

City of Miami

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



Meeting Minutes

Tuesday, October 1, 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 am. 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 September 17, 2013.

The Board entered a motion to APPROVE the minutes of the September 17, 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

Copy of a memorandum from Peter Iglesias, Director, Building Department, requesting to extend the probationary period of Soraya Gonzalez, Building Services Assistant IV, for 12 additional months beyond December 10, 2013. (DISCUSSION)

Teri Guttman-Valdes, Attorney at Law, approached and stated her appearance before the Board on behalf of Ms. Gonzalez. Chairman Silverman asked to hear from the operating department.

Peter Iglesias, Director, Department of Building, appeared before the Board and stated that the extension was being requested because the department wished to provide Ms. Gonzalez an opportunity to improve in the area of customer service. The chairman then asked if Ms. Guttman-Valdes wished to speak.

Attorney Guttman-Valdes advised that Ms. Gonzalez has been employed with the City since 1996, and previous to this position, had held the title of Permit Counter Assistant, supervising employees who worked at the Building Department service counter. She went on to say that currently, Ms. Gonzalez is a Building Services Assistant IV, but is basically performing the same duties. She further stated that the memo from the department requesting the probation extension states that there have been "numerous customer complaints regarding Ms. Gonzalez's attitude and treatment of customers...", and that it is significant to note that during this time of service, no one (from Administration) has come to her to advise of these complaints or to give her an opportunity to address and correct them so that she could complete her probation. Attorney Guttman-Valdes went on to say that Ms. Gonzalez's evaluation covering the period August 2012 - August 2013 was received by her on September 6, 2013, which is the same date as the probation extension memo, and that there is only 1 area where she received a score of "1", and that her overall evaluation was a 2.7, which is in the "Satisfactory" range; further, that there are no specific "Comments" other than that she needs to "work on her interpersonal skills...and managing customer complaints". She went on to say that there is nothing in the evaluation, and not enough justification provided by the department to warrant an extension of 12 months past December 2013.

Chairman Silverman asked Attorney Guttman-Valdes to confirm that Ms. Gonzalez is a

probationary employee, and that as such has no civil service rights to her current position, and can therefore be terminated without cause. He went on to state that Ms. Gonzalez probably has some rollback rights, but if the Board does not grant an extension, Ms. Gonzalez is putting possession of her current position at risk, and asked if Ms. Gonzalez understood that. Attorney Guttman-Valdes responded in the affirmative. Chairman Silverman stated that (as a member of the Board) he has heard many requests for extension, and has always warned the employee that the choice was up to them, but if they are not in agreement with the extension, and if the Board votes not to grant the extension, that they have no civil service rights to that job and that they could be terminated [during probation]. He went on to say that it may sound like a "win" (to the employee), but it could end up a "loss", and he wanted to make sure that the employee understands that. Chairman Silverman then asked if Ms. Gonzalez would agree to a shorter extension of probation.

Member Harris stated that the evaluation indicated that it was for a "permanent" employee, and asked what the terms of probation were. Director Iglesias responded that there is a 12-month probationary period. He went on to say that in his second week as director, he observed Ms. Gonzalez berating a customer, and asked her supervisor, Debra Jones-Fagan how [the City] could have something like that go on. He went on to say that there have also been some mistakes made with some permit issues and areas that he has not brought up; however, he wanted to be fair and give Ms. Gonzalez another opportunity to prove herself. Member Harris stated that she understands what Director Iglesias is speaking about, but she asked a technical question with regards to the one-year probation for the position versus how the evaluation form was completed indicating "permanent", she stated that the form reads as if Ms. Gonzalez had been employed in the position for one year, when according to the memo which is dated September 2013, her probationary period is not over until December 2013. Member Harris asked the Executive Secretary for clarification of Rule 9; specifically, when probation extension memos had to be brought to the Board. The Executive Secretary responded that requests for probationary extension simply had to be brought before the termination of the probationary period, whether that period was 6, 12 or 18 months. Chairman Silverman reiterated that the request memos had to be brought before the employee's probation ends. Member Harris asked if the length of probation for this position was anywhere in writing.

Debra Jones-Fagan, Permits and Control Supervisor, Building Department, appeared before the Board and advised that Ms. Gonzalez started in the position in December 2012, and that the probationary period for all positions in their department is one year. She went on to say that at the request of the director, evaluations for all employees were completed in August 2013, wherein they addressed the issues they were having. Member Harris asked if Ms. Gonzalez was aware of the length of probation, to which Supervisor Jones-Fagan responded in the affirmative. Supervisor Jones-Fagan went on to say that at one time she was the supervisor of the area and Ms. Gonzalez was her assistant. She went on to say that now (as of December 2012) Ms. Gonzalez is the supervisor and is in direct contact with the customers and staff members in permits and plans review, and her responsibility is a lot greater. Member Harris stated that she was making those points with the completion of the evaluation form, because her concerns were whether the City would be in a situation, in that the form indicates several things that are technically not correct.

Member Banos asked if Director Iglesias might be letting the one issue he spoke about earlier cloud his judgment in requesting an extension so far in advance, and for another year. He went on to say that it seemed unreasonable to him, in that Ms. Gonzalez has been doing the job for 9 months. Member Banos asked if the department could table the request and bring the matter back to the Board in November, if Ms. Gonzalez did not improve. Director Iglesias stated that he has been looking into this matter for the past

four months, and has been in contact with Supervisor Jones-Fagan regarding the many issues - not just one - with Ms. Gonzalez, since he was very concerned. He went on to say that he still wanted to give Ms. Gonzalez the opportunity by extending her probation now, since for the past four months, [her behavior] has been an issue. Member Banos asked the chairman if he would be in agreement with tabling this matter. Chairman Silverman asked Attorney Guttman-Valdes for her opinion, to which she responded that although she thinks it is early, she would not be against tabling the matter to a November meeting.

Member Moy stated that he had a few questions, and asked Director Iglesias if he had any evidence to confirm the issues Ms. Gonzalez had regarding customer service, or had he taken any progressive discipline actions. Director Iglesias stated that the instance he witnessed occurred in his second week, and that he had been observing Ms. Gonzalez's work and spoken with her supervisor for the past four months. Supervisor Jones-Fagan approached the Board and stated that the problems with Ms. Gonzalez are not new and that they have spoken to her about her attitude, her tone and how she treats the customers, and have been attempting to help her for some time. She went on to say that they have had many customer complaints and they deal with it by speaking with the employee, although there are not many written documents regarding these instances, much to their (Administration's) detriment. She further stated that they have counseled the employee and sent her to training and have given her many opportunities to correct [her performance], and they are trying once again to help her make those corrections, in order to extend the greatest customer service possible to their internal and external customers. Member Moy stated that he understood what Supervisor Jones-Fagan had to say, and assured her that she was doing a phenomenal job, and advised Director Iglesias that he was lucky to have her as an employee. He went on to say that although the department advised that there are issues with the employee, it is difficult, to support the department's request without having the assertions in writing.

Chairman Silverman advised that he thinks it is a mistake for the Board to delay this decision and that it accomplishes nothing, as he thinks that it would not help the employee - rather the department may decide to terminate her. He went on to say that this request is not the same as a disciplinary hearing, as the department does not have to provide any written evidence or proof of any issues or concerns to extend the probation of an employee, and can terminate any time during the probationary period without cause. He further stated that the Board can ask for documentation from the department, but the truth is that the employee has no civil service rights as it concerns this position and he thinks it is in the employee's best interest for the Board to grant a shorter extension to give her an opportunity.

Member Harris stated that the department's memo is fair in that it offers to make Ms. Gonzalez permanent in six months if improvement is made, and that this is a commitment from a department that she does not normally see. Director Iglesias stated that they would like to see Ms. Gonzalez succeed.

Following discussion, the Board considered a motion to GRANT the department's request to extend the probationary period of Soraya Gonzalez, but for six (6) additional months beyond December 10, 2013, which resulted as follows:

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

Aye: Silverman, Baños and Harris

No: Moy

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

- D.1** Copy of a letter from Keith Carswell, Director, Department of Solid Waste, notifying Clifford Holzendorf Jr., Waste Collector Operator, of a 10-day suspension, effective September 16, 2013 and a request to appeal from Osnat K. Rind, Attorney, Phillips, Richard, & Rind, P.A. A hearing has been scheduled for February 4, 2014. (NOTIFICATION)
RECEIVED AND FILED
- D.2** Copy of a letter from Chief Maurice Kemp, Director, Department of Fire Rescue, notifying Tony Belfort, Facility Maintenance Technician, of his 40-hour suspension, effective September 30, 2013. (NOTIFICATION)
NOTIFIED
- D.3** Copy of a letter from Chief Maurice Kemp, Director, Department of Fire Rescue, notifying Alberto Hoyos, Fire Lieutenant, of his 24-hour forfeiture, effective September 26, 2013. (NOTIFICATION)
NOTIFIED
- D.4** Copy of a letter from Chief Maurice Kemp, Director, Department of Fire Rescue, notifying William Savoy, Fire Lieutenant, of his 96-hour suspension, effective September 24, 2013. (NOTIFICATION)
NOTIFIED
- D.5** Copy of a letter from Chief Maurice Kemp, Director, Department of Fire Rescue, notifying Robert Welz, Firefighter, of his 72-hour suspension, effective September 26, 2013 and a 48-hour forfeiture, effective October 7, 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.
- Assistant City Attorney Richard advised that with regards to items E.1 - E. 7, Attorney Gibbons has represented that he is in the process of finalizing the Settlement Agreements and having his clients sign them, so that they can be forwarded to her office.*
- Chairman Silverman stated that the Board has been hearing the same response for months and in some cases since February. He went on to suggest that the matters be*

placed on the November Agenda and if they are not settled by then, they would be set for hearing.

Member Banos stated that the Board has waited long enough and asked if they could all be set for hearing, since the Board has been hearing the same story regarding settlements for nine months.

Chairman Silverman stated that the Board wants these cases closed and without objection, directed that if the Agreements were not received beforehand, to place the matters on an Agenda after November 1, 2013.

There was no further discussion.

DISCUSSED

- 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.

DISCUSSED

- 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.

DISCUSSED

- E.4** Hearing of Appeal on behalf of Melissa Valdes, Police Sergeant, concerning her 10-hour forfeiture, effective August 24, 2012. (DISCUSSION)
Rescheduled pursuant to continuance policy; pending settlement since February 19, 2013.

DISCUSSED

- E.5** Hearing of Appeal on behalf of Manuel Cabrera, Police Officer, concerning his 20-hour Forfeiture, effective August 16, 2012. (DISCUSSION)
Rescheduled pursuant to continuance policy; pending settlement since March 5, 2013.

DISCUSSED

- E.6** Hearing of Appeal on behalf of John Marin, Police Officer, concerning his 10-hour Forfeiture, effective August 24, 2012. (DISCUSSION)
Rescheduled pursuant to continuance policy; pending settlement since March 5, 2013.

DISCUSSED

- E.7**

20-hour suspension, effective March 31, 2013. (DISCUSSION)
Rescheduled pursuant to continuance policy; pending settlement since August 20, 2013.

DISCUSSED

E.8 Proposed Amendment to Civil Service Rule Section 15.9 - Military Training Leave. (DISCUSSION)

Chairman Silverman opened the public hearing and asked if there was any discussion regarding this item. No one from the public spoke on the matter.

The Executive Secretary stated that due to revisions enacted by the Florida Legislature, Florida Statute 115.07 was revised to allow for Military Training leave of up to 240 working hours per annual period. Therefore, the Civil Service Rule which relates to military training leave must also be amended. She went on to say that it was being recommended to update the Rule to match whatever provisions were allowed in the Statutes.

Chairman Silverman asked if the Board's decision would have to be approved by the City Commission. The Executive Secretary responded in the affirmative.

Following discussion, the Board considered a motion to APPROVE the revision to Rule 15.9 (Military Training), 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.9 Copy of Findings of Fact concerning the Appeal hearing on behalf of Helene Lugo, Emergency Dispatcher, relative to her 40-hour suspension, effective April 7, 2013. (DISCUSSION)

Chairman Silverman asked if anyone had any objections or questions regarding the Findings of Fact as prepared by Special Counsel. ACA Richard previously advised that she had no objections to the Findings. Michael Braverman, Attorney on behalf of Helene Lugo, appeared before the Board and stated that he had no objections to the Findings.

Following discussion, the Board entered a motion to APPROVE the Findings of Fact concerning the matter of Helene Lugo, 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

F. REPORTS

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

PRESENTED

G. REQUESTS FOR HEARINGS**H. TODAY'S HEARINGS****H.1** Hearing of Appeal on behalf of Melvin Calixto, Police Officer, relative to his 10-hour suspension, effective May 2, 2013.

Prior to opening statements, Assistant City Attorney Richard advised the Board that she believes that Officer Calixto is agreeing with the charges, and disagreeing only with the penalty assessed.

Chairman Silverman asked Officer Calixto if what Assistant City Attorney Richard stated was true, to which Officer Calixto responded in the affirmative. Chairman Silverman stated that Appeal hearings are done in two parts, the determination of guilt, and if found guilty, the penalty phase. He went on to say that the first part is complete, and that now the Board will hear testimony and review exhibits in order to make a recommendation of the penalty to the City Manager, who will [in accordance with Civil Service Rule 14, make a final determination sustaining, reversing or modifying the actions of the department director]. He went on to say that he always respect someone who says that they agree with the facts, but may disagree or have issue with the penalty. He went on to say that the department has the burden of proof and asked Assistant City Attorney what she would like to put forth regarding the penalty recommendation.

Assistant City Attorney Richard stated that the facts are clear in the reprimand and following a synopsis of the reprimand, submitted exhibits for the Board to review. She went on to say that the penalty assessed in this case was a 10-hour suspension.

Chairman Silverman read to the Board the overview of the employee's personnel file, then asked if Officer Calixto had anything to add.

Officer Calixto advised that he has worked for the City for about 20 years, has never called in sick for any Christmas or New Year's workday, and that this is his first incident. He went on to say that he was ill on December 31, 2012, and on that day at approximately 20:00 hours, he called the station to speak with the early sergeant to advise that he was ill and could not come to work. He went on to say that the sergeant was unavailable, so he spoke with Officer Kelly, who told him that she was advised to take the calls, and would notify the sergeant. He went on to say that he waited at home for 2.5 hours for a call or visit, but it did not happen, then he went to sleep after taking medication.

Member Banos stated that it sounded to him like Officer Calixto was indeed challenging the facts of the case. Chairman Silverman asked Officer Calixto if he was challenging the facts, to which he responded that he wanted to clear the record, but that he did not agree with the Reprimand, since he was at home, but did not hear the telephone. He went on to say that he was against the penalty because he thought that in accordance with progressive discipline, he could receive a verbal warning prior to written reprimand and suspension without pay.

Chairman Silverman asked if Assistant City Attorney Richard had any cross examination. Assistant City Attorney Richard responded that she was actually confused with the direction that the case was taking, but that she did not have any questions for Officer Calixto. Chairman Silverman asked if the department had any testimony to offer, to which Assistant City Attorney Richard responded in the negative.

Chairman Silverman asked Officer Calixto if he wished to offer any further testimony.

Officer Calixto stated that he had no further testimony, and understood the City's findings. He went on to say that he wanted to offer his apologies, and added that if he is sick in the future and was not available, that he would have someone at home with him to field telephone calls or visits.

Following statements and discussion, the Chairman asked if any Member wished to discuss a recommended penalty for the City Manager to consider. The Executive Secretary asked if the Board would confirm the finding of guilty of the charges for the record. Chairman Silverman asked the Board for a motion of guilty on one of the charges. Member Moy asked Officer Calixto if he had seen the charges in the reprimand, and asked if he was in agreement with them. Officer Calixto responded that he was not in agreement. Chairman Silverman stated that Officer Calixto was putting the Board in an awkward situation, since it seems after his presentation that he has changed his mind regarding agreeing with the charges and only debating the penalty. He went on to say that if he wanted a hearing on the charges, then the Board could accommodate him, but he had to make the decision.

Member Harris stated that what she heard Officer Calixto say is that he does not contest the facts, but that he does not agree with the charges per se. Chairman Silverman responded that given that distinction, the Board should go through the charges and make a ruling on each. Under discussion, Member Banos stated that based on the presentation by both sides, he would say that just because someone comes to your house and you don't answer the door, it doesn't mean that you are not home. Member Harris stated that she would like to ask Officer Calixto some questions before the Board considers the charges, then proceeded to ask for each charge, whether Officer Calixto agreed that he was guilty. Officer Calixto responded each time that he was not guilty and explained why he felt that he did not violate the departmental order or rule.

Member Banos stated that since the employee denied each charge, he asked if the department wished to put on a case. Assistant City Attorney Richard responded that in this case, they would have to have a regular hearing and have all testimony submitted under oath, since none of the statements and responses provided thus far were given under oath. She went on to say that her witnesses were present and available to testify.

Chairman Silverman asked the Board what they wished to do at this time. Member Banos stated that based on what he's heard thus far, he would find the Appellant not guilty. Chairman Silverman stated that the Board would take a break and begin the hearing.

Following the break, Chairman Silverman stated that he was advised that a settlement agreement had been reached and asked Officer Calixto to confirm. Officer Calixto responded in the affirmative.

No further discussion took place on this matter.

SETTLED : The matter will be removed from the Board's docket following submission of the Settlement Agreement.

H.2

Hearing of Appeal on behalf of Silvia Benitez, Emergency Dispatcher, relative to her 120-hour suspension, effective May 27, 2013.

Michael Braverman, Attorney on behalf of Ms. Benitez, appeared before the Board and requested a continuance. Chairman Silverman asked if the department had an objection, to which Assistant City Attorney Richard responded in the negative. Member Banos asked if today was the first time that the matter had been scheduled, to which

Attorney Braverman responded in the affirmative.

Following discussion, the Board entered a motion to GRANT the Continuance on behalf of the employee, which resulted as follows:

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

Aye: Silverman, Moy, Baños and Harris

ADJOURNMENT:

The meeting ADJOURNED at 11:01 AM. A break was taken from 10:47-10:59 AM.

SIGNATURE:

Gerald Silverman, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary