

City of Miami

*City Hall
3500 Pan American Drive
Miami, FL 33133
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Meeting Minutes

Tuesday, October 14, 2014

10:00 AM

Commission Chambers

Civil Service Board

*Lillie Harris, Chairperson
Troy Sutton, Chief Examiner
Javier Baños, Board Member
Vishwani Ramlal, Board Member
William W. Riley, Board Member*

PLEDGE OF ALLEGIANCE

The meeting was called to order at 10:02 a.m. At the commencement of the meeting, Roll Call was as follows:

Present: Chairperson Harris, Member Baños, Member Ramlal and Chief Examiner Sutton

Absent: Member Riley

A. APPROVING THE MINUTES OF:

Regular Meeting of September 30, 2014

The Board entered a motion to approve the minutes of the September 30, 2014 meeting, which resulted as follows:

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

Aye: Ramlal, Baños, Sutton and Harris

Absent: Riley

B. PERSONNEL MATTERS**C. MILITARY LEAVES OF ABSENCE**

- C.1 Michelangelo Rojas, Police Officer, requests active duty military leave without pay for 360 days from October 5, 2014 through September 30, 2015. Copy of Orders submitted. (DISCUSSION)

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

Aye: Ramlal, Baños, Sutton and Harris

D. DISCIPLINARY MATTERS

- D.1 Copy of a letter from Manuel Orosa, Director, Department of Police, notifying Kenneth Rodriguez, Police Officer, of his 10-Hour Suspension, Effective October 8, 2014.

NOTIFIED

- D.2 Copy of a letter from Manuel Orosa, Director, Department of Police notifying James Fraser, Police Officer of his 10-Hour Forfeiture, Effective October 3, 2014.

NOTIFIED

E. GENERAL ITEMS**F. REPORTS**

F.1 Pending Hearings as of October 14, 2014. (NOTIFICATION)

PRESENTED

G. REQUESTS FOR HEARINGS

G.1 Copy of letter from Attorney Osnat K. Rind requesting an appeal hearing on the City Manager's decision in the investigation hearing on behalf of Lewis Mahoney, Park Manager II. (DISCUSSION)

Chair Harris asked if anyone was present on this matter. Attorney Osnat K. Rind, appeared before the Board on behalf of Lewis Mahoney and requested that this matter be continued to the next Board meeting due to a pending public records request regarding this issue. Without objection, the Board entered a motion to continue this matter which resulted as follows:

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

Aye: Ramlal, Baños, Sutton and Harris

Absent: Riley

H. TODAY'S HEARINGS

H.1 Hearing of Appeal on behalf of Francisco Gonzalez, Zoning Plans Reviewer, concerning his 1-day suspension, effective December 2, 2013.

Chair Harris asked for the status on this matter. Assistant City Attorney Stephanie Panoff ("ACA Panoff"), appeared before the Board and requested a continuance in this matter on behalf of the Department. Osnat K. Rind, Attorney on behalf of Mr. Gonzalez, appeared before the Board and expressed no objections to the continuance. The Board entered a motion to GRANT A CONTINUANCE which resulted as follows:

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

Aye: Ramlal, Baños, Sutton and Harris

H.2 Hearing of Appeal on behalf of Lewis Mahoney, Park Manager II, relative to his 5-Day Suspension, effective March 4, 2014.

The Board entered into the Appeal hearing on behalf of Lewis Mahoney, Park Manager II, City of Miami Department of Parks & Recreation ("Appellant").

Appellant was represented by Osnat K. Rind, Attorney at Law, of Phillips, Richard & Rind, P.A. The Parks and Recreation Department was represented by Stephanie Panoff, Assistant City Attorney ("ACA") of the City of Miami Attorney's Office.

The Rule of Witnesses was invoked and witnesses were advised to leave the chambers and not to discuss their testimony. ACA Panoff presented opening statements. Attorney Rind deferred opening statements.

Witnesses for the Department appeared in the following order:

1. *Lara De Souza, Deputy Director, Department of Parks and Recreation. Questions were posed by Members Banos, Ramlal, Sutton and Harris.*

2. *Wesley Carroll, Parks and Recreation Coordinator, Department of Parks and Recreation. Questions were posed by Members Banos, Ramlal, Sutton and Harris.*

The Department rested its case.

Attorney Rind presented opening statements. Witnesses for the Appellant appeared in the following order:

1. *Lewis Mahoney testified on his own behalf.*

The Appellant rested his case.

The Board proceeded to discussion. Member Banos stated that the charging document incorporated several attachments and he would have preferred for the department to include the referenced information into the actual document, as opposed to referring to attachments. He also stated that he did not read the Kronos policy in the same way as Attorney Rind did, in that he reads that all employees must sign out any time that they leave the facility, and the Appellant received at least one email confirming his work schedule.

Chair Harris stated that she had challenges with both sides. She went on to say that she appreciated Appellant's straightforwardness when he admitted that he changed his work schedule on his own, but she believes that his motivation came from wanting to provide the most efficient and best service to the public; especially as he mentioned closing the park early in order to clean the bathrooms. She went on to say that in her opinion, management has a greater responsibility to ensure that subordinates have a clear understanding when it comes to communications, and that she did not appreciate witness Carroll's response that he "does not talk to Mr. Mahoney". She further advised that Mr. Mahoney may be considered a "problem employee", but in her experience as a manager, those are the ones who need the most time and attention, and managers should get a commitment from them showing that they clearly understand what is expected of them. Chair Harris also advised that she had concerns with the due process issue that was raised, in that although there was nothing presented that barred the Board from considering the charges, the reprimand includes actions from 2012, and seemed to take a long time for it to be handed down. Following discussion, the Board considered the charges individually.

Following discussion, the Board entered a motion to find the Appellant GUILTY of violating Departmental Rules 1.01, A - Work Schedule: Employees are authorized to work pre-approved schedule only, which resulted as follows:

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

Aye: Baños, Sutton and Harris

No: Ramlal

The Board entered a motion to find the Appellant GUILTY of violating Departmental Rules 1.01, A,1 - Work Schedule: Any changes require advanced authorization of immediate supervisor, which resulted as follows:

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

Aye: Baños, Sutton and Harris

No: Ramlal

The Board entered a motion to find the Appellant NOT GUILTY of violating Departmental Rules - Kronos and Sign-In/Out Procedure, B - If Kronos malfunctions, employees must follow sign-in/sign-out procedures, which resulted as follows:

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

Aye: Ramlal, Baños, Sutton and Harris

The Board entered a motion to find the Appellant NOT GUILTY of violating Departmental Rules - Kronos and Sign-In/Out Procedures: Employees cannot submit their own edits, which resulted as follows:

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

Aye: Ramlal, Baños, Sutton and Harris

The Board entered a motion to find the Appellant NOT GUILTY of violating Departmental Rules - Not Submitting Mandatory Documents Due, which resulted as follows:

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

Aye: Ramlal, Baños and Harris

No: Sutton

Chair Harris called for a motion on the charge of Not Attending Mandatory Park Manager Academies. Following a motion by Member Banos, which was seconded by Member Sutton, Chair Harris stated that she wished to explain her pending vote. She went on to say that she would be voting "No" based on the memorandum of understanding (Employee Exhibit #7 - letter from Director Burkeen), which Mr. Mahoney views as him being "grandfathered in" as it concerns his work hours.

Following discussion, the Board considered a motion to find the Appellant GUILTY of violating Departmental Rules - Not Attending Mandatory Park Manager Academies, which resulted as follows:

**Motion by Member Baños, seconded by Chief Examiner Sutton, to APPROVE.
FAILED by the following vote.**

Aye: Baños and Sutton

No: Ramlal and Harris

The Board entered a motion to find the Appellant GUILTY of violating Departmental Rules - Not Attending Mandatory Region Meetings, which resulted as follows:

**Motion by Member Baños, seconded by Chief Examiner Sutton, to APPROVE.
FAILED by the following vote.**

Aye: Baños and Sutton

No: Ramlal and Harris

The Board entered a motion to find the Appellant GUILTY of violating Civil Service Rules and Regulations, 14.2(H) - Insubordination or disgraceful conduct, which resulted as follows:

**Motion by Member Baños, seconded by Chief Examiner Sutton, to APPROVE.
FAILED by the following vote.**

Aye: Baños and Sutton

No: Ramlal and Harris

The Board entered a motion to find the Appellant GUILTY of violating Civil Service Rules and Regulations, 14.2(K) - Incompetent, Negligent or Inefficient, which resulted as follows:

**Motion by Member Baños, seconded by Chief Examiner Sutton, to APPROVE.
FAILED by the following vote.**

Aye: Baños and Sutton

No: Ramlal and Harris

Chair Harris noted the tie votes and asked if any member wished to revisit those charges. Member Banos advised that the only options would be if members wished to make (different) motions or change their votes on those charges. Chair Harris stated that she did find Mr. Mahoney guilty on the work schedule items, but she did not feel that his motivation was from a bad place. She went on to say that as managers, we have to take responsibility as well in order to ensure the success of the organization. She further stated that in regards to Civil Service Rule 14.2 (K), she does not think that Mr. Mahoney was incompetent and believes that he was trying to be efficient in his duties. Member Banos responded that he too had trouble with the degree of insubordination and that management should have been more proactive. He went on to say that in his opinion, Mr. Mahoney was at the very least negligent, and that it does not imply intent; and in fact is the opposite of intent in terms of an employee not doing what he or she is supposed to be doing. He went on to say that Mr. Mahoney, as a manager and someone with a lot of responsibility, should be proactive and could have definitely done things better.

Attorney Rind asked to make an objection for the record. She went on to say that she believes that the Board has recently been advised that a "2-2 vote" is considered a decision in favor of the employee; therefore, she would object to a reconsideration of any of the tie votes.

Following discussion, the Board entered a motion to find the Appellant NOT GUILTY of violating Civil Service Rules and Regulations, 14.2(H) - Insubordination, which resulted as follows:

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

Aye: Ramlal, Baños and Harris

No: Sutton

Having found the employee GUILTY of some charges, the Board began discussion regarding Phase 2 of the hearing process, which is to recommend a penalty. The Executive Secretary provided the Board with the report detailing no disciplinary actions. The department submitted exhibits which included three (3) Records of Formal Counseling and statements advocating support of the department's assessed penalty.

Attorney Rind provided statements reminding the Board that Mr. Mahoney was found not guilty of the majority of the charges and reiterated that there is the report which indicated no disciplinary actions in 10 years of service. She asked that the Board also consider her client's clean record in making their determination.

Chair Harris asked if Attorney Rind could share with the Board the penalty schedule for tardiness, found in the contract. ACA Panoff advised that while the Board could of course consider this information, because Mr. Mahoney changed his work schedule, they are not bound by the tardiness article in recommendation of a penalty. Attorney Rind read into the record the penalty schedule from Article 40 of the current AFSCME, Local 1907 Collective Bargaining Agreement with the City of Miami. Chair Harris stated that she regarded the incident in question as the first one and therefore the penalty should be reflective of that.

Attorney Rind reminded the Board that Records of Formal Counseling could not be appealed. Member Sutton asked if Attorney Rind was implying that the allegations made in the Records were false, to which she replied that she would have to confer with her client, but the Board should know that he is not able to defend himself against the allegations. Member Sutton replied that at this point, the Board would consider the severity of the charges and recommendations regarding a penalty, and though her client was found not guilty of most of the charges, the true penalty in this case is being paid by the taxpayers or visitors to the park, because the managers can not solve their personal differences.

Following discussion, the Board considered a motion to recommend that the City Manager SUSTAIN the penalty assessed by the department director, which resulted as follows:

**Motion by Member Baños, seconded by Chief Examiner Sutton, to APPROVE.
FAILED by the following vote.**

Aye: Baños and Sutton

No: Ramlal and Harris

The motion having failed, Chair Harris asked if there was another motion. Member Banos asked if anyone wanted to make a motion for a Reprimand only, although he was not in agreement, but it is the lowest penalty that the Board could recommend. Member Sutton stated that Mr. Mahoney was found not guilty on most of the charges, and (in one case) he was AWOL, although Mr. Mahoney's contract does not use that term. He went on to say that the taxpayers did not have a manager on site. Member Sutton went on to say that he is pro-employee and wants everyone to be protected and treated fairly; however, Mr. Mahoney did not show up 5-6 Saturdays and he is a manager, and the Board has to agree that he did something wrong.

Following continued discussion, the Board considered a motion to recommend that the employee receive a 20-hour Suspension, which resulted as follows:

**Motion by Member Baños, seconded by Chief Examiner Sutton, to APPROVE.
FAILED by the following vote.**

Aye: Baños and Sutton

No: Ramlal and Harris

The motion having failed, Chair Harris asked if anyone had another motion. Member Ramlal stated that in her opinion there is fault on both sides, but that the employee's evidence did confirm his statements regarding issues with Kronos. She went on to say that management did not do their due diligence in reviewing Mr. Mahoney's time and

attendance, and did not reprimand him when the issues first started. She concluded by saying that because there is fault on both sides, she would recommend that the Appellant not receive any penalty. The motion DIED for lack of a second.

Chair Harris stated that she is a big proponent of progressive discipline and she regards this as a one-time incident. She went on to say that the City Manager has jurisdiction to [sustain, reverse or modify the action of the director], but she hopes that he considers the Board's recommendation and the reasons therefore when he makes his decision. Member Sutton stated that he believes that discipline is to correct behavior and for the Board to find an employee guilty of something but recommend no discipline is one-sided, and will not correct the employee's future behavior. He went on to say that he wants the City Manager to listen to the Board and accept its recommendations, but he will likely sustain the 5-day suspension.

Following continued discussion, the Board considered a motion to recommend that the employee receive a REPRIMAND, with no further penalty, which resulted as follows:

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

Aye: Ramlal, Baños and Harris

No: Sutton

ADJOURNMENT

The meeting adjourned at 4:37 p.m.

SIGNATURE:

Lillie Harris, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary