

City of Miami

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



Meeting Minutes

Tuesday, September 17, 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 10:02 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

Prior to taking up items on the agenda, the Chairman welcomed Jeff P. H. Cazeau, who acted in the absence of the Board's new Special Counsel, Reginald J. Clyne.

A. APPROVING THE MINUTES OF:

Regular Meeting of August 20, 2013.

The Board entered a motion to APPROVE the minutes of the August 20, 2013 meeting which resulted as follows:

**Motion by Member Baños, seconded by Chief Examiner Moy, 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, confirming the request of Nicole Sanders, Crime Scene Investigator I, to return to her former classification of Public Service Aide, effective August 26, 2013. (NOTIFICATION)

NOTIFIED

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

- D.1** Copy of a Judgment from the City Manager concurring with the Board's findings concerning the Appeal on behalf of Eddy Rodriguez, Police Officer, concerning his 10-hour suspension, effective January 3, 2013. It is ordered and adjudged that the decision of the Chief of Police to suspension Officer Rodriguez for 10-hours is hereby sustained. (NOTIFICATION)

NOTIFIED

- D.2** Copy of a Judgment from the City Manager concurring with the Board's findings concerning the Appeal hearing on behalf of Osmar Martinez, Police Officer, relative to his 160-hour suspension, effective January 11, 2013. It is ordered and adjudged that the decision of the Chief of Police to suspend Officer Martinez for 160-hours is hereby sustained. (NOTIFICATION)

NOTIFIED

- D.3** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Carlos Mendez, Police Sergeant, of his 20-hour suspension,

effective August 26, 2013 and a copy of a request to appeal from Officer Mendez. 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 Richard Alleyne, Police Officer, of his 40-hour suspension, effective August 13, 2013 and a copy of a request to appeal from Officer Alleyne. A hearing has been scheduled for February 18, 2014. (NOTIFICATION)

RECEIVED AND FILED

- D.5** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Dayanna Frederick, Police Officer, of her 20-hour suspension, effective July 29, 2013 and a copy of a request to appeal from Officer Frederick. A hearing of appeal has been scheduled for February 18, 2014. (NOTIFICATION)

RECEIVED AND FILED

- D.6** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Silvia Benitez, Emergency Dispatcher, of her 150-hour suspension, effective September 9, 2013. (NOTIFICATION)

NOTIFIED

- D.7** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Kenneth Rodriguez, Police Officer, of his 10-hour suspension, effective August 21, 2013. (NOTIFICATION)

NOTIFIED

- D.8** Copy of a letter from Chief Maurice Kemp, Director, Department of Fire Rescue, notifying Richard Perry, Fire Supplies Clerk II, of his 8-hour suspension, effective September 10, 2013. (NOTIFICATION)

NOTIFIED

- D.9** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Roberto Novo, Police Officer, of his 20-hour forfeiture, effective September 10, 2013. (NOTIFICATION)

NOTIFIED

E. GENERAL ITEMS

- E.1** Hearing of Appeal on behalf of John Kocur, Police Officer, relative to his 10hr suspension, effective July 9, 2012. (DISCUSSION)

Chairman Silverman asked for the status of this item. The Executive Secretary responded that this matter was placed on the Board's agenda because a settlement was

announced at the May 14, 2013 meeting and she had not received the written settlement agreement.

Chairman Silverman asked the department's attorney for the status of the settlement. ACA Richard responded that she needed to speak with Attorney Gibbons regarding the settlement. Chairman Silverman asked the employee's attorney for the status of his client's settlement. Eugene Gibbons, Attorney on behalf of Officer John Kocur stated he did not know off the top of his head if a settlement was reached so he would have to verify the matter.

Chairman Silverman stated that the Board was told at the last meeting when this matter was considered that the case was 90% settled, that only minor changes had to be done to solidify the settlement, but it has now been months and no written settlement has been presented in this case. Attorney Gibbons responded that he would certainly check into the matter concerning the settlement.

DISCUSSED : Chairman Silverman instructed Attorney Gibbons to report at the Board's next meeting on the status of the settlement and instructed the Executive Secretary to schedule Officer John Kocur's case for a hearing if the case has not been settled.

E.2

Hearing of Appeal on behalf of Marly Saldarriaga, former Public Service Aide, concerning her termination, effective July 10, 2012. (DISCUSSION)

Chairman Silverman asked for the status of this case. He went on to say that he recalled from the last meeting this matter was discussed that Ms. Saldarriaga's case was continued because her attorney had withdrawn representation, and there was some question about whether she received notification about her scheduled hearing. Chairman Silverman asked the Executive Secretary if she heard from Ms. Saldarriaga. The Executive Secretary responded in the negative. She further stated that two letters had been sent to Ms. Saldarriaga with no response.

Chairman Silverman asked if anyone was present to speak on this item. Hearing none, Chairman Silverman stated the last time the Board considered this matter, he seemed to recall that the Board would dismiss Ms. Saldarriaga's case for lack of prosecution if no one appeared for her scheduled hearing.

Following discussion, the Board entered a motion to DISMISS the case of Marly Saldarriaga 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

NOTE: Case will be closed, removed from the Board's docket, and forwarded to the Department of Human Resources for filing in Ms. Saldarriaga's personnel file.

F. REPORTS**F.1**

Pending Hearings as of September 17, 2013. (NOTIFICATION)

PRESENTED

G. REQUESTS FOR HEARINGS

H. TODAY'S HEARINGS

- H.1** Hearing of Appeal on behalf of Jeffrey Locke, Police Lieutenant, relative to his 20-hour suspension, effective February 25, 2009.
- Chairman Silverman asked if anyone was present regarding the appeal hearing of Lt. Jeffrey Locke.*
- Teri Guttman-Valdes, Attorney on behalf of Lt. Locke, appeared before the Board and stated that a settlement of this case was reached yesterday.*
- Chairman Silverman asked opposing counsel if a settlement was reached in this case. ACA Richard 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.2** Hearing of Appeal on behalf of Dayanna Frederick, Police Officer, relative to her 20-hour suspension, effective October 19, 2012.
- CONTINUED : Due to time constraints, the Board CONTINUED this hearing and charged the continuance to the Board.**
- H.3** Hearing of Appeal on behalf of Darlene Jones, Police Officer, relative to her 20-hr suspension, effective December 23, 2012.
- CONTINUED : Due to time constraints, the Board CONTINUED this hearing and charged the continuance to the Board.**
- H.4** Hearing of Appeal on behalf of Helene Lugo, Emergency Dispatcher, relative to her 40-hour suspension, effective April 7, 2013.
- Chairman Silverman asked Eugene Gibbons, Attorney on behalf of Ms. Lugo, if he was okay with having Attorney Braverman's case heard ahead of his two scheduled cases. Attorney Gibbons responded in the affirmative.*
- Attorney Braverman stated that since most of his witnesses worked the night shift and were tired, he wanted to excuse some of them if they were not needed by either side. Chairman Silverman suggested that each witness stand, give their name, and both attorneys could decide whether they were needed. As a result, the following witnesses were released: David Davila, Jose Davila, Stephanie Morfa and Lillian Arcelay. Chairman Silverman excused the witnesses and let them know they were free to go.*
- Following the release of witnesses, the Board entered into the scheduled hearing of appeal on behalf of Helene Lugo, the Appellant.*
- Janeen Richard, Assistant City Attorney (ACA) represented the Department.*
- Michael A. Braverman, Attorney at Law, represented the Appellant.*
- Both attorneys presented opening statements. The Rule of Witnesses was invoked and all witnesses were sworn in individually. Witnesses for the Department appeared in the following order:*

1. *Veronica Williams, Emergency Dispatcher Assistant, City of Miami, Department of Police. Questions were posed by Board Members Harris and Banos during the testimony of Veronica Williams.*
2. *Ernestina Castaneda, Emergency Dispatcher, City of Miami, Department of Police. Questions were posed by Board Members Harris and Banos during the testimony of Ernestina Castaneda.*
3. *Sharon Jones, Emergency Dispatcher Assistant, City of Miami, Department of Police.*
4. *Ernest Lawrence, Police Officer, City of Miami, Department of Police.*
5. *Doretha Hall, Sergeant, City of Miami, Department of Police. Questions were posed by Board Members Harris and Banos during the testimony of Doretha Hall.*
6. *Keith Cunningham, Major, City of Miami, Department of Police.*

The Department rested its case. Witnesses for the Appellant appeared in the following order:

1. *Twanna Ingram, Emergency Dispatch Assistant, City of Miami, Department of Police. Questions were posed by Board Member Harris during the testimony of Twanna Ingram.*
2. *Helene Lugo, Emergency Dispatcher, City of Miami, Department of Police, testified on her own behalf. Questions were posed by Board Members Banos and Harris during the testimony of the Appellant.*

The Appellant rested her case and the Board proceeded to closing arguments that were presented by both attorneys. Following final argument, Member Banos (referring to a comment made by the Appellant's Attorney during closing arguments), stated that the Board is always "Monday morning quarter-backing" because that is what the Board must do. He went on to say that the Board listens to facts after a situation had occurred, weighs the facts and evidence based upon who had the burden of proof, and makes the best decision based upon what's presented by both parties.

Member Banos further stated with regards to other comments that were made during closing argument, it seemed to him from the witness testimony presented that Ms. Lugo did know of the [emergency] incident that occurred at that time. He stated there were numerous witnesses that testified that Ms. Lugo [did not dispatch the call] because she did not want to "sound stupid" on the air. Member Banos went on to say that with all due respect to Sgt. Hall, he agreed with Attorney Braverman that some blame should have been placed at her feet. He further stated the fact that [Sgt. Hall] was not a fast typist was no excuse not to have the call placed into the computer system. He further stated that Ms. Lugo should not have been penalized for not following protocol because no one followed protocol. Member Banos stated in view of the fact that [protocol was not followed], the department had the burden of proof and it did meet its burden because the evidence seemed very clear to him that Ms. Lugo was negligent at the very least in performing her duties [as an Emergency Dispatcher.] He went on to say that Ms. Lugo may have been a very experienced dispatcher and she used to be a Emergency Dispatcher Supervisor, which he commends her for, but that one night [that required her to perform her duty as a dispatcher] she made a mistake. Member Banos further stated like with anything else, we sometimes do not meet our par and we have to sometimes be punished to learn a lesson, but that was a part of life's experiences. He stated his basic perspective, with the exception of [the charge of] departmental order 1. 11.6.28.3, Members and Civilian Employees to Conform, that Ms. Lugo should be found guilty of

the remaining five charges cited in the reprimand. Member Banos stated he would make a motion with regards to the charges, but he would do so after hearing from the other Board Members.

Member Harris stated that Ms. Lugo certainly had the right to be heard just like anyone else that was being accused of something, so she commended her for coming before the Board to state her case. She went on to say that she thought all of the witnesses from the Communications Unit should be commended because they have a hard job and to be honest, she could not do that job. Member Harris further stated her job of [Police Lieutenant] requires her to work the streets and that it was a tough job; however, she felt the job of dispatcher took a certain type of DNA. She stated during testimony, Ms. Lugo stated one of the things she has to be able to do is multi-task. Member Harris went on to say that she witnessed the [multi-tasking among dispatchers] when she worked in the Communications Unit so she had great admiration for the Emergency Dispatchers because they are the first line of contact with the public. Member Harris went on to say that the dispatcher's job was just as important as the job of the 911 call takers because the dispatcher does not know what he/she will receive at the other end of the call. She further stated her first application filed with the City of Miami was for the position of 911 Call-Taker/Dispatcher but she did not pass the typing test. Member Harris went on to say that when working the streets, she felt safe hearing the voices of Emergency Dispatchers Castaneda, Lugo, and other dispatchers because she knew them all to be experienced and professional in what they did when it came to dispatching information [to officers working the streets.]

Member Harris stated there is always something we can do better so if there should ever come a time when we feel there is nothing we can or could have done better in a situation especially when handling dispatcher responsibilities, we are in trouble. She went on to say the reason she felt this way was based upon an example [about company services] she likes to use to make her point. Member Harris further stated when an individual calls the City's 911 phone line but does not like the service received, the individual does not have the option to change to another service; unlike a person who is hungry and can decide to go to McDonald's if the person did not like hamburgers from Burger King. She stated her point was that when a person calls 911 in the City of Miami, the buck stops there and the caller can only depend on the service or lack thereof in terms of how soon the service will or will not be provided.

Member Harris stated that she agreed with the Appellant's attorney when he said Ms. Lugo was not intentionally neglectful of her duty. She went on to say she believed there was some kind of breakdown of communication in Ms. Lugo's mind which she thought was important to factor in, especially when a person is hearing from another person's perspective as to what they may or may not have heard or how it was translated in their mind, and whatever information the person may have blocked out of their mind. She stated she honestly thought Emergency Dispatcher Assistant Jones' feeder to Ms. Lugo was a block so she believed Ms. Lugo may have tuned out Ms. Jones based upon the history of their working relationship that she voiced during her testimony. Member Harris went on to say that she believed the information from the Metro-Dade Police Department advising of a male beating a female in a moving vehicle was being relayed to Ms. Lugo but because of what might have been going on in the mind of Ms. Lugo at that time, she believed Ms. Lugo may have blocked out certain information.

Member Harris advised Ms. Lugo not to let this one incident define who she really is because she has seen her work so she knows that Ms. Lugo is bigger and better than the incident before the Board. She went on to say that if anything, she would advise Ms. Lugo to use [the discipline she received] as a stepping stone to do better because we all can do better.

Following discussion, the Board entered a motion to find the Appellant GUILTY of Charge #1, Departmental Order 1.11.6.13.2 - Effort and Manner of Members and Civilian Employees. Under discussion on the motion, Member Harris stated she was aware that the Board was not voting on the charge of neglect (Charge #3), but she wanted to let her colleagues know that she would not vote in favor of a motion of guilt on that charge. She went on to say that with regards to charge #1 as it related to the Appellant's effort, she felt there was not enough effort made on the Appellant's part. Member Harris further stated of her subordinates, all she ever ask of them is that they make an effort in the performance of their duties. She stated that the Appellant should have made some type of movement or effort to find out what Emergency Dispatcher Assistant Jones and Emergency Dispatcher Castaneda were relating to her, but she did not, so she felt the Appellant was in violation of this departmental order.

Member Banos stated he appreciated Member Harris for going out of her way to explain to Board Members the lingo used in the police department. He went on to say that his notion of negligence was essentially when a person has a duty that they owe someone and that duty was breached in some way thereby holding the person responsible for having breached the duty. Member Banos further stated when this happens, there is an acknowledgment between the two individuals that there was no legitimate reason to breach whatever responsibility the person had that caused the damage therefore, the absence of intent is implied. He stated the person is essentially not doing what they are supposed to do but the person does not really mean not to do it so that would be the legal definition of negligence. Member Banos went on to say that the Appellant did not mean to neglect the call but it happened.

Member Harris stated that she respected Member Banos' reasoning and that she would get to the meaning behind her position with regards to negligence as it related to charge #3 since she jumped ahead on the charges. Following discussion, the motion on the floor to find the Appellant GUILTY of Charge #1 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

The Board entered a motion to find the Appellant GUILTY of Charge #2, Departmental Order 1.11.6.16.2 - Responsibility of Civilian Employees. Under discussion, Member Harris stated that the Appellant failed to assume responsibility of her duty so she was in favor of the finding. Following discussion, the motion on the floor to find the Appellant GUILTY of Charge #2 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

The Board entered a motion to find the Appellant GUILTY of Charge #3, Departmental Order 1.11.6.17.9 - Neglect or Inattention to Duty. Under discussion on the motion, Member Harris stated that she was giving the benefit of the doubt to the Appellant and that she weighed in on the intent portion of this charge. She went on to say that she understood Member Banos' earlier explanation on the matter of neglect from a legal standpoint ; however, under the Civil Service Rules, intent is a part of being neglectful and she did not think that Ms. Lugo intentionally neglected her duties.

Following discussion, the motion on the floor to find the Appellant GUILTY of Charge #3 resulted as follows:

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

Aye: Silverman, Moy and Baños

No: Harris

The Board entered a motion to find the Appellant NOT GUILTY of Charge #4 - Departmental Order 1.11.6.28.3 - Members and Civilian Employees to Conform. 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: Moy, Baños and Harris

No: Silverman

The Board entered a motion to find the Appellant GUILTY of Charge #5 - Civil Service Rule 14.2(e) 2 - Incompetent/Negligent. Under discussion, Member Banos stated that he would vote against his motion so as to avoid a tie vote. The motion on the floor for a finding of GUILTY on Charge #5 resulted as follows:

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

Aye: Silverman

No: Moy, Baños and Harris

The motion having failed, the Chairman stated that Charge #5 would be recorded as a finding of NOT GUILTY by the Board since Member Banos voted against his original motion so as to avoid a tie vote. Hearing no objection from Board Members, the NOT GUILTY finding on Charge #5 stood.

The Board entered a motion to find the Appellant GUILTY of Charge #6 - Civil Service Rule 14.2(e) 3 - Loss/Injury to the City which resulted as follows:

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

Aye: Silverman, Baños and Harris

No: Moy

Having found the Appellant GUILTY of some of the violations cited in the Charging Document, the Board proceeded to the Penalty Phase of the Appellant's hearing. The Chairman read into the record details of the Appellant's personnel file which revealed the Appellant was hired on April 27, 1998 and that she received 24 commendations, 1 reprimand, and 3 suspensions.

During the Penalty Portion of Ms. Lugo's appeal hearing, neither side presented testimony and the Board proceeded to closing argument that was presented by both sides. Following final argument, the Board entered a motion to sustain the 40-hour suspension ordered by the department director. Under discussion on the motion, Member Harris stated in following the guidelines for progressive discipline, the recommended discipline was in order.

Following discussion, the motion on the floor to sustain the 40-hour suspension resulted as follows:

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

Aye: Silverman, Baños and Harris

No: Moy

ADJOURNMENT:

The meeting ADJOURNED at 3:28 p.m. Breaks were taken at 10:11-10:17 a.m., 10:56-11:08 a.m., 11:42-11:53 a.m., 12:07-1:11 p.m. (LUNCH) and 1:45-1:50 p.m.

SIGNATURE:

Gerald Silverman, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary