

City of Miami

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

Tuesday, November 12, 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 10:03am, with the Pledge of Allegiance. The attendance was as follows:

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

A. APPROVING THE MINUTES OF:

Regular Meeting of October 29, 2013.

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 Jorge H. Gomez, Assistant Chief, Department of Police, requesting to extend the probationary period of Douglas Duenas, Police Officer, for two (2) additional months beyond January 23, 2014. (DISCUSSION)

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

Aye: Silverman, Moy, Baños and Harris

- B.2** A copy of a memorandum from Amy Klose, Director, Department of Human Resources, advising Moriath Melendez, Crime Scene Investigator I, of her return to her former classification. Moriath Melendez is being rolled back to Public Service Aide, effective November 4, 2013. (NOTIFICATION)
- NOTIFIED

C. MILITARY LEAVES OF ABSENCE

- C.1** Genesis Troutman, Park Ranger, requests re-employment as a Park Ranger following her return from military leave. (DISCUSSION)

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

Aye: Silverman, Moy, Baños and Harris

D. DISCIPLINARY MATTERS

- D.1** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Rhusser Charles, Police Officer, of his 10-hour suspension, effective November 7, 2013. (NOTIFICATION)

NOTIFIED

- D.2 Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Fred Pacheco, Police Officer, of his 10-hour forfeiture, effective October 29, 2013. (NOTIFICATION)

NOTIFIED

- D.3 Copy of a letter from Orlando Diez, Director, Department of Code Compliance, notifying Andrea Adderly-Proctor, Code Enforcement Inspector, of her 45-day suspension, effective November 4, 2013. (NOTIFICATION)

NOTIFIED

E. GENERAL ITEMS

F. REPORTS

- F.1 Pending Hearings as of November 12, 2013. (NOTIFICATION)

PRESENTED

G. REQUESTS FOR HEARINGS

H. TODAY'S HEARINGS

- H.1 Hearing of Appeal on behalf of Jesus Valdivia, Police Sergeant, relative to his 200-hour suspension, effective January 23, 2013.

Eugene Gibbons, Attorney on behalf of the employee, appeared before the Board and advised that a Settlement may have been reached in this matter. Without objection, Chairman Silverman instructed the Executive Secretary to continue this matter pending settlement. In accordance with the Board's Continuance Policy, the matter will be removed from the docket following submission of the Settlement Agreement, or rescheduled if the Agreement is not received within 30 days from today's meeting.

CONTINUED

- H.2 Hearing of Appeal on behalf of Alcides Diaz, Police Officer, relative to his 240-hour suspension, effective February 20, 2013.

Eugene Gibbons, Attorney on behalf of the employee, appeared before the Board and advised that a Settlement may have been reached in this matter. Without objection, Chairman Silverman instructed the Executive Secretary to continue this matter pending settlement. In accordance with the Board's Continuance Policy, the matter will be removed from the docket following submission of the Settlement Agreement, or rescheduled if the Agreement is not received within 30 days from today's meeting.

CONTINUED

- H.3 Hearing of Appeal on behalf of Daniel Crocker, Police Officer, concerning his 10-hour suspension, effective July 12, 2013.

Eugene Gibbons, Attorney appeared before the Board and advised that he has been retained to represent Daniel Crocker. He went on to request a Continuance in this

matter due to his client not being in attendance. Chairman asked ACA Richard if she was in agreement with the request, to which she replied in the affirmative. Without objection, Chairman Silverman instructed the Executive Secretary to continue this matter.

CONTINUED

H.4

Grievance Hearing 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.

The Board entered into the Grievance hearing on behalf of Mr. Falcon. Michael Braverman, Attorney at Law, represented the employee and Janeen Richard, Assistant City Attorney, represented the Department of Human Resources.

Attorney Braverman presented opening statements. Assistant City Attorney Richard deferred opening statements. Witnesses appeared on behalf of Mr. Falcon in the following order:

1. Eduardo Falcon, Grievant testified on his own behalf. Questions were posed to witness Falcon by Members Banos, Harris and Moy.

The Grievant rested his case.

Prior to opening statements, Assistant City Attorney Richard stated that she wished to make a motion, but first needed clarification from the employee and the Board as to what Rules are actually alleged to be violated. She went on to say that the response would determine the motion she was going to make, and if denied, which witnesses she would call.

Chairman Silverman asked Attorney Braverman to identify the Rules that his client feels were violated. Attorney Braverman responded that [with the Civil Service Board], at best, the level of pleading specificity is informal. Chairman Silverman responded that the Board would rule on that, and that he wanted Attorney Braverman to provide the Rule numbers. Attorney Braverman stated that he listed in the Grievance that his client is travelling under Rule 16.2, and alleging violation of Rules 5.4, 6.2 and 8.4. He further stated that the clearly applicable Rules are those under Rule 8 (Appointments, Promotions and Advancements), but he would say that they are also travelling under LMP-3-92. Chairman Silverman then asked for Assistant City Attorney Richard to respond.

Assistant City Attorney Richard stated that she would like to make a legal argument as to why the Rules cited as being violated do not apply to what the employee has presented. She went on to say that Rules 6.2 and 8.4 relate to Promotional positions, and if the Board were to review Rule 1.12, they would see the definition of "Promotion", which she read into the record. She further stated that it is clear from the testimony provided that the position that Mr. Falcon interviewed for is not Promotional, in accordance with the Board's Rules, since it is not within the same job family. She then went on to ask that these Rules be stricken from the Grievance since they do not apply. Without objection, Chairman Silverman denied the motion and asked that Assistant City Attorney Richard proceed with her case.

Witnesses appeared on behalf of the department in the following order:

1. Juan Velazco, Police Sergeant, Records Unit, Department of Police. Questions were posed to witness Velazco by Members Harris and Moy.

2. James Concepcion, HR Generalist, Testing and Validation Division, Department of Human Resources. Questions were posed to witness Concepcion by Members Banos, Harris and Moy.

3. Sylvia Gonzalez, HR Generalist, Testing and Validation Division, Department of Human Resources. Questions were posed to witness Gonzalez by Members Harris and Moy.

4. Amy Klose, Director, Department of Human Resources. Questions were posed to witness Klose by Members Harris and Moy.

The department rested its case.

Member Banos asked if he could have the Board's attorney to provide his opinion as to whether or not the Board could read the provisions of Rule 5.4 (Disqualification) into Rule 6 (Examinations). Chairman Silverman asked Special Counsel to research the matter and advise the Board.

Both sides presented closing arguments and the employee presented rebuttal arguments. Following final arguments, Member Banos asked if Special Counsel was ready to present his response to the earlier request.

Jeff Cazeau, Special Counsel to the Civil Service Board, advised that the title of Rule 5 is "Application for Examinations", and the title of Rule 6 is "Examinations", and based on statutory interpretation, if they are labeled differently, it means that they are two different sections. He went on to say that Rule 5.4 therefore relates to Applications for Examinations, and there is no such provision regarding disqualification under the Examinations Rule. He went on to say that in terms of whether Rule 5.4 applies (in this case), his opinion is that it does not. Special Counsel went on to say that this does not mean that the Board does not have jurisdiction and that under Rule 16.2 the employee is allowed to make a complaint, and (pursuant to it and) Rule 4.2 the Board has the authority to make recommendations to the City Manager and Director of Human Resources as it sees fit. He further advised that if the Board so desires, revisions to the Rules can be made in accordance with Rule 18; however, the Board at this time does have the ability to make recommendations.

Chairman Silverman followed up by reading a portion of Rule 16.2 into the record. He then stated that he would suggest that the Board recommend to the City Manager, that he overrule the decision of the Director of Human Resources and score the interview results of Mr. Falcon, allowing him to be considered by the hiring department for the position of Police Records Supervisor.

Following discussion, the Board entered a motion to recommend to the City Manager, that he require the scoring of Mr. Falcon's interview results, and that he be considered for the Police Records Supervisor position, 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

ADJOURNMENT:

*There being no further business before the Board, the meeting adjourned at 2:43 pm.
Breaks were taken at 11:16-11:23 am; 11:02-11:14 am; 1:01-1:07 pm; and 1:40pm-2:15
pm (LUNCH).*

SIGNATURE:

Gerald Silverman, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary