

City of Miami

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



Meeting Minutes

Tuesday, May 5, 2009

10:00 AM

Commission Chambers

Civil Service Board

*Miguel M. de la O, Chairperson
William J. Scarola, Chief Examiner
Jessica Angel-Capo, Board Member
Mariano Cruz, Board Member
Michael T. Dames, Board Member*

PLEDGE OF ALLEGIANCE

The meeting was called to order at 10:11 a.m. The roll call for Board Members at the commencement of the meeting was as follows:

Present: Chief Examiner Scarola, Chairperson de la O, Member Dames, Member Angel-Capo and Member Cruz

A. APPROVING THE MINUTES OF:

Regular Meeting of April 21, 2009.

The Board entered a motion to APPROVE the minutes of the regular meeting of April 21, 2009 which resulted as follows:

Motion by Chief Examiner Scarola, seconded by Member Cruz, to APPROVE. PASSED by the following vote.

Aye: Chairperson de la O, Dames, Angel-Capo, Scarola and Cruz

B. PERSONNEL MATTERS

- B.1** Notification of a memorandum from Stephanie Grindell, Director, Department of Public Works, notifying Richard Valdes, Labor Crew Leader II, Department of Public Works, of his return to former classification. Richard Valdes is being rolled back to Automotive Equipment Operator II. (NOTIFICATION)

NOTIFIED

C. MILITARY LEAVES OF ABSENCE

- C.1** Vincent F. Miller, Police Officer, requests active duty military leave without pay from April 13, 2009 through September 22, 2009. Copy of Orders Attached. (DISCUSSION)

The Board entered a motion to APPROVE Officer Miller's request for active duty military leave which resulted as follows:

Motion by Chief Examiner Scarola, seconded by Member Angel-Capo, that this matter be APPROVED. PASSED by the following vote.

Aye: Chairperson de la O, Dames, Angel-Capo, Scarola and Cruz

- C.2** Mariela C. del Rio, GIS Analyst, requests active duty military leave without pay from May 10, 2009 through October 1, 2009. Copy of Orders Attached. (DISCUSSION).

The Board entered a motion to APPROVE Ms. del Rio's request for active duty military leave which resulted as follows:

Motion by Chief Examiner Scarola, seconded by Member Angel-Capo, that this matter be APPROVED. PASSED by the following vote.

Aye: Chairperson de la O, Dames, Angel-Capo, Scarola and Cruz

D. DISCIPLINARY MATTERS

- D.1 Copy of Judgment from the City Manager concurring with the Board in finding Debra Grant, Police Officer, not guilty of all the charges against her as set forth in the 20-hour disciplinary letter, effective July 3, 2009, thereby reversing the Police Chief's decision. (NOTIFICATION)
NOTIFIED
- D.2 Copy of Judgment from the City Manager concurring with the Board in finding Lazaro Chappoten, Automotive Mechanic, not guilty of all the charges against him as set forth in the termination letter, effective May 30, 2008 and ordering that Lazaro Chappoten be reinstated as a Automotive Mechanic. (NOTIFICATION)
NOTIFIED
- D.3 Copy of Judgment from the City Manager concurring with the Board in finding Leonel Tapanes, not guilty of all the charges against him as set forth in the 40-hour disciplinary letter, effective June 4, 2004, thereby reversing the Police Chief's decision. (NOTIFICATION)
NOTIFIED
- D.4 Copy of Judgment from the City Manager concurring with the Board in finding Alina Pena, Police Sergent, not guilty of all the charges against her as set forth in the 20-hour disciplinary letter, effective July 1, 2007, thereby reversing the Police Chief's decision. (NOTIFICATION)
NOTIFIED
- D.5 Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Horacio Larosa, Police Officer, of his 10-hour forfeiture, effective April 28, 2009. No appeal to date. (NOTIFICATION)
NOTIFIED
- D.6 Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Garret Wing, Police Officer, of his 10-hour suspension, effective April 19, 2009. No appeal to date. (NOTIFICATION)
NOTIFIED
- D.7 Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Rameses Rengifo, Police Officer, of his 10-hour suspension, effective April 25, 2009 and a request from Rameses Rengifo, requesting a hearing of appeal relative to his 10-hour suspension. A hearing will be scheduled in accordance with Civil Service Rules and Regulations. (NOTIFICATION)
RECEIVED AND FILED
- D.8 Copy of a letter from Mario E. Soldevilla, Director, Department of Solid Waste, notifying Paul Walters, Maintenance Shop Worker, of his 5-day suspension,

effective May 4, 2009 and a request from Paul Walters, requesting a hearing of appeal relative to his 5-day suspension. A hearing will be scheduled in accordance with Civil Service Rules and Regulations. (NOTIFICATION)

RECEIVED AND FILED

E. GENERAL ITEMS

- E.1** Copy of a letter from Teri Guttman-Valdes, Attorney, on behalf of her client, Victor L. Cornier, Materials Specialist Supervisor, concerning a 1-day suspension, effective February 27, 2009, advising the Board of his resignation in accordance with Civil Service Rule 14.6 and a request for withdrawal of the charges and her client be made whole for the suspension. (DISCUSSION)

Deferred from the meeting of April 14, 2009.

The Executive Secretary advised the Board that Attorney Guttman-Valdes asked that this item be deferred to the Board's next meeting because she was not available to be present at today's meeting.

DEFERRED TO THE MAY 12, 2009 CIVIL SERVICE BOARD MEETING.

F. REPORTS

- F.1** Pending Hearings as of May 5, 2009. (NOTIFICATION)

G. REQUESTS FOR HEARINGS

H. TODAY'S HEARINGS

- H.1** Investigation hearing on behalf of Teresa Borkowski, Police Sergeant, pursuant to Rule 16.1, Abuse of Power.
- Attorney Rind stated that she would ask that this case be continued because her client, Sgt. Borkowski, is out of town.*
- Assistant City Attorney (ACA) Vizcaino stated that she had no objection to the continuance.*
- The Chairman asked for the scheduling history of Sgt. Borkowski's case.*
- Member Scarola stated that according to the Pending Hearings List, Sgt. Borkowski's case was continued three times and each continuance was charged to the Board.*
- Following discussion, the Board entered a motion to CONTINUE the appeal hearing and charge the continuance to the employee which resulted as follows:*
- Motion by Chief Examiner Scarola, seconded by Member Angel-Capo, that this matter be CONTINUED. PASSED by the following vote.**
- Aye:** Chairperson de la O, Dames, Angel-Capo, Scarola and Cruz

H.2

Hearing of appeal on behalf of Alice Dunn, Typist Clerk II, relative to her 40-hour suspension, effective October 20, 2008.

The Board entered into the scheduled hearing of Alice Dunn (Appellant).

Assistant City Attorney (ACA) Diana Vizcaino represented the Department.

Osnat K. Rind, Attorney at Law, represented the Appellant.

The Rule of Witnesses was invoked and all witnesses were sworn in individually.

ACA Vizcaino waived opening statements and Attorney Rind deferred opening statements until after the department rested its case.

Witnesses for the Department appeared in the following order:

Cherise Gause, Police Sergeant, City of Miami, Department of Police.

Questions were posed by Board Members Angel-Capo, Cruz, Dames, and Scarola during the testimony of witness Cherise Gause.

The Department rested its case.

Attorney Rind presented an opening statement.

Following the opening statement, witnesses for the Appellant appeared in the following order:

Alice Dunn, Typist Clerk II, City of Miami, Department of Police, testified on her own behalf.

Questions were posed by Board Members Dames, Cruz, and Scarola during the testimony of witness Alice Dunn.

The Appellant rested her case and the Board proceeded to the presentation of closing argument by both attorneys.

Following final argument, the Board entered a motion to find the Appellant NOT GUILTY of all of the charges.

Under discussion, Member Cruz stated that he thinks Ms. Dunn is guilty of being too efficient. He went on to say that a person who is too efficient does not pace their work, so they finish quickly leaving them with much time on their hands to read the newspaper or make telephone calls. Member Cruz further stated that he does not think a person should be penalized if they are able to complete assignments in a time period less than what is allocated to do the job; however, in this case the employee is being penalized for being efficient.

Member Dames stated that at his place of work, he would find newspapers in the lobby and other areas of the building so [after learning today that the police department has a specific rule that prohibits the reading of newspapers on duty] he could only think that the newspapers he sees around the building are for employees to take home or read on their lunch break. He went on to say that [based upon the] departmental order that prohibits police personnel from reading on duty, if other personnel were reading the newspaper, but Ms. Dunn was the one caught reading the newspaper on duty, she

would be guilty of violating this order; and that he has no choice other than to find Ms. Dunn guilty of this charge because she admitted to reading the newspaper on duty. Member Dames further stated that he understands there may be others who read the newspaper or use the internet on duty, but if the supervisor wants to enforce the order that prohibits the reading of newspapers on duty and Ms. Dunn happened to get caught doing so, there is no getting around the fact that she is guilty of this charge. He stated that he agreed with the department's attorney when she said that just because many employees are reading the newspaper does not make it right [because there is an order in place that prohibits employees from doing so].

Chairman de la O stated that he agreed with Member Dames' comments. He went on to say that Attorney Rind made the point about how it was undisputed that a lot of employees were reading the newspaper and the supervisors were not enforcing the departmental order, but at the end of the day, the department has to have the ability to enforce its rules. Chairman de la O further stated that he thinks it is different if a particular supervisor decided that he/she was only going to enforce the rules against some employees and not others, that would be unacceptable behavior, but there certainly was no testimony that Sgt. Gause was letting other employees read newspapers or play computer games on duty and was only enforcing the rules against Ms. Dunn. He stated that he thinks everyone got a little hung up on the newspaper issue, and he was just as surprised as Member Dames that there is such a specific departmental order, but at the end of the day there is still the issue that if you have time on your hands, you should be working because you work for the City, which is the second charge that an employee should not be idling or loafing while on duty. Chairman de la O went on to say that he thinks the violation was admitted by Ms. Dunn and that he also thinks the real argument is what should the appropriate penalty be rather than the issue of guilt that was admitted by the employee.

Following discussion, the motion on the floor to find the Appellant NOT GUILTY of all of the charges resulted as follows:

Motion by Member Angel-Capo, seconded by Member Cruz, that this matter be APPROVED. FAILED by the following vote.

Aye: Angel-Capo and Cruz

No: Chairperson de la O, Dames and Scarola

The motion having failed, the Board entered a motion to find the Appellant GUILTY of Charge #1 - Departmental Order 1.11.6.13.13 - Reading on Duty, which resulted as follows:

Motion by Member Dames, seconded by Chief Examiner Scarola, that this matter be APPROVE. PASSED by the following vote.

Aye: Chairperson de la O, Dames and Scarola

No: Angel-Capo and Cruz

The Board entered a motion to find the Appellant NOT GUILTY of Charge #2 - Departmental Order 1.11.6.30.2 - On Duty, which resulted as follows:

Motion by Member Dames, seconded by Member Cruz, that this matter be APPROVE. PASSED by the following vote.

Aye: Dames, Angel-Capo and Cruz

No: Chairperson de la O and Scarola

The Board entered a motion to find the Appellant NOT GUILTY of Charge #3 - Neglect, which resulted as follows:

Motion by Member Dames, seconded by Member Cruz, that this matter be APPROVE. PASSED by the following vote.

Aye: Dames, Angel-Capo and Cruz

No: Chairperson de la O and Scarola

The Board entered a motion to find the Appellant NOT GUILTY of Charge #4 - Civil Service Rule 14.2(e)(1) - Act of Insubordination, which resulted as follows:

Motion by Member Dames, seconded by Member Cruz, that this matter be APPROVE. PASSED by the following vote.

Aye: Chairperson de la O, Dames, Angel-Capo and Cruz

No: Scarola

The Board entered a motion to find the Appellant NOT GUILTY of Charge #5 - Civil Service Rule 14.2(e)(2) - A serious breach of proper discipline, which resulted as follows:

Motion by Member Dames, seconded by Member Angel-Capo, that this matter be APPROVE. PASSED by the following vote.

Aye: Chairperson de la O, Dames, Angel-Capo, Scarola and Cruz

The Board entered a motion to find the Appellant NOT GUILTY of Charge #6 - Civil Service Rule 14.2(k) - Is incompetent, negligent or efficient, which resulted as follows:

Motion by Member Angel-Capo, seconded by Member Dames, that this matter be APPROVE. PASSED by the following vote.

Aye: Dames, Angel-Capo and Cruz

No: Chairperson de la O and Scarola

Having found the Appellant guilty of one of the violations cited in the charging document, the Board entered into the penalty phase of the Appellant's hearing. The Board reviewed the summary of Ms. Dunn's personnel file which revealed: 22 commendations, 1 Good Citizen letter, 10 reprimands, 2 suspensions (pending appeal before the Board), and 2 forfeitures of earned overtime.

The department called no witnesses during the penalty portion, but presented a 6-page history of the Appellant's disciplinary profile.

At the request of Member Dames, Charles Cox, President, AFSCME-Local 1907, presented testimony on behalf of the Appellant during the penalty portion.

Following argument by both attorneys on the penalty portion of Ms. Dunn's hearing, the Board entered a motion to recommend to the City Manager that Ms. Alice Dunn receive a reprimand only in lieu of a 40-hour suspension, which resulted as follows:

Motion by Member Angel-Capo, seconded by Member Cruz, that this matter be APPROVE. PASSED by the following vote.

Aye: Dames, Angel-Capo and Cruz

No: Chairperson de la O and Scarola

Following the vote, Member Scarola stated that as a recommendation to the Records Division, he would ask that Sgt. Gause inform administration to review its procedures for taking 15-minute breaks, because he believes they are not only in violation of the departmental orders, but the collective bargaining agreement which states that employee lunch and 15 minute breaks shall not be used during the first and last hour of an employee's work day.

ADJOURNMENT:

The Chairman called for a motion to ADJOURN which resulted as follows:

Motion by Member Cruz, seconded by Member Dames, to APPROVE. PASSED by the following vote.

Aye: Chairperson de la O, Dames, Angel-Capo, Scarola and Cruz

The meeting adjourned at 1:04 p.m. Breaks were taken at 11:05-11:24 a.m. and 12:13-12:28 p.m.

SIGNATURE:

Miguel M. de la O, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary