

City of Miami

*City Hall
3500 Pan American Drive
Miami, FL 33133
www.miamigov.com*



Meeting Minutes

Tuesday, September 15, 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 10:00 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 and Member Ramlal

Absent: Member Riley

ADOPTION OF TODAY'S AGENDA

Chair Banos asked if there were any revisions to today's Agenda. Hearing none, the Board considered a motion to Adopt the Agenda, which resulted as follows:

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

Aye: Baños, Sutton, Harris and Ramlal

A. APPROVING THE MINUTES OF:

Regular Meeting of August 18, 2015.

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

Aye: Baños, Sutton, Harris and Ramlal

B. PERSONNEL MATTERS**B.1**

Request from Malissa Trevino for accrual of Civil Service credits as Hearing Board Specialist, pursuant to Civil Service Rule 8.13. (DISCUSSION)

Chair Banos asked if anyone was present to address this issue. Malissa Trevino appeared before the Board and stated that she is requesting civil service credits in the position of Hearing Board Specialist I, in accordance with the Rules

Chair Banos asked if anyone was present to object to this request. Assistant City Attorney (ACA) Carlos Gamez appeared on behalf of the Department and stated that their position is that the request should not be granted by the Board for various reasons. ACA Gamez advised that Ms. Trevino was hired September 2, 2014 as a Hearing Board Specialist which is a full-time, Classified AFSCME position. He went on to read to the Board Article 24.2 of the Collective Bargaining Agreement (CBA) which he stated supersedes the Civil Service Rule under which Ms. Trevino is traveling with this request. ACA Gamez stated that the Article is very clear and doesn't provide for any exceptions. He informed the Board that Ms. Trevino's probation was not completed, in that she served eight (8) months (September 2, 2014 through May 4, 2015) in the classified position and was advanced to a Management Intern position which is in the Unclassified service. He stated that Ms. Trevino did not complete the full probationary period according to the CBA, and that it is the department's position that Ms. Trevino has no standing to petition the Board for this request pursuant to the bargaining agreement.

Chair Banos asked the Board's Special Counsel to provide an opinion in this issue. Special Counsel Gomez reviewed the Civil Service Rules mentioned and stated that the Rules that were applicable to Ms. Trevino's request are Civil Service Rules 9.3 and 8.13. Special Counsel stated that she agrees with the employee and that the accrual of time

should be credited.

Member Harris reviewed the Rules mentioned and asked Special Counsel if the Rule recited was a conflict. Special Counsel responded in the negative and clarified her response. Member Harris responded that there is a recommendation from the Department and reminded the Board that they should ensure that employees obtain positions based on merit.

Member Ramlal stated that she has also worked in Human Resources and recalls that the language in the CBA states that new employees must complete a one-year probationary period. Member Ramlal reviewed Ms. Trevino's request and reiterated the required one-year probationary period. Chair Banos agreed with Member Ramlal and stated that employees should complete the probationary period which is fair to Ms. Trevino's peers.

Member Harris made further comments and concurred with Member Ramlal. Member Harris stated that Ms. Trevino is short of completing the probationary period by four (4) months. Member Sutton asked Ms. Trevino to provide further testimony.

Ms. Trevino stated that she did have employee reviews with her supervisor to make sure the needs of the department were met. She stated that she also wrote procedures for Hearing Boards, and that because the department is short-staffed she has continued to be a point of contact for Hearing Boards as needed.

Member Harris stated she would not want the Board to set a precedent and asked for historical cases. Member Ramlal provided clarification of the process as she recalled.

Following discussion the Board voted on a motion to deny the request which resulted as follows:

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

Aye: Baños, Sutton, Harris and Ramlal

B.2

Copy of a memorandum from Maurice Kemp, Director, requesting to extend the probationary period of Natalie Ortiz, Firefighter, for six (6) additional months beyond September 15, 2015. (DISCUSSION)

Chair Banos asked who was present regarding this issue. Niorge Aragon, Executive Assistant to the Fire Chief, appeared before the Board and reiterated the purpose of the request. Firefighter Natalie Ortiz appeared before the Board. Member Sutton made comments and addressing Ms. Ortiz, stated that the ultimate goal of the extension is to ensure that she becomes a permanent employee. Member Sutton reminded the employee that the Fire Department takes these matters seriously, and that he has done the research. Member Sutton stated that Ms. Ortiz's character was reviewed along with her work ethic, and although she somewhat let the department down as far as character, her work ethic is outstanding; which is why he will vote for the extension to finish the probationary period. Ms. Ortiz recited the fire department's Vision Statement at the request of Member Sutton. Following discussion the board voted to grant the requested extension of probation as follows:

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

Aye: Baños, Sutton, Harris and Ramlal

- B.3** Copy of a memorandum from Maurice Kemp, Director, requesting to extend the probationary period of Alexander Vergara, Firefighter, for 12 additional months beyond September 15, 2015. (DISCUSSION)

ITEM ADDITION

Chair Banos asked if anyone was present on this matter. Executive Assistant to the Fire Chief Niorge Aragon appeared before the Board stating the department's request. Firefighter Alexander Vergara appeared before the Board, and confirmed that he was in agreement with the request. Member Sutton stated that the comments previously made regarding character and work ethic also apply to Mr. Vergara. Mr. Vergara recited the department's Mission Statement at the request of Member Sutton. Following discussion the Board voted on a motion to Grant the requested extension of probation which resulted as follows:

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

Aye: Baños, Sutton, Harris and Ramlal

C. MILITARY LEAVES OF ABSENCE

D. DISCIPLINARY MATTERS

- D.1** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, amending Diyango Fernandez', Police Officer, 40-hour forfeiture to a reprimand, effective July 17, 2014. (NOTIFICATION)
- NOTIFIED**
- D.2** Copy of a letter from Chief Rodolfo Llanes, Director, Department of Police, notifying Johnny Brutus, Police Officer, of his Termination, effective August 14, 2015 and a copy of a request to appeal. (NOTIFICATION)
- NOTIFIED**
- D.3** Copy of letter from Chief Manuel Orosa, Director, Department of Police, notifying Jean Marie Jean-Philippe, Police Officer, of his Termination, effective August 17, 2015. (NOTIFICATION)
- NOTIFIED**
- D.4** Copy of letter from Victoria Mendez, City Attorney, Office of the City Attorney, notifying Aida Garcia, Litigation Assistant, of her 5-day suspension, effective August 18, 2015. (NOTIFICATION)
- NOTIFIED**
- D.5** Copy of a letter from Chief Rodolfo Llanes, Director, Department of Police, notifying Kevin Harrison, Police Officer, of his 80-hour suspension, effective August 29, 2015. (NOTIFICATION)
- NOTIFIED**

- D.6 Copy of a letter from Chief Rodolfo Llanes, Director, Department of Police, notifying Royland Alvarado-Haber, Police Officer, of his 10-hour forfeiture, effective September 9, 2015. (NOTIFICATION)

NOTIFIED

E. GENERAL ITEMS

- E.1 Copy of an Agreement between the City of Miami and Francisco Gonzalez, Zoning Plans Reviewer, concerning his 1-day suspension, effective December 2, 2013. (NOTIFICATION)

NOTIFIED

- E.2 Copy of Findings of Fact concerning the Appeal hearing of Daniel Fernandez, Police Officer, concerning his termination, effective November 6, 2010. (DISCUSSION)

Deferred from the meeting of July 7, 2015.

Chair Banos asked if anyone was present regarding this issue and if there were any objections. The Executive Secretary provided the Board with a copy of Attorney Ronald Cohen's document submitted in response to the drafted Findings, and advised the Board that the only Finding objection that both sides agreed to is the one for Finding #1. Assistant City Attorney Carlos Gamez appeared on behalf of the Department and confirmed that he does not object to the correction of Finding #1.

Brent Chudachek, Attorney, Rice, Pugatch, Robinson, P.A. appeared for Mr. Cohen on behalf of the Appellant. Attorney Chudachek stated their opposition to the Findings as submitted to the Board, and repeated that the Findings are based on hearsay testimonials provided at the hearing and not supported by competent substantial evidence as required by the rules and procedures of the Civil Service Board. Attorney Chudachek stated that the City did not call pertinent witnesses to provide testimony nor did the City provide supportive evidence. He further stated that conclusions in the Findings are insufficient and not supported by the facts.

ACA Gamez recalled and reviewed Finding #2. ACA Gamez stated that he reviewed the recording of the hearing and recalled testimony from the hearing, and responded that there was information provided and witnesses who did provide testimony at the hearing. He further stated that the Board was presented with sufficient testimony and evidence to sustain the employee's termination. ACA Gamez stated that a Finding about witnesses that were not called to testify on behalf of the City is irrelevant and that information does not belong in the Findings. He reminded the Board that the Findings are a delineation of what was heard and presented at the hearing, and asked that the Board accept the Findings as initially drafted and submitted by Board's Special Counsel with the correction of Finding #1.

Member Harris stated that she did not recall the Board sustained the termination but the Board recommended a lesser discipline. Member Sutton agreed with Member Harris' recollection and stated that he made the motion to reinstate the employee without backpay. Member Ramlal recalled that the decision was to reinstate the employee without retroactive pay. Chair Banos recalled that the employee was found guilty of some charges, and the recommendation was to reinstate the employee without pay.

Attorney Chudacheck again reiterated his position on the Findings as submitted. ACA Gamez corrected his statement on the Board's recommendation. ACA Gamez further stated that opposing counsel also could have, but did not, ask certain witnesses to be present at the hearing to provide testimony.

Member Harris reminded Appellant's counsel that the Civil Service Board procedure is a quasi-judicial process and the rules are more relaxed pertaining to hearsay. Member Harris also recalled reasons for her guilty votes.

Member Harris made a motion to accept the Findings as amended. Member Sutton also made further comments as to why he is voting yes for the Findings previously submitted.

Following discussion the Board voted on a motion to accept the Findings as amended which resulted as follows:

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

Aye: Baños, Sutton, Harris and Ramlal

E.3

Notice of a Request to Continue from Jonathan Minick, Attorney on behalf of Kimberly Rodriguez, Police Officer, concerning her Grievance hearing alleging a violation of Rule 7.5 - Removal from Register, as it relates to the 2015 Police Sergeant's Exam. Carlos Gamez, Assistant City Attorney, expressed no objection to the request. (DISCUSSION)

Hearing of appeal is scheduled for October 6, 2015.

ITEM ADDITION

Chair Banos asked who was present regarding this issue. Seeing no one, Chair Banos asked if there was an objection to the request for continuance. Assistant City Attorney Carlos Gamez responded that the Department did not object to the continuance.

Following discussion the Board voted to GRANT the Employee's request for continuance which resulted as follows:

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

Aye: Baños, Sutton, Harris and Ramlal

F. REPORTS

F.1

Pending Hearings as of September 15, 2015. (NOTIFICATION)

PRESENTED

G. REQUESTS FOR HEARINGS

G.1

A copy of a request for Grievance hearing, pursuant to Civil Service Rule 16.2 from Moises Velazquez, Police Sergeant, alleging a violation of Rules 6.3 and 6.5 as it relates to the 2015 Police Lieutenant's Exam. (DISCUSSION)

Chair Banos asked who was present to speak on this issue. Sergeant Moises Velazquez appeared before the Board. Chair Banos explained the Request for a

Hearing process to Sgt. Velazquez. The Executive Secretary confirmed that the Board was provided copies of the Hearing Request Form and copies of the Civil Service Rules cited in the Request.

Sgt. Velazquez commenced with his summary of events that took place at the examination. He stated that during his oral boards he noticed that his assessors were not paying attention to his performance and they seemed to be in a panic. He went to say that he realized what was going on was that the timer for his session was not turned on. He went on to state that because of that he feels that there was a clear violation of certain Civil Service Rules, and read to the Board Rule 6.3 Contents of Examination, stating that the proper procedure was not applied to him.

Chair Banos asked Sgt. Velazquez to explain his statement. Sgt. Velazquez reiterated that the procedure was not used for him, and added that the incident being described is captured on video. Sgt. Velazquez also read to the Board Civil Service Rule 6.5, Method of Rating, and added that he feels he was not rated and ranked correctly due to the disruption caused with the timer issue. He stated that he was thrown off his presentation which is why his rating was low, and is asking that he receive the maximum number of points for that exercise.

Assistant City Attorney Carlos Gamez appeared on behalf of the Department. ACA Gamez stated that the timing of the request was odd because the Lieutenant's exam was given in February of this year, the Register was published in March and just now the Board is hearing this request regarding the exam. ACA Gamez stated that he reviewed the examination guidelines which allowed the officers to bring in their own timers to keep track of their own time, which the sergeant did not do. He went on to say that he also reviewed the [sergeant's] video which was very limited but on the video Sgt. Velazquez continued as instructed and on the video Sgt. Velazquez was afforded an additional 15 seconds to complete his presentation. He further stated that from his review of the video the panel appeared to be attentive to Sgt. Velazquez's presentation. ACA Gamez respectfully requested that the Board deny the request for hearing.

Chair Banos and Member Sutton made further comments and asked questions regarding the testing process. Chair Banos reminded the Board that Sgt. Velazquez must quote the correct Civil Service Rules and meet the basic burden of proof. Member Harris agreed with Chair Banos. She further stated that the Board's responsibility is to be the watchdog over the merit-based process and ensure fairness. Member Harris explained that the Civil Service Board was created by the citizens to ensure that opportunities are based on what employees know not who they know.

Member Harris reminded Sgt. Velazquez that the burden of proof is on him and she feels that he should be granted a hearing. Member Ramlal stated that she agrees with Member Harris and employees have a right to be heard.

Following discussion, a motion to GRANT the Grievance hearing was considered and resulted as follows:

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

Aye: Sutton, Harris and Ramlal

No: Baños

H. TODAY'S HEARINGS

H.1

Hearing of Appeal on behalf of Janet Williams-Brewster, Grant Writer, concerning her termination, effective January 9, 2015.

Chair Banos called for the hearing. Attorney Teri Guttman Valdes appeared on behalf of the Appellant and stated that she is requesting a continuance for several reasons. She went on to say that the dismissal letter her client received is vague and does not clearly state the exact reason for the dismissal. She further stated there is an issue with contacting one of her witnesses in addition to the need for additional time to review documentation received in response to a public records request from the City.

Assistant City Attorney Carlos Gamez appeared on behalf of the Department, stated his objection to a continuance and announced that he is ready to proceed with the hearing. ACA Gamez respectfully requested that the Board not grant the continuance.

Chair Banos asked for the continuance record. The Executive Secretary advised that there had been one continuance, which was granted to the Appellant. The Executive Secretary also confirmed that the Department has not requested a continuance in this matter.

Member Harris stated that she agrees with moving forward with the hearing.

Attorney Guttman Valdes read to the Board a portion of her client's dismissal letter and stated that it very vague and resulted in a public records request including numerous emails that require review.

Chair Banos asked the Executive Secretary for the Board's hearing schedule for the next scheduled meeting. The Executive Secretary responded and recommended a date for the hearing if the continuance is granted. Member Ramlal asked a question regarding the witnesses. ACA Gamez responded that most of his witnesses would be available October 6, 2015, with the exception of Human Resources Director Amy Klose.

Chair Banos stated that he wants to make sure the process is fair. Member Harris stated that her inclination is to deny the continuance based on the purpose of the Board, but she would go along with the Board's decision. ACA Gamez reminded the Board that one of the Department's witnesses is not available for October 6th and respectfully requested that the hearing not be scheduled on that day.

Following discussion the Board offered a motion to grant a CONTINUANCE which resulted as follows:

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

Aye: Baños, Sutton, Harris and Ramlal

ADJOURNMENT

Having no further business, the meeting adjourned at 11:15am.

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

Aye: Baños, Sutton, Harris and Ramlal

SIGNATURE:

Javier Banos, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary