

City of Miami

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



Meeting Minutes

Wednesday, November 12, 2014

10:00 AM

Commission Chambers

Civil Service Board

*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 10:05 a.m. At the commencement of the meeting, Roll Call was as follows:

Present: Member Baños, Member Ramlal and Chief Examiner Sutton

Absent: Member Riley

***** VACANCY OF CIVIL SERVICE BOARD OFFICER *****

Pursuant to a letter forwarded to the Office by Todd Hannon, City Clerk, the Board was advised that Chair Harris qualified for an elective office during the November 4, 2014, Wilton Manors Municipal Election; and that per Sec. 2-884 of the City Code, such qualification is deemed a tender of resignation from the Board.

As is the practice of the Board, the Chief Examiner chairs the meetings in the absence of the Chairperson. Chief Examiner Sutton stated that he did not wish to chair the meeting and asked if Member Banos would serve as Chair. Member Banos accepted and asked if there were any objections to Chief Examiner Sutton's recommendation. Hearing no objections, Chair Banos thanked the Members and called the meeting to order.

Chair Banos asked if Ms. Harris wished to make any statements regarding the situation. Lillie Harris appeared before the Board and stated that there was a technicality concerning the City Code, which was misinterpreted. She thanked Member Banos for serving in her absence and advised that she expected to return to the Board very soon. Member Banos stated that the Board would table the election of a Chair until such time as the Commission appoints the fifth member.

A. APPROVING THE MINUTES OF:

Regular Meeting of October 28, 2014.

The Board entered a motion to approve the minutes of the October 28, 2014 meeting, which resulted as follows:

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

Aye: Ramlal, Baños and Sutton

Absent: Riley

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

- D.1** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Christopher Vital, Police Officer, of his termination, effective October 30, 2014. (NOTIFICATION)

NOTIFIED

- D.2 Copy of a letter from Chief Maurice Kemp, Director, Department of Fire Rescue, notifying Alberto Hoyos, Lieutenant, of his 24-hour forfeiture, effective September 18, 2014. (NOTIFICATION)

NOTIFIED

- D.3 Copy of a letter from Chief Maurice Kemp, Director, Department of Fire Rescue, notifying Alberto Hoyos, Lieutenant, of his 24-hour suspension, effective November 12, 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)

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

Aye: Ramlal, Baños and Sutton

Absent: Riley

SECOND ROLL CALL

At approximately 10:42 a.m., Member Riley arrived at the meeting. A second Roll Call was done which was as follows:

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

- E.2 Copy of Findings of Fact concerning the Hearing of Appeal on behalf of Carlos Antunez, Police Officer, relative to his 40-hour suspension, effective June 1, 2009. (DISCUSSION)

Chair Banos asked if Special Counsel could meet with the attorneys and agree on the Findings and Recommendations, then report back to the Board. Following a brief recess, Special Counsel Clyne advised all of the revisions that are to be made. The Board considered a motion to Adopt the Findings as amended, which resulted as follows:

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

Aye: Ramlal, Baños, Sutton and Riley

- E.3 Civil Service Board's Calendar (DISCUSSION)

The Executive Secretary advised that the Board currently had a meeting scheduled for November 25, 2014, which she noted was the Tuesday before Thanksgiving. She asked if the Board members would be available for that date, or if they wished to cancel the meeting. She further requested that they consider the other dates listed on her

memo, which were regularly scheduled meeting dates that occur after a Monday holiday. The Board Members advised that they would be present for the dates listed in the memo. Following discussion, the Board considered a motion to cancel the meeting scheduled for November 25, 2014, which resulted as follows:

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

Aye: Ramlal, Baños, Sutton and Riley

**E.4 Robert's Rules of Order (DISCUSSION)
ITEM ADDITION**

The Board considered a motion to adopt Robert's Rules of Order into the Procedures of the Board, which resulted as follows:

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

Aye: Ramlal, Baños, Sutton and Riley

F. REPORTS

**F.1 Pending Hearings as of November 12, 2014. (NOTIFICATION)
PRESENTED**

G. REQUESTS FOR HEARINGS

G.1 Copy of a Request for an Investigation Hearing from Carlos Mendez, Police Sergeant, concerning his eligibility as it relates to the Police Lieutenant's Promotional Exam. (DISCUSSION)

Chair Banos noted the written request, and asked if Mr. Mendez wished to make a statement. Mr. Mendez appeared before the Board and advised that several members of the police department were present to ask that the Board grant them permission to sit for the upcoming Police Lieutenant exam. He went on to say that but for the request of the FOP President to bring a matter before the Board which was heard in April 2013, they would have been promoted in January 2013, instead of April 2013. He further advised that the expected date of the examination is in January 2015.

Chair Banos asked for the City's position. ACA Panoff responded that to be promoted, in accordance with Civil Service Rules, an employee would have to serve as a sergeant for two years in order to be eligible for lieutenant, and unfortunately, these employees would not have two years of service as required.

Chair Banos asked if this matter had been brought before the Board before. The Executive Secretary responded that the hearing that Sgt. Mendez referred to, which was brought by the President of the FOP, was the matter that the Board heard, and that the item on today's Agenda is related to that hearing, due to the delay in appointments, but the matters are not exactly the same.

Assistant City Attorney Diana Vizcaino appeared before the Board and asked if the request was for a Rule 16 hearing, which results in a recommendation from the Board, and if the hearing was against the City of Miami or the FOP. Chair Banos replied that

the matter is pursuant to Rule 16.1, which is an Investigation hearing. Member Sutton stated that he would not want to deny anyone a hearing.

Following discussion, the Board considered a motion to GRANT the request for a hearing pursuant to Rule 16.1, into the eligibility of several employees to sit for the upcoming examination for Police Lieutenant, and to schedule the hearing for the December 9, 2014 meeting date, which resulted as follows:

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

Aye: Ramlal, Sutton and Riley

No: Baños

H. TODAY'S HEARINGS

H.1 Hearing of Appeal on behalf of Jean Marie Jean-Philippe, Police Officer, concerning his 200-hour suspension, effective February 16, 2013.

The Board entered into the appeal hearing on behalf of Jean Marie Jean-Philippe.

Eugene Gibbons, Attorney at Law, represented the Appellant. Stephanie Panoff, Assistant City Attorney, Office of the City Attorney, represented the Department.

The Rule of Witnesses was invoked and witnesses were excused, and cautioned not to discuss their testimony with anyone. Opening statements were presented by both parties.

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

- 1. Marc Francois, Police Officer, City of Miami Department of Police. Questions were asked by Member Riley and Chair Banos during the testimony of witness Francois.*
- 2. Orlando Benitez, Police Detective, City of Miami Department of Police. Questions were asked by Members Ramlal and Sutton, and Chair Banos during the testimony of witness Benitez.*

The Department rested its case.

Attorney Gibbons moved for a directed verdict of not guilty, which was denied by the Chair. Following a brief break, the Appellant presented no witnesses as the Department called their only witness. The Appellant rested its case.

The parties provided closing argument. The Board entered into discussion.

Chair Banos stated that [the neighborhood] is a high-crime area and should be patrolled regularly. He went on to say that the employee's patrol car was dark (no lights on inside) and there was no activity being engaged in, and it is suggested that the employee was probably sleeping. He further stated that he thinks that the employee is guilty of several charges, based on the direct testimony; and, he did not comply with the Rules.

Member Sutton stated that [the Fire-Rescue] department had been called many times to that same area; and that if he was a business owner in the area, he would be happy to have a police officer there on watch.

Member Riley stated that he agreed with the Chair's comments and the testimony was that the employee was seen parked for several hours, but his own worksheet shows him working for those hours.

Following discussion, the Board entered a motion to find the Appellant NOT GUILTY of violating D.O. 1, Ch. 11.4.5.7 - Responsibility to Know Rules, which resulted as follows:

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

Aye: Ramlal, Baños, Sutton and Riley

The Board entered a motion to find the Appellant NOT GUILTY of violating D.O. 1, Ch. 11.6.17.2 - Disobedience, which resulted as follows:

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

Aye: Ramlal and Sutton

No: Baños and Riley

The Board entered a motion to find the Appellant GUILTY of violating D.O. 1, Ch. 11.6.17.2 - Disobedience, which resulted as follows:

Motion by Member Riley, seconded by Member Baños, to APPROVE. FAILED by the following vote.

Aye: Baños and Riley

No: Ramlal and Sutton

The Board entered a motion to find the Appellant GUILTY of violating D.O. 1, Ch. 11.6.17.9 - Neglect/Inattention to Duty, which resulted as follows:

Motion by Member Riley, seconded by Member Baños, to APPROVE. FAILED by the following vote.

Aye: Baños and Riley

No: Ramlal and Sutton

The Board entered a motion to find the Appellant NOT GUILTY of violating D.O. 1, Ch. 11.6.17.9 - Neglect/Inattention to Duty which resulted as follows:

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

Aye: Ramlal and Sutton

No: Baños and Riley

The Board entered a motion to find the Appellant GUILTY of violating D.O. 1, Ch. 11.6.17.12 - Laziness/Idleness, which resulted as follows:

Motion by Member Riley, seconded by Member Baños, to APPROVE. FAILED by the following vote.

Aye: Baños and Riley

No: Ramlal and Sutton

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

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

Aye: Ramlal and Sutton

No: Baños and Riley

The Board entered a motion to find the Appellant NOT GUILTY of violating D.O. 1, Ch. 11.6.18.2 - Duty Responsibilities, which resulted as follows:

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

Aye: Ramlal, Baños, Sutton and Riley

The Board entered a motion to find the Appellant NOT GUILTY of violating D.O. 1, Ch. 11.6.30.1 - Shall Not Loiter While on Duty, which resulted as follows:

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

Aye: Ramlal and Sutton

No: Baños and Riley

The Board entered a motion to find the Appellant NOT GUILTY of violating D.O. 1, Ch. 11.6.30.2 - Shall Not Sleep While on Duty, which resulted as follows:

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

Aye: Ramlal and Sutton

No: Baños and Riley

The Board entered a motion to find the Appellant NOT GUILTY of violating D.O. 11, Ch. 2.3.4 - Leaving Sector, which resulted as follows:

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

Aye: Ramlal, Sutton and Riley

No: Baños

The Board entered a motion to find the Appellant NOT GUILTY of violating Civil Service Rules & Regulations, 14.2(e)2 - Breach of Proper Discipline, which resulted as follows:

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

Aye: Ramlal and Sutton

No: Baños and Riley

The Board entered a motion to find the Appellant NOT GUILTY of violating Civil Service Rules & Regulations, 14.2(d) - Willfully Violated Rules, which resulted as follows:

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

Aye: Ramlal and Sutton

No: Baños and Riley

The Board entered a motion to find the Appellant NOT GUILTY of violating Civil Service Rules & Regulations, 14.2(k) - Incompetent/Negligent, which resulted as follows:

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

Aye: Ramlal and Sutton

No: Baños and Riley

Having found the employee Not Guilty of several charges, and having reached "tie votes" on the remaining charges, the Chair asked if anyone wished to continue discussion or change their vote. Hearing no response, the Board did not enter into the penalty phase of the hearing, and will forward its findings as indicated to the City Manager in accordance with Civil Service Rule 14.3.

ADJOURNMENT

The meeting adjourned at 1:42 p.m.

SIGNATURE:

Javier Banos, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary