

City of Miami

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



Meeting Minutes

Tuesday, October 15, 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 10:03 am. The roll call at the commencement of the meeting was as follows:

Present: Chairperson Silverman, Chief Examiner Moy and Member Baños

Absent: Member Harris

A. APPROVING THE MINUTES OF:

Regular Meeting of October 1, 2013.

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

Aye: Silverman, Moy and Baños

Absent: Harris

B. PERSONNEL MATTERS

- B.1** Copy of a memorandum from Keith Carswell, Director, Department of Solid Waste, requesting to extend the probationary period of Daemon Covington, Sanitation Supervisor, for three (3) additional months beyond November 5, 2013. (DISCUSSION)

The Executive Secretary advised that this item had been withdrawn by the department.

WITHDRAWN

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

- D.1** Copy of a letter from Chief Maurice Kemp, Director, Department of Fire Rescue, notifying Julio Dominguez, Fire Lieutenant, of his 24-hour forfeiture, effective September 26, 2013. (NOTIFICATION)

NOTIFIED

- D.2** Copy of a letter from Chief Maurice Kemp, Director, Department of Fire Rescue, notifying Marlon Lopez, Firefighter, of his 48-hour forfeiture, effective October 7, 2013. (NOTIFICATION)

NOTIFIED

- D.3** Copy of a letter from Chief Maurice Kemp, Director, Department of Fire Rescue, notifying Gianna Morra, Firefighter, of his 120-hour suspension, effective October 13, 2013. (NOTIFICATION)

NOTIFIED

- D.4 Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Jerome Williams, Police Officer, of his 10-hour suspension, effective October 11, 2013. (NOTIFICATION)

NOTIFIED

- D.5 Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Elvin Guzman, Police Officer, of his 10-hour forfeiture, effective October 8, 2013. (NOTIFICATION)

NOTIFIED

- D.6 Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Ricardo De Armas, Police Officer, of his 10-hour suspension, effective October 11, 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)
Status update regarding settlement agreement, announced September 17, 2013.

Eugene Gibbons, Attorney on behalf of John Kocur, appeared before the Board and advised that he was providing a drafted Settlement Agreement to Assistant City Attorney Richard at this meeting.

Without objection, the Chairman directed the Executive Secretary to carry the matter over in accordance with the Board's Continuance Policy.

DISCUSSED

- E.2 Hearing of Appeal on behalf of Jeffrey Locke, Police Lieutenant, relative to his 20-hour suspension, effective February 25, 2009. (DISCUSSION)
Status update regarding settlement agreement, announced September 17, 2013.

Teri Guttman Valdes, Attorney on behalf of Jeffrey Locke, appeared before the Board and advised that she had just reviewed the drafted Settlement Agreement and has to return it to Assistant City Attorney Richard for correction of one item. She went on to say that the document should be signed within a few weeks.

Without objection, the Chairman directed the Executive Secretary to carry the matter over in accordance with the Board's Continuance Policy.

DISCUSSED

F. REPORTS

- F.1 Pending Hearings as of October 15, 2013. (NOTIFICATION)

G. REQUESTS FOR HEARINGS**G.1**

Copy of a Request for Grievance Hearing from Michael Braverman, Attorney, on behalf of Eduardo Falcon, pursuant to Rule 16.2, alleging violations of Civil Service Rules 5.4- Disqualification, 6.2- Promotional Examinations and 8.4- Certification from Promotional Competitive Registers. (DISCUSSION)

Michael Braverman, Attorney on behalf of Eduardo Falcon, appeared before the Board and stated that his client was requesting this hearing in accordance with Rule 16.2, citing a violation of several Rules (Rules 5.4, 6.2 and 8.4), as it concerns being removed from an interview process (for the classification of Police Records Supervisor). He went on to say that although in their letter they requested a preliminary hearing by the Chief Examiner, he thought it best for the sake of time, for the Board to just hear the matter outright.

Assistant City Attorney Richard stated that she needs clarity on how the Rules cited were violated, as two of them appear to have nothing to do with this matter. She went on to say that she did not want to have the hearing set and then later be surprised with allegations of new or different Rules being violated, if these in fact are not applicable.

Attorney Braverman responded that he believed that his letter (requesting the hearing) set out the facts and the rationale being used to request the hearing, as well as the Civil Service Rules that they believe were violated.

Member Banos stated that he read Attorney Braverman's letter and is fine with granting a hearing. Chairman Silverman asked if Attorney Braverman could finish his statement to the Board, then he would request a motion.

Attorney Braverman stated that he appreciated Member Banos' agreement, and he wanted to make one more point. He went on to say that this hearing must be expedited as there are individuals slated for appointment very soon, and seemingly this employee would be precluded from being considered for that appointment.

Member Banos asked what the timetable was (for appointment), to which Attorney Braverman responded that he did not know, but that the [Monitor's memo] was dated and sent to Human Resources on September 10, 2013.

Chairman Silverman asked for the department's final word. ACA Richard responded that Rule 6.2 did not apply as this was not a promotional examination, and Rule 8.4 did not apply as this was not a promotional competitive position. She further stated that under Rule 5.4, the Human Resources Director has the authority to disqualify an applicant, which is contrary to Attorney Braverman's letter.

Member Banos stated that those were all excellent points that can be brought up at the hearing; then reiterated his question regarding the timetable. ACA Richard responded that she did not know, but she would like that those bases she mentioned be stricken from the employee's request, so that the department does not have to spend valuable time preparing for a hearing concerning the violation of Rules that are not relevant. She went on to advise that in the past, the Board has always set the parameters for a Rule 16 hearing, so that everyone was clear as to what the Board would be considering.

Following further discussion, the Board entered a motion to GRANT the Grievance hearing on behalf of Eduardo Falcon as requested, 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 and Baños

Absent: Harris

Following the vote, Chairman Silverman asked if the parties could possibly meet before the hearing to narrow the issues.

SECOND ROLL CALL:

Member Harris arrived at approximately 10:20am, at which point a second roll call took place.

Present: Chairperson Silverman, Chief Examiner Moy, Member Harris and Member Baños

H. TODAY'S HEARINGS

H.1

Hearing of Appeal on behalf of Yatha Legrand, Police Officer, relative to her 30-hour suspension, effective January 25, 2012.

The Board entered into the scheduled hearing of appeal on behalf of Yatha Legrand, the Appellant.

Janeen Richard, Assistant City Attorney (ACA) represented the Department of Police.

Eugene Gibbons, Attorney at Law, represented the Appellant.

Assistant City Attorney Richard presented an opening statement. Attorney Gibbons deferred his opening statement. Witnesses for the Department appeared in the following order:

1. Allen Davis, Police Sergeant, City of Miami, Department of Police. Questions were posed by Members Banos and Moy during the testimony of Allen Davis.

2. Lazaro Ferro, Police Commander, City of Miami, Department of Police. Questions were posed by Members Moy and Harris during the testimony of Lazaro Ferro.

The Department rested its case.

Attorney Gibbons waived opening statements. Witnesses for the Appellant appeared in the following order:

1. Viona Browne-Williams, Police Officer, City of Miami, Department of Police. Questions were posed by Member Harris during the testimony of Viona Browne-Williams.

2. Yatha Legrand testified on her on behalf.

The Appellant rested her case.

ACA Richard asked if based on the testimony of the Appellant, she could call Sergeant Rotolo (who was referenced by Appellant during her testimony) who would have to testify by phone. Attorney Gibbons stated that for various reasons he thought it was improper to allow for a witness to testify by phone, and that the Board should not allow it. He went on to say that if the Board was going to allow phone testimony, he intended to use [that method] a lot.

Member Banos stated that he would like to give everyone the benefit of the doubt, but he was really uncomfortable with allowing testimony by phone. He further stated that he felt the Board would be "opening Pandora's Box" (if it allowed testimony via phone).

