris and Member Baños

**A. APPROVING THE MINUTES OF:**

Regular Meeting of June 25, 2013.

*The Board entered a motion to APPROVE the minutes of the June 25, 2013 meeting which resulted as follows:*

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

**Aye:** Silverman, Moy, Baños and Harris

**B. PERSONNEL MATTERS**

- B.1** A copy of a memorandum from Amy Klose, Director, Department of Human Resources, notifying Yolanda Padrino, Administrative Aide I, Department of Code Compliance, of her return to her previous classification of Typist Clerk III, in the Miami Police Department, upon successfully passing the background investigation process. (NOTIFICATION)

**NOTIFIED**

- B.2** Request from Prosper Ermilus, to be placed on the re-employment list for Public Service Aide, pursuant to Civil Service Rule 12, Sec. 12.4, Resignations and a copy of the Department Director's endorsement attached. (DISCUSSION)

*Jorge Valladares, Police Personnel Manager, appeared before the Board and stated that the Police Chief endorsed Prosper Ermilus' request for re-employment.*

*Following discussion, the Board entered a motion to APPROVE Prosper Ermilus' request to place his name on re-employment list for the position of Public Service Aide which resulted as follows:*

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

**Aye:** Silverman, Moy, Baños and Harris

**C. MILITARY LEAVES OF ABSENCE**

- C.1** Sandy Cabana, Police Officer, requests re-employment as a Police Officer following his return from Active Duty Military Leave. Copy of DD214 indicating Honorable Discharge submitted. (DISCUSSION)

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

**Aye:** Silverman, Moy, Baños and Harris

- C.2** Mariela C. del Rio, GIS Analyst, requests active duty military leave without pay from July 5, 2013 through July 4, 2014. Copy of Orders submitted.  
(DISCUSSION)

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

**Aye:** Silverman, Moy, Baños and Harris

#### **D. DISCIPLINARY MATTERS**

- D.1** Copy of a Judgment from the City Manager concurring with the Board's findings concerning the Appeal hearing of David Carpenter, Police Officer, relative to his 10-hour forfeiture of earned time, effective May 25, 2011. It is ordered and adjudged that the decision of the Chief of Police to forfeit Officer Carpenter's 10-hours of earned overtime is hereby sustained.  
(NOTIFICATION)

**NOTIFIED**

- D.2** Copy of a letter from Keith Carswell, Director, Department of Solid Waste, notifying Leon Leonard, Waste Collector, of a three (3) day suspension, effective July 1, 2013 and a copy of a memorandum to Leon Leonard, rescinding two (2) days. Mr. Leonard is hereby suspended for one (1) day, effective July 1, 2013. (NOTIFICATION)

**NOTIFIED**

- D.3** Copy of a letter from Keith Carswell, Director, Department of Solid Waste, notifying Marvin Antill, Sanitation Supervisor, of his one (1) day suspension, effective July 16, 2013 and a copy of a request to appeal from Michael Braverman, Attorney, on behalf of Mr. Antill. A hearing will be scheduled in accordance with Civil Service Rules and Regulations. (NOTIFICATION)

**RECEIVED AND FILED**

- D.4** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Carol Vargas, Police Officer, of her 240-hour suspension, effective June 24, 2013. (NOTIFICATION)

**NOTIFIED**

- D.5** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Daniel Crocker, Police Officer, of his 10-hour suspension, effective July 12, 2013. (NOTIFICATION)

**NOTIFIED**

- D.6** Copy of a letter from Chief Manuel Orosa, Director, Department of Police,

notifying Adam Nentwig, Police Officer, of his 10-hour suspension, effective July 20, 2013. (NOTIFICATION)

**NOTIFIED**

- D.7 Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Tonty Francoeur, Police Officer, of his termination, effective July 19, 2013. (NOTIFICATION)

**NOTIFIED**

## **E. GENERAL ITEMS**

- E.1 Civil Service Board's Calendar (DISCUSSION)

*Member Banos stated that he resolved his calendar issue so instead of a date change for the August 20, 2013 meeting as he had previously requested, he will be in attendance; however, he might be approximately 20 minutes late.*

**NO ACTION TAKEN**

- E.2 Copy of Findings of Fact concerning the Appeal on behalf of Eddy Rodriguez, Police Officer, concerning his 10-hour suspension, effective January 3, 2013. (DISCUSSION)

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

**Aye:** Silverman, Moy, Baños and Harris

- E.3 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 25, 2013.

*Chairman Silverman asked Attorney Gibbons if he had any objections to the Findings of Fact. Attorney Gibbons responded in the affirmative. He went on to say that reference to the U.S. Customs documented flight information was cited throughout the Findings although that evidence was excluded by the Board.*

*Chairman Silverman asked Special Counsel Everett for her position regarding Attorney Gibbons' concern. Cynthia A. Everett, Special Counsel to the Board, responded that she was not sure what Attorney Gibbons was referring to with regards to the findings because the Findings of Fact report had been consistently prepared in the same format. She went on to say that the information included on the first page of the Findings was a recitation from the reprimand of the initial finding made by the department and that she attempted to modify the findings to reflect the decision of the Board.*

*Chairman Silverman asked ACA Richard for her position on the findings. Janeen Richard, Assistant City Attorney (ACA), responded that Attorney Gibbons alluded that it was the City that kept referring to the U.S. Customs documented flight information in the findings; however, she wanted to make it clear that the City did not prepare the proposed findings. Chairman Silverman asked ACA Richard if she had an objection to the inclusion of the flight information in the findings. ACA Richard responded that she did not have an objection because as Special Counsel Everett stated, it was only a*

*summary of what was included in the reprimand and not a finding made by the Board.*

*Attorney Gibbons responded if that was the case, he was fine with that explanation and would now focus on the Findings of Fact portion of the report. He went on to say that if the Board were to consider the Conclusion of Law and what this Board found his client guilty of, it was horrible because there were no facts to prove the Board's findings. Chairman Silverman reminded Attorney Gibbons that he expressed an objection to paragraph 3 of the findings and he needed to state the reason for his objection. Attorney Gibbons responded that he objected to paragraph 3 because the facts that the Board rested its conclusion on and what the Board rested his client guilty on, anyone could see how poor [the Board's decision] was because there were no facts to support all of the charges [cited in the reprimand]. He went on to say that the documents should include facts that support the findings and conclusion of law. Attorney Gibbons further stated that there were four findings listed in the report versus the abundant charges the Board found his client guilty of but there was nothing to support [all of the guilty findings.] Chairman Silverman asked Attorney Gibbons again to go through each paragraph and tell the Board which ones he had an objection rather than try the case again. He went on to say that after hearing Attorney Gibbons' objections, the Board would listen to the department's argument on the objection and then vote on each paragraph (for which an objection was raised.) Attorney Gibbons responded that he objected to paragraph 3 in its entirety. He went on to say that the fact that Board Member Harris asked a question and his client responded that he did not recall, was proof of nothing and therefore the department did not prove its case.*

*After hearing Attorney Gibbons' objection to paragraph 3, Chairman Silverman asked for the department's position on the matter. ACA Richard responded her position was that [the finding included in paragraph 3] was exactly what happened during the hearing and she believed the information was taken from the minutes. She went on to say that the bottom line was the employee, in his own handwriting, filled out paperwork saying that he was out of the country and then tried to call in to the office to say that he was ill for the times that he was out of the country.*

*Chairman Silverman asked Special Counsel Everett if she was satisfied with the manner in which paragraph 3 was written. Special Counsel Everett responded in the affirmative. Chairman Silverman asked Attorney Gibbons if there was anything else he wished to say with regards to paragraph 3. Attorney Gibbons responded in the negative.*

*Member Banos moved to leave paragraph 3 as it was initially written by Special Counsel Everett. Chairman Silverman informed Member Banos that there was no need for him to make a motion if he was in agreement with the finding. He asked Attorney Gibbons if he had any other objections he wished to share with the Board. Attorney Gibbons responded in the negative.*

*Member Banos stated he understood that Special Counsel Everett traditionally took information from the reprimand and included it in the first page of the Findings of Fact report. He went on to say that he was somewhat uncomfortable [with that practice] mostly because he saw that the findings were going to be used for purposes of support of a particular position in the future. He went on to say that the very first page of the Findings of Fact report did not seem to say or made any reference to the fact that even though [the flight information] may have been a part of the original complaint, the Board determined this information was something that would not be used or allowed in the findings. Member Banos further stated in reference to the information contained in the fifth paragraph, bottom of page 1, he would like something reflected in the findings either eliminating the flight information or something along the lines to indicate that specific information about the flight information would not be used for purposes of this case (based upon a motion passed by the Board.)*

*Chairman Silverman asked if there was language included in the findings indicating the Board denied the evidence [about the flight information.] Special Counsel Everett responded in the negative. She went on to say anytime the Board has made a ruling excluding evidence, that information was never reflected in the findings. Chairman Silverman stated as he recalled, he made a motion to allow the information about the flight information but he was overruled by the Board so he thought Special Counsel should add this information in the report.*

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

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

**Aye:** Silverman, Moy, Baños and Harris

#### E.4

Notice of a Request to Continue from Eugene Gibbons, Attorney, on behalf of Jean Marie Jean-Philippe, Police Officer, relative to his 160-hour suspension, effective January 19, 2013. Janeen Richard, Assistant City Attorney, expressed no objection to the request.

Hearing of appeal is scheduled for today.

*Chairman Silverman asked opposing counsel if she objected to the employee's request for a continuance of his hearing. ACA Richard responded in the negative. Chairman Silverman asked if there was any discussion from Board Members on this matter. Member Harris responded in the affirmative and asked for the scheduling history of Officer Jean-Philippe's case. The Executive Secretary responded this was the first time the hearing was scheduled and the first continuance requested by the employee.*

*Following discussion, the Board entered a motion to APPROVE the employee's request for a continuance of his hearing, which resulted as follows:*

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

**Aye:** Silverman, Moy, Baños and Harris

#### E.5

Notice of a Request to Continue from Janeen Richard, Assistant City Attorney, concerning the Hearing of Appeal on behalf of Francisco Sallano, Police Officer, relative his 10-hr forfeiture, effective December 6, 2012. Eugene Gibbons, Attorney, expressed no objection to the request.  
(DISCUSSION)

Hearing of Appeal is scheduled for today.

*Chairman Silverman asked opposing counsel if he objected to the department's request for a continuance. Attorney Gibbons responded in the negative. Chairman Silverman asked if there was any discussion from Board Members. Hearing none, the Board entered a motion to APPROVE the department's request for a continuance, which resulted as follows:*

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

**Aye:** Silverman, Moy, Baños and Harris

**F. REPORTS**

F.1 Pending Hearings as of August 6, 2013. (NOTIFICATION)

**PRESENTED**

**G. REQUESTS FOR HEARINGS****H. TODAY'S HEARINGS**

H.1 Hearing on behalf of Michael Fonte, Firefighter, relative to his Unsatisfactory Service Rating for the period ending June 30, 2013.

*Chairman Silverman called for the case of Fire Fighter Michael Fonte.*

*For the Board's edification, Chairman Silverman stated that he might be able to shorten the hearing by giving an overview of the case. He went on to say that it was his understanding from documents he read, that the department worked out an arrangement with Fire Fighter Fonte regarding a disciplinary matter.] Chairman Silverman further stated the arrangement was that Fire Fighter Fonte would serve a 96-hour suspension (which automatically triggered an unsatisfactory service rating for the period ending June 30, 2013.) He stated it was up to the Board to decide whether it wanted to impart additional discipline by conducting a full hearing or adopt the department's action with no further penalty. Chairman Silverman asked if what he explained about the process was procedurally correct. The Executive Secretary responded in the affirmative. Chairman Silverman asked if there was anyone from the department that wished to say anything on this case.*

*Adrian Plasenceia, Executive Assistant to the Fire Chief, responded that the Chairman referred to Fire Fighter Fonte as receiving a 96-hour suspension; however, it was Fire Fighter Cagnin that received the 96-hour suspension. Chairman Silverman apologized and corrected the error by stating that Fire Fighter Fonte was in fact issued a "Last Chance Agreement" for which he was suspended 240 hours. He asked Executive Assistant Plasenceia was there anything else he wished to relate to the Board on this matter. Executive Assistant Plasenceia responded in the negative. Chairman Silverman asked Fire Fighter Fonte if he wished to say anything regarding his case. Fire Fighter Fonte responded in the negative. Chairman Silverman informed Board Members that in most cases the Board normally approved the department's penalty with no further action for unsatisfactory service rating hearings, .*

*Chairman Silverman asked if there were any questions from Board Members. Hearing none, the Board entered a motion to ADOPT Fire Fighter Fonte's unsatisfactory service rating with no further penalty. The motion resulted as follows:*

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

**Aye:** Silverman, Moy, Baños and Harris

H.2 Hearing on behalf of Eduardo Cagnin, Firefighter, relative to his Unsatisfactory Service Rating for the period ending June 30, 2013.

*Chairman Silverman called for the case of Eduardo Cagnin. Following an appearance by Fire Fighter Cagnin, Chairman Silverman asked Fire Fighter Cagnin if he was able to follow the procedures the Board used in considering the previous hearing because his case would be handled in the same manner. Fire Fighter Cagnin responded in the*

*affirmative.*

*It was noted earlier by Executive Assistant Adrian Plasenceia, that Firefighter Cagnin automatically received a USR due to receiving a 96-hour suspension. Chairman Silverman asked Fire Fighter Cagnin if he understood why he was before the Board. Fire Fighter Cagnin responded in the affirmative. Chairman Silverman asked Fire Fighter Cagnin if he wished to relate anything to the Board concerning his case, to which Fire Fighter Cagnin responded in the negative.*

*Chairman Silverman asked if anyone from the department wished to say anything on this matter. Hearing none, Chairman Silverman asked if any Board Member wished to say anything concerning Fire Fighter Cagnin's case.*

*Member Harris responded in the affirmative and asked if the department was satisfied with the case before the Board. Executive Assistant Plasenceia responded in the affirmative and stated as far as the Department of Fire-Rescue was concerned, the matter was concluded.*

*Following discussion, the Board entered a motion to ADOPT Fire Fighter Cagnin's unsatisfactory service rating with no further penalty. 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, Moy, Baños and Harris

### H.3

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

*The Board took no action on this case because a CONTINUANCE was approved at today's meeting.*

**CONTINUED : Hearing will be rescheduled to a future date.**

### H.4

Grievance Hearing on behalf of Jonathan Yavneh, Police Lieutenant, pursuant to Civil Service Rule 16.2, concerning a violation of 11.2 Assignment to Other Work.

*The Board entered into the grievance hearing of Lt. Jonathan Yavneh.*

*Chairman Silverman referred to the procedures the Board follows for grievance hearings in accordance with Rule 16.2(d). He went on to say that the Board will hear witness testimony and present its recommendation to the City Manager [in the form of a Findings of Fact and Recommendation Report.] Chairman Silverman asked the attorneys to state their appearances for the record.*

*Eugene Gibbons, Attorney at Law, appeared on behalf of Jonathan Yavneh, the Grievant.*

*Janeen Richard, Assistant City Attorney (ACA) appeared on behalf of the Department.*

*The Rule of Witnesses was invoked and all witnesses were sworn in individually. Chairman Silverman instructed the witnesses not to discuss their testimony among themselves.*



Attorney Gibbons presented opening statements. Chairman Silverman asked ACA Richard if she wished to present opening statements. ACA Richard responded that she did not wish to present opening statements at this time; however, she wanted to seek clarification because it was her understanding that Attorney Gibbons and his client were alleging violation of Civil Service Rule 11.2 and not Rule 8.10, as he stated in his opening statement.

Chairman Silverman asked Attorney Gibbons to relate to the Board which Rule violations he was alleging. Attorney Gibbons responded that he was travelling under Civil Service Rules 11.2 and 8.10 because they both applied with regards to the working out of classification issue that is before the Board.

The Executive Secretary stated for the Board's edification, in February of this year, the Board granted Lt. Yavneh's request for a grievance hearing pursuant to Rule 16.2 alleging a violation of Rule 11.2. She went on to say that if Rule 8.10 is being considered, then it was being added today.

ACA Richard stated if that was the case (Attorney Gibbons being allowed to amend his client's grievance today), a lot of talk was said about due process at Civil Service Board meetings, and it should not be a one-way street. She went on to say that she was sure the department would not be allowed to come on the day of a hearing and add a completely new charge without giving any notice to the employee, so she thought it worked both ways. ACA Richard further stated that whenever a Rule 16 hearing was scheduled, Attorney Gibbons could not come the day of the hearing to say that he was also moving under Rule 8.10 which was completely different from Rule 11.2, and that all of the documents that were submitted when the request for hearing was originally sought were pursuant to a violation of Rule 11.2 only. ACA Richard went on to say that if the Board were to approve Attorney Gibbons request to include the additional charge, then she would not be prepared to go forward with this case today.

Chairman Silverman stated that he wanted to give Attorney Gibbons the last word before he entertained Board discussion. Attorney Gibbons stated that he wanted it to be clear [that adding the charge of 8.10] was no sneak attack on the department. He went on to say that this was what should have happened whenever the Board considered a situation where Rule 11.2 was involved since Rule 8.10 would naturally follow. Attorney Gibbons further stated that [according to Rule 8.10], whenever a person had worked in a position for two or more years in a higher classification, the individual had to be given an examination for the position. He stated if a person had been working out of classification for four or more years, the Board could award the person the position without examination. Attorney Gibbons went on to say that Lt. Yavneh had been working out of classification for almost four years. He further stated the language is clearly stated in the Rule and does not place the department at a disadvantage because, it is what should have happened, and the Board is bound to do so according to its own Rule in this type of case.

Chairman Silverman stated the question was whether the Board should consider Rule 8.10 in the hearing before the Board today or continue the hearing to allow Attorney Gibbons to amend his client's request to include Rule 8.10.

Member Banos stated he was in favor of the latter choice because this would give Attorney Gibbons the opportunity of amending his original complaint to include the charge of Rule 8.10 and also allow the department time to get a sense of what the extra part of the process was. He went on to say that he also wanted to continue the hearing so as to have extra time to review all of the information in the employee's book of exhibits that was given to him at today's hearing. Member Banos further stated that he tried to read through the information but he thought that was asking a lot of the Board to

*review the information after receiving it today.*

*Member Harris stated as she looked back at the minutes of February 19, 2013, she recalled that a very thorough discussion took place by both the attorneys and Board Members upon considering Lt. Yavneh's request for a hearing. She went on to say at that meeting, she specifically asked Attorney Gibbons which Rule would he be travelling under and he responded that he would be travelling under Rule 11.2. Member Harris further stated that she particularly asked that question for the purpose of swift justice, due process, avoiding a prolonged case, etc., especially since something of this nature was obviously important to both sides. She stated [for these reasons] she did not favor continuing the hearing for something the Board had already voted on to hear today. Member Harris went on to say that if Attorney Gibbons and his client wished to come back to the Board at a later time on a different issue, she felt that should be a different request. She further stated that she also felt the Board should move forward today with what it approved to hear today, which was a violation of Rule 11.2.*

*Member Banos stated that he understood Member Harris' position about swift justice and that he was a firm believer in the saying, "Justice delayed is justice denied." He went on to say that he also believed it would be a misuse of the Board's resources to hear very similar evidence twice. Member Banos further stated that Lt. Yavneh was essentially complaining that he should be compensated since he had been working as a Field Training Coordinator for a very long period of time and that he should also be placed in the position of Police Captain. He stated the department expressed concern about not being ready to address the second factor of Lt. Yavneh's complaint today, [which was to appoint him as a police captain in accordance with Rule 8.10], so he felt a continuance of today's hearing would have given the department an opportunity to prepare its case. Member Banos went on to say that by [granting a continuance,] the issuance of additional information would not have to be distributed to the Board, and the employee would be allowed to have a hearing on all of the issues without having the Board to rehash the evidence all over again.*

*Chairman Silverman asked Attorney Gibbons if he wished to say anything further on the matter. Attorney Gibbons responded in the affirmative. He went on to say he thought a lot was being made out of a very little. Attorney Gibbons further stated this case was about the simple facts of whether Lt. Yavneh was working out of classification, should he be paid, and Rule 8.10 clearly specifies what the Board must do if Lt. Yavneh was working out of classification between two to four years.*

*Chairman Silverman asked Attorney Gibbons what was his position towards continuing the hearing. Attorney Gibbons responded that he was opposed to a continuance, this was a very simple case, and that they were prepared to go forward with the hearing today. Chairman Silverman stated since Attorney Gibbons opposed continuing the hearing, the Board had to make a decision whether it would proceed on one or both of the Rules.*

*Following discussion, Member Banos made a motion to allow the employee to amend his original grievance request to include Rule 8.10 and to continue the hearing. The motion died for lack of a second.*

*The motion having died, Member Banos made a motion to proceed under an alleged violation of Civil Service Rules 11.2 and 8.10. The motion died for lack of a second.*

*The motion having died, the Board entered a motion to proceed under Rule 11.2 only, which resulted as follows:*

**Motion by Member Harris, seconded by Chief Examiner Moy, that this matter be APPROVED. PASSED by the following vote.**

**Aye:** Silverman, Moy and Harris

**No:** Baños

*The motion having passed to proceed under the charge of Rule 11.2, the Board considered to hear witness testimony. Witnesses for the Grievant appeared in the following order:*

*1. Jonathan Yavneh, Lieutenant of Police, City of Miami, Department of Police. Questions were posed by Board Members Harris and Banos during the testimony of Jonathan Yavneh.*

*The employee rested his case and ACA Richard presented opening statements. Following opening statements, ACA Richard commenced with the calling of her witnesses. Witnesses for the department appeared in the following order:*

*1. Roy Brown, Assistant Chief, City of Miami, Department of Police.*

*2. Rodolfo Llanes, Assistant Chief, City of Miami, Department of Police. Questions were posed by Board Member Harris during the testimony of Rodolfo Llanes.*

*3. Ricardo Martinez, Compensation Supervisor, City of Miami, Department of Human Resources. Questions were posed by Board Members Banos and Harris during the testimony of Ricardo Martinez.*

*The department rested its case, the Grievant waived rebuttal, and the Board proceeded to closing arguments that were presented by both attorneys. Following final argument, Board discussion took place.*

*Member Banos stated the real question of whether Lt. Yavneh worked as a Police Captain in his capacity of Field Training Coordinator (FTC) with the Field Training Officer Program (FTOP) was alluded to throughout the hearing. He went on to say that he felt it was pretty much established that the Field Training Coordinator (FTC) was not a higher classification. Member Banos further stated he reviewed the job descriptions for Police Captain and FTC and they both had very similar language, so it really was up to the Board to determine whether the obligations of the FTC merited compensation as a police captain. He went on to say that it was his belief that this City would receive great benefits if it had a strong, robust and much improved training program, but unfortunately it has suffered due to the decline of sworn ranks in the police department. Member Banos further stated that he did not know Lt. Yavneh (personally) but on paper he should be commended because he is a highly incredible officer.*

*Member Banos stated that he acknowledged Member Harris' point that [the classification of Police Captain] required an exam and a few steps to get there. He went on to say that Lt. Yavneh did not reach the point [of becoming a captain] because the position was not made available for him to apply; however, that should not bar the Board from making a decision on the matter. Member Banos further stated that Lt. Yavneh requested to amend his complaint to include Rule 8.10 for the purpose of allowing him to be placed in the position of police captain, but the Board denied his request. He stated the fact that Lt. Yavneh's request was denied, the Board considered his original request for which Lt. Yavneh asked to be compensated as a police captain for the period of time that he worked as the Field Training Coordinator. Member Banos went on to say that the only thing that troubled him about recommending Lt. Yavneh receive compensation for the entire time he claimed he worked out of classification was that he did not work the entire*

time as the Field Training Coordinator. He went on to say that given the fact that it was established that Lt. Yavneh did not devote a greater portion of his work day to the program, he did not know what choices the Board had on this matter. Member Banos further stated he would leave it to the Board's counsel to direct the Board because he did not know if a recommendation could be made to the City Manager asking that Lt. Yavneh be compensated 50% for performing the duties of the Field Training Coordinator since his other time was spent doing the work of a Patrol Lieutenant.

Special Counsel Everett responded that the short answer to Member Banos' question was that the Board should make whatever recommendation it felt was appropriate to the findings of the Board in this case. She went on to say that it was really difficult to give Member Banos a direct answer because she was not sure what the Board's findings are. Special Counsel Everett further stated if it was the Board's finding that the department improperly worked Lt. Yavneh out of classification, then the Board's remedy would take that factor into consideration. She stated if it was the Board's finding that Lt. Yavneh occasionally did certain duties, then she was not sure what the Board's ultimate recommendation would be.

Following discussion, Member Banos made a motion to find that the department violated Rule 11.2. The motion died for lack of a second. The motion having died, the Board took up further discussion on the matter.

Member Harris stated at one time or another, we all have filled in for others due to areas that were lacking. She went on to say that is the nature of the job and a sign of the times. Member Harris further stated that she and Lt. Yavneh worked in several roles and instances over the years and that Lt. Yavneh was an excellent police officer and now lieutenant. She stated there are many who desire to compete for higher-level positions which was why a competitive, merit-based, civil service process was put in place to fill such positions. Member Harris went on to say she commended Lt. Yavneh for bringing forth his case because it shed light on other things that she felt were the real issues of pay and promotions. She further stated that in her opinion, pay and promotions were the crux of the issue because the City had not given exams for sergeants, lieutenants, and captains for some time. Member Harris stated that the role of Field Training Coordinator falls under the collective bargaining agreement so based upon what the membership wants, it is the responsibility of the union to negotiate salary incentives, etc. that a person would receive for particular roles. She went on to say it was her hope that the City would look at the bigger issues in the future because when she considers how long it has been since the City administered promotional exams, the attrition rate, and experience, the department is losing opportunities of promoting individuals who had a lot to offer the City. Member Harris further stated that based upon evidence presented, she did find that the Police Department violated Civil Service Rule 11.2.

Chairman Silverman stated he agreed with Member Harris' position because he did not believe Lt. Yavneh proved that he worked out of classification. Chairman Silverman further stated that Lt. Yavneh did perform training work and he was compensated for the additional work; however, he did not feel Lt. Yavneh was working as a police captain.

Following discussion, the Board entered a motion to find that there was no violation of Rule 11.2 as alleged by the employee. The motion resulted as follows:

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

**Aye:** Silverman and Harris

**No:** Moy and Baños

*The motion having failed, the Board entered a motion to find that Lt. Yavneh worked out of classification and should be compensated. The motion resulted as follows:*

**Motion by Chief Examiner Moy, seconded by Member Baños, that this matter be APPROVED. FAILED by the following vote.**

**Aye:** Moy and Baños

**No:** Silverman and Harris

*Chairman Silverman stated it appeared to him that the Board was unable to make a decision so the case would have to be reheard once the Board gets its additional Board Member. He asked Special Counsel Everett if there was anything she wished to say on this matter. Special Counsel Everett responded in the affirmative and suggested the Board engage in more discussion to see if any Board Member would be inclined to change their position or receive a consensus on some position because other than that, there would be no finding or remedy to report to the City Manager.*

*After much discussion and still unable to reach a consensus, Chairman Silverman asked the Board's Special Counsel if she felt it was appropriate to declare that the Board was unable to make a finding and report it to the City Manager. Special Counsel Everett responded in the affirmative. She went on to say the suggestion made by the Chairman was going to be her next suggestion if the Board was not successful through its debate in reaching a consensus. Special Counsel Everett further stated this was a grievance hearing and the Board could investigate the matter as it chose to do so, make findings, and deem a remedy if appropriate. She went on to say if the Board was unable to reach a conclusion, then the Board's consensus to the City Manager would be that it was unable to reach a decision on the finding.*

*Member Banos stated that since the Board will have to rehear this matter once a fifth Member is appointed to the Board, he wanted to know if the Board could stay the proceedings and allow for the amendment to the original complaint to include Rule 8.10. Special Counsel Everett responded that she had not focused on the additional Rule so she did not know the relationship, if any it had to this Rule [11.2], and she did not know if it could be entirely a separate matter and she did not know whether the employee would come forward on the issue. She stated at this stage, the Board has accepted all of the evidence, and entered deliberations, so she did not see the Board now backtracking and staying the proceedings.*

*Following discussion, the Board entered a motion to find that it was unable to reach a decision in the matter of Lt. Yavneh's grievance alleging a violation of Rule 11.2, which resulted as follows:*

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

**Aye:** Silverman, Moy, Baños and Harris

#### H.5

Hearing of Appeal on behalf of Francisco Sallano, Police Officer, concerning his 10-hr forfeiture, effective December 6, 2012.

*The Board took no action on this case because a CONTINUANCE was approved at today's meeting.*

**CONTINUED : Hearing will be rescheduled to a future date.**

**ADJOURNMENT:**

*The meeting ADJOURNED at 4:12 p.m. Breaks were taken at 10:21 - 10:25 a.m., 11:11 - 11:18 a.m., 12:13 - 12:19 p.m., 12:58 - 2:01 p.m. (LUNCH) and 3:26 - 3:31 p.m.*

**SIGNATURE:**

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**Gerald Silverman, Chairperson**

**ATTEST:**

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**Tishria L. Mindingall, Executive Secretary**