

# **City of Miami**

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



## **Meeting Minutes**

**Tuesday, August 20, 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 August 6, 2013.

*The Board entered a motion to APPROVE the minutes of the August 6, 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 Daniel Newhoff, Assistant Director, of his return to former classification of Sr. Budget Analyst, effective August 7, 2013. (NOTIFICATION)

**NOTIFIED**

**C. MILITARY LEAVES OF ABSENCE**

- C.1** Luis F. Pla, Police Officer, requests active duty military leave extension without pay from August 31, 2013 through February 26, 2014. Copy of amended orders 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

**D. DISCIPLINARY MATTERS**

- D.1** Copy of a letter from Chief Maurice Kemp, Director, Department of Fire Rescue, notifying Tony Belfort, Facility Maintenance Technician, of his 8-hour suspension, effective August 15, 2013. (NOTIFICATION)

**NOTIFIED**

**E. GENERAL ITEMS**

- E.1** Hearing of Appeal on behalf of Pierre Chery, Police Officer, relative to his 40-hour suspension, effective September 14, 2012. (DISCUSSION)

Rescheduled pursuant to continuance policy; pending settlement since

February 19, 2013.

*Chairman Silverman asked for the status of the settlement in Officer Pierre Chery's case. ACA Richard responded that Items E.1 through E.4 were related to the Sunpass speeding cases. She went on to say that one Sunpass speeding case was heard by the Board and that they were going to settle the other cases, but they just needed to work out some minor details.*

*Chairman Silverman asked ACA Richard when she anticipated resolution of the cases. ACA Richard responded that she anticipated the cases would be resolved in one week. Chairman Silverman asked Attorney Gibbons if he was in agreement with the pending settlements. Attorney Gibbons responded in the affirmative.*

**SETTLED - This matter will be removed from the Board's docket upon submission of the Settlement Agreement or rescheduled in accordance with the Board's Continuance Policy.**

E.2

Hearing of Appeal on behalf of Robert Jules, Police Officer, concerning his 40-hour suspension, effective September 14, 2012. (DISCUSSION)

Rescheduled pursuant to continuance policy; pending settlement since February 19, 2013.

**SETTLED - This matter will be removed from the Board's docket upon submission of the Settlement Agreement or rescheduled in accordance with the Board's Continuance Policy.**

E.3

Hearing of Appeal on behalf of Juan Ortega, Police Officer, concerning his 20-hour forfeiture, effective August 16, 2012. (DISCUSSION)

Rescheduled pursuant to continuance policy; pending settlement since February 19, 2013.

**SETTLED - This matter will be removed from the Board's docket upon submission of the Settlement Agreement or rescheduled in accordance with the Board's Continuance Policy.**

E.4

Hearing of Appeal on behalf of Melissa Valdes, Police Sergeant, concerning her 10-hr forfeiture, effective August 24, 2012. (DISCUSSION)

Rescheduled pursuant to continuance policy; pending settlement since February 19, 2013.

**SETTLED - This matter will be removed from the Board's docket upon submission of the Settlement Agreement or rescheduled in accordance with the Board's Continuance Policy.**

E.5

Motion for Disqualification of Board Member Lillie Harris, filed by Eugene Gibbons, Attorney. (DISCUSSION)

*Chairman Silverman informed Attorney Gibbons that the Board received a copy of his Motion for Disqualification of Board Member Lillie Harris and asked him if there was anything else he wished to share with the Board regarding his Motion. Attorney Gibbons responded that he wished to reiterate the standard of Circuit law being that the Board*

was a quasi-judicial body. He went on to say that if there was an appearance or reasonable belief that there was a conflict between a Board Member, Counsel, himself or his client, the Board Member had a legal duty to recuse or disqualify himself/herself. Attorney Gibbons further stated that in this case he was asking for disqualification [of a Board Member] which should have happened on the Board Member's own volition when she knew there was a conflict. He stated that he attached an email that clearly specified there was a conflict between him specifically and the Fraternal Order of Police for which he serves as their general counsel. Attorney Gibbons went on to say another conflict he learned about recently was the fact that Lt. Yavneh testified on behalf of the City in a matter Member Harris had before the Civil Service Board concerning an allegation of misconduct. He further stated those things in and of themselves required disqualification so Member Harris should have disqualified herself from Lt. Yavneh's hearing and that they were asking that the Board do so now. Attorney Gibbons stated given that fact [that Lt. Harris should have disqualified herself from the hearing], that would mean there was a (2-1) vote passed in favor of Lt. Yavneh and that is what should be submitted to the City Manager.

Chairman Silverman asked Attorney Gibbons not to discuss the case but to discuss his Motion for Disqualification. He asked Attorney Gibbons if there was anything else he wished to say concerning the disqualification [of Member Harris.] Attorney Gibbons responded everything was laid out in his Motion but he would again reiterate that there was a fundamental principle to make sure the administration of justice was fair, impartial, and unbiased. He went on to say that in this case, there was clear evidence where Member Harris clearly talked about there being a conflict in her email and that she was stating that about him (Gibbons). Attorney Gibbons further stated that he had no business with Member Harris other than the spats they had at Civil Service Board meetings. He stated that Member Harris' email also indicated that he was pitted against her. Attorney Gibbons went on to say that Lt. Yavneh deserved respect, his case deserved reconsideration, and that Member Harris should have disqualified herself [from the hearing.] He further stated that since he was going to be the FOP's general counsel for a while, it was clear Member Harris had a problem with him personally through the email that he was pitted against her so he was also asking that Member Harris be disqualified from every FOP case.

Chairman Silverman asked Special Counsel what legal advice did she have to give the Board concerning this matter. Special Counsel Everett responded that the matter (of recusal) had risen before and that each time it was up to the Board Member to determine if he/she had a conflict or otherwise should disqualify himself/herself from a particular matter.

Chairman Silverman asked Member Harris if there was anything she wished to say regarding the matter (of Attorney Gibbons' motion that she disqualify herself from Lt. Yavneh's hearing.) Member Harris responded that she was not going to recuse herself.

Chairman Silverman stated that Member Harris' response resolved the matter and that the Board would move to the next agenda item for consideration.

#### E.6

Copy of Findings and Recommendations concerning the 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. (DISCUSSION)

Chairman Silverman asked Attorney Gibbons if he wished to make any comments concerning the Findings of Fact. Attorney Gibbons responded in the affirmative. He went on to say that the Findings of Fact were completely erroneous and unsupported with a tie (2-2) vote by a Board Member who sat in defiance of the law and defiance of

*recusing of herself. Attorney Gibbons further stated that Member Harris should have recused herself and the Chairman knows that is what she should have done.*

*Chairman Silverman reminded Attorney Gibbons that the Board was past [the Motion to Disqualify] item and that the Board was now considering the Findings of Fact concerning his client's hearing. He asked Attorney Gibbons if there were any objections to the Findings that he wished to share with the Board. Attorney Gibbons responded in the affirmative and stated he objected to the Findings of Fact in its entirety because there was a voting Member who should have recused herself because the law requires it. He went on to say that [since the Board Member failed to disqualify herself from the hearing], the vote was no good, the recommendation was therefore no good, which made the whole thing rotten and the Chairman knew this to be the case.*

*Chairman Silverman asked the department's attorney if she had an objection to the Findings of Fact. ACA Richard responded in the negative.*

*Chairman Silverman stated that the Findings of Fact reflected that the Board was unable to reach a decision and therefore did not provide a recommendation to the City Manager. He went on to say that [being the case], the Findings of Fact report will be submitted to the City Manager (in accordance with Rule 16.2).*

*Following discussion, the Board entered motion to APPROVE the Findings of Fact report which resulted as follows:*

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

**Aye:** Silverman, Moy and Harris

**No:** Baños

#### E.7

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 August 6, 2013.

*Chairman Silverman asked Attorney Gibbons if he was provided with a copy of the revised Findings of Fact. Attorney Gibbons responded he was provided a copy approximately five minutes ago; however, he was prepared to go forward with discussion on this matter, since he had reviewed the previous version.*

*Cynthia A. Everett, Special Counsel to the Board, stated that she wished to explain what happened with the Findings so that everyone was on the same page. She went on to say that at the last meeting, the Findings were considered by the Board and some issues arose dealing with the evidence of the fact that the Sergeant [that prepared the reprimand] had gone out to ICE (Immigration and Customs Enforcement) and obtained Officer Martinez' travel record. Special Counsel Everett further stated at that time, Member Banos wanted it to specifically be noted in the Findings that the travel information was not considered by the Board. She went on to say that she thought the best way to accommodate Member Banos' request was to include a footnote in the Findings, which is what she did. Special Counsel Everett further stated that the footnote was attached to the original recitation of the reprimand (that was included in the Findings) and a notation referencing the footnote was reflected at the bottom of the page 2 which indicated the flight information was not considered by the Board. She stated that [adding the footnote] was the only change made to the Findings, as received at the last meeting.*

Chairman Silverman asked Attorney Gibbons for his position on the amended Findings. Eugene Gibbons, Attorney on behalf of Officer Martinez, stated that he still objected to paragraph 3 (on page 2 of the Findings). He went on to say that he thought the footnote was a great start; however, the facts in relation to supporting the conclusion of law were not present so he adamantly objected to paragraph 3 in its entirety. Attorney Gibbons further stated that he also objected to paragraph 3 because it put the burden in the wrong place. He stated the Board did not find his client's testimony credible so what was absent was that the department failed to prove that fact. Attorney Gibbons went on to say the department was supposed to come forth with credible, substantial evidence supporting the fact that his client was not at home; however, there was no evidence other than his client's testimony that he did not recall [whether he was at home] and the Board used that evidence to support all of its conclusions of law. He further stated that he was begging the Board to consider what it was doing in this case specifically because the Board's attorney struggled to give facts the Board needed to support the conclusions of law. Attorney Gibbons went on to say that he would go as far as to say that Special Counsel Everett could not find facts [to support the conclusions of law] because they were not in the record. He further stated in his opinion, this was just another absurdity and that the Board would do whatever it wanted to do [regarding the Findings.]

Chairman Silverman asked Special Counsel Everett if there was anything else she wished to add regarding the Findings. Special Counsel Everett reiterated that at the last meeting, the Board approved in concept the only change to the Findings, which was to include the information contained in the footnote and that is what she did.

Member Banos stated somewhere in the Findings it should reflect that it was the department's burden. He went on to say that the Board could determine that the testimony provided by the witness was incredible but asked by doing so, would that imply that the Board was placing the burden on the employee rather on the department? Special Counsel responded that was the employee's contention. Member Banos stated he was asking if the Findings could be drafted in a way so that the implication [of it being the employee's burden] was not there. Special Counsel Everett responded that so far it was only Attorney Gibbons that put forth the thought [that the burden was wrongly placed]; however, she was willing to redraft the Findings. Member Banos stated that he thought the conclusion was right; however, he did not want to give the impression in the Findings that the Board placed the burden on the employee rather than on the department. Special Counsel Everett stated she did not think that is what occurred; however, she would be happy to redraft the Findings. She went on to say that she believed no matter what she included in the Findings, there would always be an objection. Member Banos stated that he understood and agreed with Special Counsel Everett's position. He went on to say that if the Board decided that the Findings did place the burden on the employee, then the Findings should be modified. Member Banos further stated his only question was whether the Findings could be reworded so that it was explicitly set forth in the Findings that it was the department's and not the employee's burden. Special Counsel Everett responded that she could look back at the record to ensure that she was accurately reflecting the testimony or decisions of the Board.

Following discussion, Member Banos made a motion to carry this item over to the Board next's meeting for reconsideration. The motion died for lack of a second.

The motion having died, the Board entered a motion to APPROVE the Findings of Fact as submitted. The motion resulted as follows:

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

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

#### E.8

#### Civil Service Board's Calendar (DISCUSSION)

*The Executive Secretary informed the Board that their next meeting was scheduled for September 3, 2013. She went on to say that September 2, 2013 is a holiday and that it was her understanding that some Members wished to discuss the September 3 meeting date as well as other meeting dates.*

*Chairman Silverman stated the issue was whether the Board wanted to cancel the September 3, 2013 meeting. The Executive Secretary stated she was interested in knowing the Board's preference because hearings were already scheduled for the September 3 meeting. Chairman Silverman stated that he was available on September 3; however, he will be late due to a scheduled court appearance at 9:30 a.m. He asked would the meeting be rescheduled to September 10, 2013 if the Board were to cancel the September 3 meeting. The Executive Secretary responded in the negative and stated that she would be rescheduling the hearings already scheduled for September 3, but not the meeting. She went on to say that the Board's next meeting is scheduled on September 17.*

*Following discussion, Chairman Silverman asked the Board Members what their preference was on the September 3 meeting. Member Banos stated that he had no objection to cancelling the September 3 meeting. Chairman Silverman asked was everyone okay with cancelling the September 3 meeting and all Board Members responded in the affirmative.*

*Chairman Silverman asked if there was another date that the Board needed to consider. Member Banos stated that the last meeting in November (26th) is the Tuesday before Thanksgiving and that he had a problem with the Board's first meeting in December (10th) because he would not be in town that week. He went on to say if both meetings could be moved forward one week that would be fine; however, the other Members' availability needed to be taken into consideration before doing so.*

*For clarification purposes, Chairman Silverman asked Member Banos to tell the Board which meetings he wanted to have changed. The Executive Secretary responded that the first meeting date Member Banos wished to change was November 26, 2013. She went on to say that while a meeting was scheduled for November 26, there were no hearings currently scheduled on that date because it was the week of Thanksgiving. The Executive Secretary further stated that regarding the second date of December 10, which Member Banos wished to change, there are currently hearings scheduled for that date.*

*Member Banos stated that if the meetings were moved forward one week, the November 26 meeting would be changed to December 3, 2013 and the December 10, 2013 meeting would be moved to December 17, 2013. Chairman Silverman stated that no hearings were scheduled for the November 26th meeting so he thought the Board should cancel that meeting. He went on to say that with regards to the second meeting in December, the Board has historically cancelled that meeting.*

*Following discussion, Chairman Silverman asked Board Members if they were okay with moving the December 10 meeting to December 17, 2013 and all Board Members responded in the affirmative.*

*For the record and also that the Members were clear about the meeting dates, the Executive Secretary informed the Board that the September 3 and November 26 meetings were cancelled and that the December 10 meeting was moved to December 17, 2013.*

**DISCUSSED :** Chairman Silverman instructed the Executive Secretary to send out notice regarding the meeting changes.

## F. REPORTS

F.1 Pending Hearings as of August 20, 2013. (NOTIFICATION)

**PRESENTED**

## G. REQUESTS FOR HEARINGS

## H. TODAY'S HEARINGS

H.1 Hearing of Appeal on behalf of Damian Simmons, Police Officer, relative to his 200-hour suspension, effective December 18, 2012.

*Chairman Silverman took attendance on the hearings and asked if anyone was present with regards to the hearing of Officer Damian Simmons. On behalf of Officer Simmons, Attorney Gibbons appeared before the Board and stated that Officer Simmons' appeal was withdrawn.*

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

H.2 Hearing of Appeal on behalf of Eddy Rodriguez, Police Officer, relative to his 20-hour suspension, effective March 31, 2013.

*Chairman Silverman asked for the status of Officer Eddy Rodriguez' case. Attorney Gibbons responded that he was waiting on witnesses or looking to reach a possible settlement of this case. The Board proceeded to consider other items on the agenda.*

*Following the other Agenda matters, the Board revisited discussion on the matter of Officer Eddy Rodriguez' hearing. Chairman Silverman asked both attorneys if they were still waiting on witnesses or did they wish to continue the hearing to the next meeting. ACA Richard responded that she was still waiting for Major Cunningham who was expected to arrive in approximately five minutes. The Board took a break while awaiting the arrival of Major Cunningham.*

-----  
*At 10:31 a.m., the Board reconvened to take up the matter of Officer Rodriguez' hearing. ACA Richard informed the Board that a settlement was reached in this case and that they will be drafting a settlement agreement. Chairman Silverman asked the employee's attorney was it correct that a settlement was reached 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 Sabine Raymovil, Police Officer, relative to



her 20-hour suspension, effective April 3, 2013.

*Chairman Silverman asked for the status of Officer Sabine Raymonvil's case. ACA Richard responded that she was asking for a continuance of this case due to the fact that the sergeant who authored the reprimand was still on an extended leave.*

*Chairman Silverman asked Attorney Gibbons if he had an objection to the continuance request. Before responding to the Chairman's question, Attorney Gibbons asked if the sergeant was subpoenaed by the department. ACA Richard responded in the affirmative. Chairman Silverman again asked Attorney Gibbons if he had an objection to the continuance request. Attorney Gibbons responded in the affirmative and stated that his objection was based on the fact that the sergeant was under subpoena. Chairman Silverman asked ACA Richard to tell the Board the reason for her witness' absence. ACA Richard responded that her witness' leave was extended due to medical reasons unbeknownst to her. Attorney Gibbons withdrew his objection and that the basis for his withdrawal was because the department's witness was on medical leave.*

*Following discussion, the Board entered a motion to APPROVE the department's request for a continuance of Officer Sabine Raymonvil's appeal hearing. The motion resulted as follows:*

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

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

**ADJOURNMENT:**

*The meeting ADJOURNED at 10:33 a.m. Breaks were taken at 10:12 - 10:17 a.m. and 10:29 - 10:31 a.m.*

**SIGNATURE:**

---

**Gerald Silverman, Chairperson**

**ATTEST:**

---

**Tishria L. Mindingall, Executive Secretary**