Chairman Silverman then asked for the Board to have discussion, then vote on whether to allow this witness testimony by phone. Before the vote, Member Harris asked how soon the witness might be able to get to City Hall. ACA Richard responded that the Board allows testimony by phone and hearsay is also allowed, so there really are no strict rules of evidence. Member Banos stated that as counsel said, this is opening "Pandora's Box", and if the Board were to allow testimony by phone, then the Board could have hearings via Skype. He went on to say that his basic perspective is the attorneys had an opportunity to subpoena witnesses, and although this matter came up from the Appellant's testimony, ACA Richard was asking the Board to bend over backwards in order to allow this testimony, and the Board could not swear the witness in. He went on to say that there is a difference between hearsay and this.

Chairman Silverman stated that he overruled the objection (of Attorney Gibbons), and at this time, if the Board wanted to vote to overrule the action of the Chair, they could do so. Following discussion, the Board entered a motion to **OVERRIDE THE RULING OF THE CHAIR** and deny the testimony by phone of the department's witness, which resulted as follows:

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

Aye: Moy and Baños

No: Silverman and Harris

Following the tie vote, Chairman Silverman advised that the decision of the Chair was not overruled and the witness could testify by phone.

The department called the following as a Rebuttal witness:

1. Annette Rotolo, Police Sergeant, City of Miami, Department of Police (testified by phone).

Member Moy asked if there was a Civil Service Rule that allowed testimony by phone. Chairman Silverman responded that he had already ruled on the matter and the Board discussed the matter and did not overrule his decision. Attorney Gibbons asked what the Rule was that allowed this. Chairman Silverman responded that they were not going to rehash the discussion, and asked the attorneys if there were no other rebuttal witnesses to present their final arguments.

The Board proceeded to closing arguments that were presented by both attorneys. Following final argument, Member Banos stated that he wanted to make a motion to strike the testimony of [Sergeant Rotolo], based on the Board's procedures manual, in that under "Exchange of Information", the parties of a Civil Service hearing must

disclose to each other, at least 5 business days in advance, those witnesses each intends to call to testify at a hearing by phone; and that failure to disclose this list may result in the exclusion of witnesses or documents. He went on to say that in this case, he did not believe that there was 5-day notice of [the department's] intent to call the witness, and asked ACA Richard if she had notified the employee of her intent. ACA Richard responded that the witness was called as a rebuttal (to testimony presented today). Member Banos interrupted and asked for a "yes" or "no" response and asked again if ACA Richard followed the rule. ACA Richard responded that she did not know what the hostility was about, but it was not a simple "yes" or "no" answer. Chairman Silverman asked Member Banos to let ACA Richard respond. ACA Richard stated that again, she did not know where the hostility was coming from, but she only called the witness in rebuttal (of testimony provided by the employee). She went on to say that in [Civil Service cases] there is no discovery or exchange of information; that the City is presented with what is in the Reprimand and did not have any knowledge that the employee was going to testify that she received blanket authority from Sgt. Rotolo, who is no longer the employee's supervisor. She went on to say that she thinks there should be more leeway for a witness who is brought up at a hearing, to rebut testimony when there is no idea that [said testimony] is going to be brought up. Following further discussion between Member Banos and ACA Richard, Chairman Silverman ruled that Member Banos' motion was out of order.

Attorney Gibbons stated that Chairman Silverman was ignoring the Board's own rules and he wanted everyone to hear it. Chairman Silverman asked for the Board to discuss the case.

Chairman Silverman stated that to him, this was a simple case; the Appellant was out of the area and did not have permission.

Member Moy stated that he felt that Sgt. Rotolo's testimony is not credible and not proper, and believes that the Board has opened "Pandora's Box" in allowing testimony by phone. He went on to say that he believed Sergeant Davis' testimony to be credible. Officer Legrand was late to the scene, however Unit 4312 (a different officer) was the unit initially raised, although others were also called, and [according to Commander Ferro's testimony,] the only discipline [Unit 4312] received was a formal counseling, and there was some discrepancy there.

Member Banos stated that in his view, the testimony by Sergeant Rotolo is inadmissible, and that the charges seem to hinge on whether the officer received permission to be out of her zone, because if she did, whether implicitly or explicitly, then in his view, she is not guilty of any of the charges. He went on to say that based on what was presented today, he could not support a guilty vote on any of the charges.

Chairman Silverman stated that the fact that one officer received a heavier penalty than another is not the Board's issue to consider at this time. He went on to say that there is no question that the Appellant was out of her zone, but the question is whether she had authority to be out of her zone, [because] her testimony is "in general", the Sergeant said [going outside of the zone] is okay. He stated that the Appellant's testimony is also that Sergeant Rotolo was not working that day, so that particular day, the Sergeant could not have given her permission. He went on to stay that the Appellant's defense is that in general the Sergeant has given the officers permission to leave their zone, and if the Members buy that then fine, but he does not.

Following discussion, the Board entered a motion to find the Appellant NOT GUILTY of violating D.O. 1, Ch. 11.6.17.16 - Not Properly Patrolling or Guarding a Post, which resulted as follows:

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

Aye: Moy and Baños

No: Silverman and Harris

The motion having failed, the Board entered a motion to find the Appellant GUILTY of violating D.O. 1, Ch. 11.6.17.16 - Not Properly Patrolling or Guarding a Post, which resulted as follows:

**Motion by Chairperson Silverman, seconded by Member Harris, to APPROVE.
FAILED by the following vote.**

Aye: Silverman and Harris

No: Moy and Baños

The Board entered a motion to find the Appellant NOT GUILTY of violating D.O. 4, Ch. 2.4.1 - Responsible for Radio Information, which resulted as follows:

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

Aye: Moy and Baños

No: Silverman and Harris

The motion having failed, the Board entered a motion to find the Appellant GUILTY of violating D.O. 4, Ch. 2.4.1 - Responsible for Radio Information, which resulted as follows:

**Motion by Chairperson Silverman, seconded by Member Harris, to APPROVE.
FAILED by the following vote.**

Aye: Silverman and Harris

No: Moy and Baños

The Board entered a motion to find the Appellant NOT GUILTY of violating D.O. 4, Ch. 2.5.2 - Monitor Radios at All Times, which resulted as follows:

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

Aye: Moy and Baños

No: Silverman and Harris

The motion having failed, the Board entered a motion to find the Appellant GUILTY of violating D.O. 4, Ch. 2.5.2 - Monitor Radios at All Times, which resulted as follows:

**Motion by Chairperson Silverman, seconded by Member Harris, to APPROVE.
FAILED by the following vote.**

Aye: Silverman and Harris

No: Moy and Baños

The Board entered a motion to find the Appellant NOT GUILTY of violating D.O. 11, Ch. 2.23.2 - Advising Any Changes, which resulted as follows:

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

Aye: Moy and Baños

No: Silverman and Harris

The motion having failed, the Board entered a motion to find the Appellant GUILTY of violating D.O. 11, Ch. 2.23.2 - Advising Any Changes, which resulted as follows:

**Motion by Chairperson Silverman, seconded by Member Harris, to APPROVE.
FAILED by the following vote.**

Aye: Silverman and Harris

No: Moy and Baños

The Board entered a motion to find the Appellant NOT GUILTY of violating D.O. 11, Ch. 2.3.5 - Authorization to Leave Zone, which resulted as follows:

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

Aye: Moy and Baños

No: Silverman and Harris

The motion having failed, the Board entered a motion to find the Appellant GUILTY of violating D.O. 11, Ch. 2.3.5 - Authorization to Leave Zone, which resulted as follows:

**Motion by Chairperson Silverman, seconded by Member Harris, to APPROVE.
FAILED by the following vote.**

Aye: Silverman and Harris

No: Moy and Baños

The Board entered a motion to find the Appellant NOT GUILTY of violating D.O. 1, Ch. 11.6.17.16 - Not Properly Patrolling or Guarding a Post, which resulted as follows:

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

Aye: Moy and Baños

No: Silverman and Harris

The motion having failed, the Board entered a motion to find the Appellant GUILTY of violating D.O. 1, Ch. 11.6.17.16 - Not Properly Patrolling or Guarding a Post, which resulted as follows:

**Motion by Chairperson Silverman, seconded by Member Harris, to APPROVE.
FAILED by the following vote.**

Aye: Silverman and Harris

No: Moy and Baños

The Board entered a motion to find the Appellant GUILTY of violating D.O. 11, Ch. 2.4.2 - Patrolling Zones, which resulted as follows:

**Motion by Member Harris, seconded by Chairperson Silverman, to APPROVE.
FAILED by the following vote.**

Aye: Silverman and Harris

No: Moy and Baños

The motion having failed, the Board entered a motion to find the Appellant NOT GUILTY of violating D.O. 11, Ch. 2.4.2 - Patrolling Zones, which resulted as follows:

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

Aye: Moy and Baños

No: Silverman and Harris

The Board entered a motion to find the Appellant NOT GUILTY of violating Civil Service Rule 14.2(e) - Breach of Proper Discipline, which resulted as follows:

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

Aye: Moy and Baños

No: Silverman and Harris

The Board entered a motion to find the Appellant GUILTY of violating Civil Service Rule 14.2(e) - Breach of Proper Discipline, which resulted as follows:

**Motion by Chairperson Silverman, seconded by Member Harris, to APPROVE.
FAILED by the following vote.**

Aye: Silverman and Harris

No: Moy and Baños

Having reached tie votes on all charges, the Chairman announced that Board could not agree and directed the Executive Secretary to RESCHEDULE this hearing following appointment of a fifth Board Member.

H.2

Hearing of Appeal on behalf of Viona Browne-Williams, Police Officer, relative to her 10-hour suspension, effective February 7, 2013.

The Board entered into the scheduled hearing of appeal on behalf of Viona Browne-Williams, the Appellant.

Janeen Richard, Assistant City Attorney (ACA) represented the Department of Police.

Eugene Gibbons, Attorney at Law, represented the Appellant.

Assistant City Attorney Richard presented an opening statement. Attorney Gibbons deferred his opening statement. Witnesses for the Department appeared in the following order:

1. Anita Najiy, Commander, City of Miami, Department of Police.

The Department rested its case.

Witnesses for the Appellant appeared in the following order:

1. Viona Browne-Williams testified on her on behalf. Questions were posed by Board Member Moy 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 stated that he went over the charges cited and the fact that the Appellant held a pink phone during the month of October should not be considered a violation (as it is Breast Cancer Awareness month, when a number of people/organizations have pink items to show awareness). He went on to say that based on the testimony that Officer Browne-Williams provided, he thinks that when she responded to Commander Najiy, she was asking for clarification more than anything else. He went on to say that the superior officer (Commander Najiy) being somewhat forceful in her delivery should be conscious of the response she is going to get when she does that. Member Banos stated that the only question in his mind was in regards to the first charge, involving telephone usage. He then went on to read part of the Departmental Order in question. He went on to say that his issue is whether the phone conversation (between Appellant and Officer Hicks) was essential or work-related. Member Banos asked if the Board could hear from Member Harris regarding her impressions, given that she has far more experience in this forum than he has.

Chairman Silverman stated that he believed that the Appellant was not guilty of any charges.

Member Banos stated that given the Chairman's impressions, he would make a motion to find the Appellant not guilty of all of the charges.

Following discussion, the Board entered a motion to find the Appellant NOT GUILTY of all of the charges, 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 and Baños

No: Harris

ADJOURNMENT:

*There being no further business before the Board, the meeting adjourned at 1:55pm.
Breaks were taken at 10:12-10:25am; 11:02-11:14am; 12:01-12:05pm; 1:17pm-1:22pm.*

SIGNATURE:

Gerald Silverman, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary