

City of Miami

*City Hall
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Meeting Minutes

Tuesday, December 16, 2008

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 10:24 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 December 2, 2008.

The Board entered a motion to APPROVE the minutes of the December 2, 2008 meeting which resulted as follows:

Motion by Member Cruz, seconded by Chief Examiner Scarola, to APPROVE. PASSED unanimously.

Special Meeting of December 9, 2008.

The Board entered a motion to APPROVE the minutes of the December 9, 2008 meeting which resulted as follows:

Motion by Member Cruz, seconded by Chief Examiner Scarola, to APPROVE. PASSED unanimously.

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

- D.1 08-01477** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Clive Vernon, Police Officer, of his termination, effective December 1, 2008 and a copy of a request to appeal from Clive Vernon. A hearing will be scheduled in accordance with the Civil Service Rules and Regulations. (NOTIFICATION)
- D.2 08-01480** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Jerry Sutherland, Police Officer, of his 10-hour suspension, effective December 10, 2008. No appeal to date. (NOTIFICATION)
- D.3 08-01479** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Jerry Sutherland, Police Officer, of his 20-hour suspension, effective December 11, 2008. No appeal to date. (NOTIFICATION)
- D.4 08-01481** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Jacqueline Mesidor, Police Sergeant, of her 10-hour suspension, effective December 7, 2008. No appeal to date. (NOTIFICATION)

E. GENERAL ITEMS

- E.1 05-01281** Copy of the response Memorandum from Pedro J. Hernandez, City Manager, concerning the Investigation and Grievance hearing on behalf of Khalil Mangabadi, Engineer I, pursuant to Civil Service Rule 16.1, Investigation by the Board and Civil Service Rule 16.2, Complaint by Employee. (NOTIFICATION)

Item Addition

- E.2 08-01198** Notice of Administrative Appeal, filed by Mark Terry, regarding the action of the Board at the meeting of November 4, 2008. (NOTIFICATION)

- E.3 07-00941** Copy of Findings of Fact concerning the appeal hearing of Alina Pena, Police Sergeant, relative to her 20-hour suspension, effective July 1, 2007. (DISCUSSION)
Deferred from the meeting of December 2, 2008.

Chairman de la O asked both attorneys if they had an opportunity to review the proposed findings of fact.

Assistant City Attorney Vizcaino stated that she reviewed and was satisfied with the findings prepared by Special Counsel Everett. She went on to say that she also had an opportunity to review Attorney Rind's proposed changes to the findings and that she was prepared to address those changes individually.

Chairman de la O stated that he did not have a copy of Attorney Rind's findings.

The Executive Secretary responded that the Board Members did not have a copy of Attorney Rind's findings because she thought both attorneys were going to discuss the findings beforehand which would alleviate the Board from having to review extra sets of findings.

Assistant City Attorney Vizcaino stated that she did not have any additional language to add so it was just a matter of going over any objections she might have with regards to the proposed changes.

Cynthia A. Everett, Special Counsel to the Board, interjected and asked Assistant City Attorney Vizcaino if she discussed her final objections with Attorney Rind and she responded in the negative.

Special Counsel Everett stated that her thought process on this matter is there could be some agreement reached on the findings once Attorney Rind is made aware and understands Assistant City Attorney Vizcaino's objections to the findings, so she would suggest that both attorneys get together during a break to discuss the objections and afterwards provide her with their proposed findings so that she could then prepare a final set of findings.

NOTE: Following the lunch break Chairman de la O stated that this item would have to be moved to the Board's next meeting since time constraints would not allow for consideration of the findings today.

DEFERRED TO JANUARY 13, 2009 MEETING.

E.4 08-01478

Motion filed by Iliana Forte, Assistant City Attorney, for recusal of Board Member William J. Scarola, reference the request filed on behalf of Fernando Bosch, Police Officer. (DISCUSSION)

Special Counsel Everett asked Attorney Rind if she wished to go forward with this matter now or did she wish to reschedule it to another meeting date.

Attorney Rind responded that she initially sent an e-mail to the Civil Service Board Office requesting that this matter be deferred since she received it the day before the [Thanksgiving] holiday. She went on to say that Attorney Cohen is not available today and she knows that he wants to participate in the discussion, so if it is the Board's preference to discuss this matter today, she could provide preliminary discussions on the issue, but she did not think she could discuss it completely.

Chairman de la O asked for the department's position on this matter.

Assistant City Attorney Forte responded that she was not really sure what argument Attorneys Rind and Cohen intended to make because they made their arguments when this matter was last discussed by the Board. She went on to say that this is a motion that sets out why the City feels that Member Scarola should recuse himself from this matter. Assistant City Attorney Forte further stated that there is an apparent inherent and clear conflict of interest on what the Chief Examiner is being asked to do with this investigation that was requested by Attorney Rind as ex-parte to the Chief Examiner. She stated that they feel that because Member Scarola sat on this particular committee and he is the treasurer of the FOP, there is a clear, inherent conflict of interest and that perhaps another Board Member should be handling this investigation.

Attorney Rind responded that Chairman de la O was not present when this matter was discussed so she did not know if he was familiar with the entire issue. She went on to say that their position is this is not a decision for the Board to make and this has been a request, not a request for an investigation or for a hearing to the Chief Examiner, but for the Chief Examiner to exercise authority he has under the Ordinance. Attorney Rind further stated that the Chief Examiner is not acting in a quasi-judicial capacity in that regard, rather he is acting much like any executive such as Dr. Mirable who acts as head of the Employee Relations Department by completing a task that is assigned to him; therefore, the case law cited about conflicts in quasi-judicial determinations does not apply because the issue of due process is not applicable [in this setting.] She stated that the Chief Examiner requested that he hear from both sides at the last Civil Service meeting and that was to his credit, but she did not think there was anything that obligated him to do so. Attorney Rind went on to say that she thinks the Chief Examiner can make this decision on his own and she thinks he is empowered by the Charter and Ordinances to do so and that is why she is saying [the Board] did not have an opportunity to fully look at this matter. She further stated that she thinks there is an inherent problem with this motion specifically because it is not a quasi-judicial proceeding that entitles parties to due process, but it is an act of an executive member of the City.

Assistant City Attorney Forte responded that if she recalls correctly, what occurred [when the Board voted to have an investigation] was exactly that [a quasi-judicial proceeding] because one of the Board Members made a motion for the Chief Examiner to conduct an investigation. She went on to say that she thinks [the motion] was done as a Board Member and perhaps the Board did not understand what was happening, but that was the process the Board voted on two weeks ago, so if that is the case, it clearly is a quasi-judicial function that was requested. Assistant City Attorney Forte further stated that perhaps what Attorney Rind requested in her ex-parte letter to the Chief

Examiner was something different, but what the Board decided on two weeks ago was that the Chief Examiner would conduct an investigation, but what investigation, she did not know. She reiterated that if the Chief Examiner were to conduct an investigation on behalf of the Board, there would be an inherent conflict of interest.

Chairman de la O stated that Special Counsel could correct him if necessary, but when the Chief Examiner conducts an investigation, he provides a report to the Board for any action that is going to be taken.

Special Counsel Everett responded that in the context of how the Board does business, [the Chief Examiner] would do that, but his job as Chief Examiner does not require approval or acceptance by the Board rather it requires that he provides the Board information of what he has done in his role as Chief Examiner.

Chairman de la O asked if this is [an issue that falls within the scope of] a quasi-judicial proceeding.

Special Counsel Everett responded that she did not think it would be a quasi-judicial proceeding at this stage because she was not quite sure of the parameters of the investigation. She went on to say that what she recalled from the last discussion, it really was a factual and sort of a specific objective investigation in terms of establishing what has been done or what has occurred in the past so she would not couch it in those terms because she did not know how far ranging the investigation might be.

Chairman de la O stated that this issue about recusals came up at the last meeting, but at the end of the day, it is not a motion to the Board but a request to Member Scarola and it is his decision to make as to whether he has a conflict.

Special Counsel Everett stated that she had not have an opportunity to review the case law that was cited by the department, and she was not ready to opine on whether that case law in any way binds the Board or governs how the Chief Examiner should conduct himself in this particular situation. She went on to say that if the Board were to table this item until the Board takes a break, she could look at the case law on-line and respond accordingly.

Member Scarola stated that when he initially received Attorney Rind's letter, he contacted Special Counsel Everett and asked her questions and for guidance on what he should do and at the end of the day, it was his suggestion to bring this matter to the Board so that it was out in the open as to what was being done. He went on to say at the last meeting there was Board discussion, both attorneys stated their position on the issue, he has been reviewing the minutes from that meeting, he requested documentation from the City via the Executive Secretary, and Attorney Rind provided documentation that he requested, so he is at the point of making a decision. Member Scarola further stated that if the Board were to review the City's motion, he believes [the Board] would find some information that is incorrect. He stated that there was one paragraph in the document that troubled him with regards to his involvement (with the grievance filed by the City for an arbitration hearing) and that he spoke with Special Counsel Everett today regarding the City's motion, but she informed him that she would like to review the case law so that she could answer appropriately.

Assistant City Attorney Forte stated that the way she understood what happened the last time was that the investigation was not going to be conducted as requested because that is a separate matter.

Chairman de la O suggested that they pass this item at this time.

Member Cruz stated that he did not see a conflict of interest if the Chief Examiner were to conduct an investigation. He went on to say that the Chief Examiner is supposed to investigate the matter, provide a report for the Board's review so that the Board can make an educated decision. Member Cruz further stated that he cannot make an educated decision if he does not have information.

NOTE: Due to time constraints, the Board was unable to revisit discussion of this issue. Following the lunch break, the Chairman instructed the Executive Secretary to defer discussion of this item to the Board's next meeting.

DEFERRED TO JANUARY 13, 2009 MEETING.

F. REPORTS

F.1 08-00018 Pending Hearings as of December 16, 2008. (NOTIFICATION)

G. REQUESTS FOR HEARINGS

H. TODAY'S HEARINGS

H.1 07-01190 Continuation of the Investigation hearing on behalf of Stanley Jean-Poix and Andre Paul-Noel, Police Officers, pursuant to Civil Service Rule 16.1, Investigation by the Board concerning an alleged Abuse of Power complaint against Sergeant Juan Casiano, Department of Police.

Prior to the start of the hearing, Chairman de la O stated that he was asked to conduct the hearing with the understanding that he would not participate in any decisions or give any opinions in these proceedings because he had not heard the first part of the case. He asked if anyone objected to him conducting the meeting or ruling on testamentary-type motions. Hearing none, the Board continued with the investigation hearing on behalf of Officers Stanley Jean-Poix and Andre Paul-Noel.

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

Iliana Forte, Assistant City Attorney, represented the Department.

The Rule of Witnesses continued to be invoked and all witnesses were sworn in individually. Witnesses for the Grievants continued in the following order:

4. Andre Paul-Noel, Police Officer, City of Miami, Department of Police.

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

The Grievants rested their case.

Witnesses for the Department appeared in the following order:

1. Roy Brown, Police Major, City of Miami, Department of Police.

Questions were posed by Board Members Scarola and Cruz during the testimony of witness Roy Brown.

2. Craig McQueen, Police Major, City of Miami, Department of Police.

Questions were posed by Board Members Angel-Capo and Dames during the testimony of witness Craig McQueen.

3. Rafael Tapanes, Police Lieutenant, City of Miami, Department of Police.

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

Acting Chairman Scarola concluded the hearing and stated that it would have to be continued at the January 13, 2009 meeting because the room had to be vacated by 4:00 p.m. today.

HEARING TO BE CONTINUED

H.2 06-01087 Grievance Hearing on behalf of James Billberry, Police Sergeant pursuant to Rule 16.2 Complaint by Employee, concerning an alleged violation of Civil Service Rule 11.2, Assignment to Other Work.

Attorney Rind stated that she thinks she and Assistant City Attorney Vizcaino are probably ready to proceed with all of the cases scheduled today, but they have an agreement on the order of the cases to be heard.

Assistant City Attorney Vizcaino stated that they have agreed on an order of the cases for the purpose of speeding things along. She went on to say that they have agreed to commence with Lt. Miguel Hervis' case following the conclusion of the grievance hearing on behalf of Officers Stanley Jean-Poix and Andre Paul-Noel, and that they did not think the Board would get to the other cases scheduled for today.

Following discussion, the Board entered a motion to CONTINUE the grievance hearing of Sgt. James Billberry and to charge the continuance to the Board due to time constraints, which resulted as follows:

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

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

H.3 06-02203 Investigation hearing on behalf of Teresa Borkowski, Police Sergeant, pursuant to Rule 16.1, Abuse of Power.

The Board entered a motion to CONTINUE the investigation hearing of Sgt. Teresa Borkowski and to charge the continuance to the Board due to time constraints, which resulted as follows:

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

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

H.4 07-00354 Grievance hearing on behalf of Miguel Hervis, Police Lieutenant, pursuant to Civil Service Rule 16.2, Complaint by Employee, concerning a violation of Civil Service Rule 17.1, Practices, Penalties.

Chairman de la O stated that Lt. Hervis' hearing would have to be continued because it appeared the Board would not finish the police officers' investigation hearing today.

Attorney Rind asked that this hearing be continued to the meeting of January 13, 2009

and Chairman de la O suggested that she contact the Executive Secretary since he could not promise that Lt. Hervis' hearing would be set for that meeting date.

Following discussion, the Board entered a motion to CONTINUE the investigation hearing of Lt. Miguel Hervis and to charge the continuance to the Board due to time constraints, which resulted as follows:

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

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

H.5 07-00468

Hearing of appeal on behalf of Viona Browne-Williams, Police Officer, relative to her 80-hour suspension, effective April 5, 2007.

The Board entered a motion to CONTINUE the investigation hearing of Officer Viona Browne-Williams and to charge the continuance to the Board due to time constraints, which resulted as follows:

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

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

ADJOURNMENT:

The Acting Chairman called for a motion to ADJOURN.

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

Aye: Member Dames, Member Angel-Capo, Chief Examiner Scarola and Member Cruz

Absent: Chairperson de la O

The meeting adjourned at 4:19 p.m. Breaks were taken at 10:38-10:51 a.m. and 12:47-1:51 p.m. (LUNCH)

NOTE: Chairman de la O left the meeting at 3:27 p.m. and the gavel was passed to Member Scarola to chair the remainder of the meeting.

SIGNATURE:

Miguel M. de la O, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary