

City of Miami

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



Meeting Minutes

Tuesday, October 28, 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 10:07 a.m. At the commencement of the meeting, Roll Call was as follows:

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

A. APPROVING THE MINUTES OF:

Regular Meeting of October 14, 2014.

The Board entered a motion to approve the minutes of the October 14, 2014 meeting, which resulted as follows:

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

Aye: Ramlal, Riley, Baños, Sutton and Harris

B. PERSONNEL MATTERS

- B.1** Request from Joseph Rodriguez, Firefighter, to receive retroactive seniority credit for prior service, pursuant to Rule 12.4. (DISCUSSION)

Joseph Rodriguez appeared before the Board for approval of his request for previous time in grade seniority credits. Member Banos asked if the requirements were met, and the Executive Secretary responded in the affirmative.

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

Aye: Ramlal, Riley, Baños, Sutton and Harris

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

- D.1** Copy of a letter from Chief Manuel Orosa, Director, Department of Police notifying Walter Byars, III, Police Officer of his 20-Hour Suspension, effective October 15, 2014. (NOTIFICATION)

NOTIFIED

- D.2** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Dayanna Frederick, Police Officer, of her 10-hour forfeiture, effective October 24, 2014. (NOTIFICATION)

NOTIFIED

E. GENERAL ITEMS

- E.1** Copy of Findings of Fact concerning the Hearing of Appeal on behalf of Lewis Mahoney, Park Manager II, relative to his 5-Day Suspension, effective March 4, 2014. (DISCUSSION)

Chair Harris announced that before approving the Findings, the Board Members should know that she will be changing her vote in this matter. She went on to say that she had not discussed her vote change with anyone, and confirmed that she will change her vote to not guilty (in the two charges where she voted guilty).

Osnat K. Rind, attorney on behalf of Mr. Mahoney, appeared before the Board and clarified that the Work Schedule violation is the charge Chair Harris referred to. Chair Harris also confirmed the correct charge. Member Banos announced that he also requested revisions to the Findings.

Attorney Rind stated that she discussed the Findings with ACA Panoff and they have also agreed to make changes to the Findings and (given Chair Harris' announcement) it may be helpful to wait for new Findings. Member Banos suggested that the approval of the Findings be tabled and approved at the next Board meeting. Member Banos referred to the Executive Secretary for direction regarding the vote change. The Executive Secretary responded that she and special counsel are researching the matter due to lack of a procedure in place, since there is none (for a member changing their vote after a meeting). Chair Harris stated that a vote change has happened before during the same meeting. She stated that she did not have enough time to change her vote the last meeting. Member Banos suggested that the Board attorney review the issue to see if a procedure needs to be put in place and what precedent it sets, as well as the effect the Chair's change of vote will have on the outcome of this issue. Member Banos then made a motion to table the approval of the Findings.

Chair Harris stated that approval of the Findings and changing her vote were two different issues. Chair Harris stated that she would not table changing her vote, Member Banos re-stated his motion to table the approval of the Findings until the next meeting so that Special Counsel can determine the effect that the change of vote will have on the Findings and to have the decision by next meeting. Special Counsel cited and read to the Board from "Robert's Rules of Order", Section 45, regarding members changing votes at the time the results are announced, or afterwards by unanimous consent. Chair Harris stated that she would not delay changing her vote and requested Member Banos to re-state his motion. Attorney Rind asked if Robert's Rules was cited in the Civil Service Rules. Member Banos stated that it was incorporated in a previous meeting that the Board would follow Robert's Rules. Chair Harris stated that she does not recollect a unanimous decision by the Board to follow Robert's Rules. She went on to say that precedent has already been established as to a vote change and reiterated that she is changing her vote. Member Riley asked Special Counsel Mevers if she required additional time to research the issue. Special Counsel Mevers responded in the affirmative, and asked the Board to move the item until the end of the meeting.

Local 1907 Union President Sean Moy appeared before the Board and advised that in a previous appeal hearing case on behalf of Meredith Nation, (as a sitting Board Member) he was allowed to change his vote at a subsequent meeting. Member Banos stated that his opinion is to delay the vote on the Findings. Member Banos further stated that the procedure he has seen is that a motion for re-consideration of a vote is approved at the same meeting, then the Board goes forward, which is completely appropriate.

Special Counsel Mevers stated that she agrees with Member Banos that this matter should be addressed at the next Board meeting to allow her time to look into the issue regarding the prior change in votes and any results of the vote being overturned due to any lawsuits being filed. Attorney Rind asked the Board if the matter was being deferred until the next meeting. Chair Harris stated that she will not second the offered motion and reiterated that she is changing her vote which will affect the findings. Member Banos asked if anyone would second his motion. Member Ramlal seconded the motion. Member Banos asked the Board's special counsel to make his suggested changes to

the findings. Attorney Rind asked if the changes to the Findings could also be sent to her for review.

Following discussion, the Board considered the motion to carry this matter over to the next meeting, which resulted as follows:

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

Aye: Ramlal, Baños, Sutton and Harris

Abstain: Riley

F. REPORTS

F.1 Pending Hearings as of October 28, 2014. (NOTIFICATION)

PRESENTED

G. REQUESTS FOR HEARINGS

G.1 Copy of letter from Attorney Osnat K. Rind to request an Appeal of the City Manager's decision in the investigation hearing on behalf of Lewis Mahoney, Park Manager II. (DISCUSSION)
Continued from the meeting of October 14, 2014.

Attorney Osnat K. Rind appeared before the Board regarding this issue and announced that this request was being withdrawn.

WITHDRAWN

H. TODAY'S HEARINGS

H.1 Hearing of appeal on behalf of Carlos Antunez, Police Officer, relative to his 40-hour suspension, effective June 1, 2009.

The Board entered into the Appeal Hearing on behalf of Carlos Antunez. Ronald J. Cohen, Attorney, Rice Pugatch Robinson & Schiller, P.A. represented the Appellant. Stephanie Panoff, Assistant City Attorney, Office of the City Attorney, represented the Department.

Opening statements were presented by both parties.

Prior to the Department's first witness Member Banos asked the Board's attorney if there was a statute of limitations, since the issue from which the reprimand stems is from 2008. Special Counsel Meevers responded that the employee has a right to bring the appeal and (under Rule 14 there is no statute of limitations) it can be heard.

Member Riley asked Special Counsel if hearsay evidence was admissible in this quasi-judicial hearing proceeding. Special Counsel responded in the affirmative. Attorney Cohen stated that hearsay evidence may be admissible but findings cannot be based solely on hearsay evidence. Chair Harris advised Attorney Cohen that his comment has been duly noted.

Witnesses for the Department appeared and were sworn-in in the following order:

(1) Orlando Lopez, Police Sergeant, Miami Dade County Police Department.

(2) Ramon Hernandez, Police Officer, City of Miami, Department of Police, Homicide Unit (formerly Internal Affairs).

The Department rested its case.

Member Banos moved to find the employee not guilty of the charges, which died for lack of a second.

The motion having failed, the Appellant presented witnesses in the following order:

(1) Carlos Gutierrez, Private Citizen.

The Appellant rested its case.

The Board entered into discussion regarding whether to allow the entry of certain testimony and exhibits. Chair Harris announced that she would be voting not guilty on all of the charges.

Following discussion, the Board entered a motion to find the Appellant NOT GUILTY of violating Departmental Order 1, Chapter 11.6.5.11- Off Duty Arrests, which resulted as follows:

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

Aye: Ramlal, Riley, Baños, Sutton and Harris

The Board entered a motion to find the Appellant NOT GUILTY of violating Departmental Order 1, Chapter 11.6.13.8 - Conduct Unbecoming, which resulted as follows:

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

Aye: Ramlal, Baños, Sutton and Harris

No: Riley

Member Sutton asked questions to Attorney Cohen regarding the issuance of the tickets. Member Banos provided explanation of the incident. Member Riley reviewed and made comments about the evidence entered.

Following discussion, the Board entered a motion to find the Appellant NOT GUILTY of violating Departmental Order 1, Chapter 11.6.13.18 - Personal Disputes, 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: Riley and Sutton

The Board entered a motion to find the Appellant NOT GUILTY of violating Departmental Order 1, Chapter 11.6.29.5 - Jurisdictional Authority, which resulted as follows:

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

Aye: Ramlal, Baños, Sutton and Harris

No: Riley

The Board entered a motion to find the Appellant NOT GUILTY of violating Departmental Order 11, Chapter 16.3.4 - Responsibilities, which resulted as follows:

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

Aye: Ramlal, Riley, Baños, Sutton and Harris

The Board entered a motion to find the Appellant NOT GUILTY of violating Departmental Order 11, Chapter 16.4.1 - Procedures, which resulted as follows:

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

Aye: Ramlal, Riley, Baños, Sutton and Harris

The Board entered a motion to find the Appellant NOT GUILTY of violating Departmental Order 11, Chapter 16.4.28.3 - Arrest Affidavit, which resulted as follows:

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

Aye: Ramlal, Riley, Baños, Sutton and Harris

The Board entered a motion to find the Appellant NOT GUILTY of violating Civil Service Rules and Regulations 14.2(e)2 - Breach of Proper Discipline, 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: Riley and Sutton

The Board entered a motion to find the Appellant NOT GUILTY of violating Civil Service Rules and Regulations 14.2(e)3 - Loss/Injury to City, which resulted as follows:

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

Aye: Ramlal, Riley, Baños, Sutton and Harris

The Board entered a motion to find the Appellant NOT GUILTY of violating Civil Service Rules and Regulations 14.2(h) - Disgraceful Conduct, which resulted as follows:

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

Aye: Ramlal, Riley, Baños, Sutton and Harris

H.2

Hearing of Appeal on behalf of Quateca Kirksey, Police Officer, relative to her 20-hour suspension, effective April 2, 2014.

Chair Harris asked if the parties were prepared to hear this matter today. Eugene Gibbons, attorney on behalf of Ms. Kinsey, appeared before the Board and responded that the employee was ready to proceed. Assistant City Attorney Stephanie Panoff appeared and responded that the department was also ready to proceed.

RECESS

Following a brief recess Member Banos moved to continue the appeal hearing, however, the motion failed for lack of a second. Attorney Gibbons approached and informed the Board that they would like their case to be heard and requested to stay on the Board's current agenda. Chair Harris excused Attorney Gibbons and his client until noon. Assistant City Attorney Panoff advised the Board that her witnesses in this matter would be arriving at 1:00 pm.

RECESS

Following another recess later in the day, Attorney Gibbons requested that this matter be continued. He went on to state that he has been at the meeting since 10:00 a.m.

The Board entered a motion to CONTINUE this matter and charge the continuance to the Board, due to a lack of time, which resulted as follows:

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

Aye: Ramlal, Riley, Baños, Sutton and Harris

NON AGENDA**Civil Service Board's Calendar**

Member Banos noted the number of hearings scheduled per Board meeting (two to three), and since the Board is only able to hear one case per meeting, he suggested that only one hearing be scheduled for each meeting date. The Executive Secretary asked member Banos if he was instructing her to reschedule the hearings currently listed on the Board's schedule. Member Banos stated that he did not want multiple cases per Board meeting. The Executive Secretary explained that she wanted the attorneys to understand what Member Banos was asking for. Attorney Gibbons asked that a maximum of two hearings be scheduled per meeting. The Executive Secretary responded that she would revise the Board's docket as requested.

DISCUSSED

ADJOURNMENT

The meeting adjourned at 3:51 p.m.

SIGNATURE:

Lillie Harris, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary