

City of Miami

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



Meeting Minutes

Tuesday, February 10, 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 10:21 a.m. The roll call for Board Members at the commencement of the meeting was as follows:

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

Absent: Chairperson de la O

NOTE: Member Scarola advised all present that Chairman de la O would be late and that he would chair the meeting until he arrives. Chairman de la O arrived at 11:07 a.m.

A. APPROVING THE MINUTES OF:

Regular Meeting of January 27, 2009.

The Board entered a motion to APPROVE the minutes of the January 27, 2009 meeting which resulted as follows:

**Motion by Member Cruz, seconded by Member Angel-Capo, to APPROVE.
PASSED by the following vote.**

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

Absent: Chairperson de la O

B. PERSONNEL MATTERS

- B.1 09-00136** Copy of a memorandum from Hector Mirabile, Ph.D., Director, Department of Employee Relations, notifying Lazaro A. Martinez, Oracle Database Manager, of his return to former classification. Lazaro A. Martinez is being rolled back to Information Technology Technician II, effective February 4, 2009.
(NOTIFICATION)
NOTIFIED
- B.2 09-00137** Copy of a memorandum from Hector Mirabile, Ph.D., Director, Department of Employee Relations, notifying Jose Preciado, Information Technology Technician II, of his return to former classification. Jose Preciado is being rolled back to Information Technology Technician I, effective February 4, 2009.
(NOTIFICATION)
NOTIFIED
- B.3 09-00138** Copy of a memorandum from Hector Mirabile, Ph.D., Director, Department of Employee Relations, notifying Aida Morejon, Information Technology Technician I, of her end of dismissal (probationary employee), effective February 4, 2009. (NOTIFICATION)
NOTIFIED

C. MILITARY LEAVES OF ABSENCE

D. DISCIPLINARY MATTERS

- D.1 06-00249 Copy of a Judgment from the City Manager concurring with the Board in finding Juan Casiano, Police Officer, not guilty of all the charges against him as set forth in the disciplinary letter, effective February 2, 2006, thereby reversing the Police Chief's decision. (NOTIFICATION)
- NOTIFIED

E. GENERAL ITEMS

- E.1 08-01477 Copy of a Request for a continuance from Clive Vernon, Police Officer, relative to his termination, effective December 1, 2008.

Item Addition

The Executive Secretary stated that she received a letter from Officer Vernon requesting a continuance of his appeal hearing and that this was the first time his hearing was scheduled and his first request for a continuance.

Following discussion, the Board entered a motion to APPROVE Officer Clive Vernon's request for a continuance of his appeal hearing, which resulted as follows:

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

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

Absent: Chairperson de la O

- E.2 08-01278 Copy of a letter from Osnat K. Rind, Attorney, on behalf of her client, Steven A. Dominguez, Clerk I, requesting to withdraw her client's appeal hearing relative to his termination, effective October 20, 2008. (NOTIFICATION)

Item will be considered withdrawn and removed from Board's docket.

WITHDRAWN

F. REPORTS

- F.1 09-00002 Pending Hearings as of February 10, 2009. (NOTIFICATION)

G. REQUESTS FOR HEARINGS

- G.1 09-00135 Request for a review from Neal A. Muhammad, Fire Lieutenant, pursuant to Civil Service Rule 4.2, relative to the Fire Department's Captain's Oral Board Exam and a request pursuant to Civil Service Rule 16.2 - Complaint by Employee, concerning an alleged violation of Civil Service Rule 6.3 Contents of Examination. (DISCUSSION)

Note: Request pursuant to 4.2, and in the alternative a 16.2 hearing.

Acting Chairman Scarola asked Lt. Muhammad if he was represented by legal counsel or if he was representing himself.

Neal A. Muhammad, Fire Lieutenant, responded that he was representing himself.

Acting Chairman Scarola asked Lt. Muhammad to provide the Board with the basis for his complaint.

Lt. Muhammad stated that his purpose before the Board is to discuss concerns he had about the 2008 Fire Captain exam. He went on to say that one concern in particular was that he was not provided with the same information as the other candidates for the oral boards portion of the exam and as a consequence of not receiving complete information, he was placed in an extremely disadvantaged and unfair position. Lt. Muhammad further stated that since that time [oral boards administration], he had become concerned that representatives of the Employee Relations (ER) Department did not want to hold themselves accountable for the problems they caused as administrators of the Fire Captain exam. He stated that as a result of what happened to him during the exam process, he learned that ER administrators not only failed to own up to accountability, but they tried to hide the problem and the candidates had to bear the consequences. Lt. Muhammad went on to say that during the fire tactical component of the assessment center, candidates were given a written document that included a scenario and a diagram that depicted a strip mall of businesses. He further stated that in order for candidates to be successful (in this exercise), candidates had to explain the importance of the available information contained in the diagram; however, he was given a blank diagram whereas other candidates were given a detailed diagram. Lt. Muhammad stated that upon discovering the error with his diagram, he reported this concern to Dr. Kraus (of the Testing & Validations Section) and that Dr. Kraus produced to him what was supposed to be his exam documents. He went on to say that after reviewing the exam documents, he filed a written complaint with ER because [he noticed there was] a detailed diagram stapled to his scenario document instead of the blank diagram he was originally given at the time of the exam. Lt. Muhammad further stated that in one of his memos to the ER Director, he requested an investigation and during that investigation, he discovered evidence that could have made his complaint plausible, but in spite of this [information], the ER Director refused to go the extra step so that he could prove his case. He went on to say that he submitted his request to the Board for redress because he was unfairly treated during the 2008 Fire Captain exam.

Member Cruz stated that it is very important that candidates are treated fairly when seeking career advancements especially since one point could make the difference [in a candidate being promoted or not promoted]. He went on to say that candidates sometimes have to wait years before they get a second chance [for promotion] so he feels that Lt. Muhammad's complaint should be investigated by the Board.

Acting Chairman Scarola advised Member Cruz that the Board needed to hear the department's position before deciding whether to grant Lt. Muhammad's request for an investigation. He asked Lt. Muhammad if there was anything else he wished to present to the Board.

Lt. Muhammad showed the Board two exhibits, one of which was a diagram that contained detailed information and one that represented the diagram given to him at the time of the exam and Assistant City Attorney Forte interjected and stated that Lt. Muhammad should not be revealing exam information to the public.

Acting Chairman Scarola stated that Lt. Muhammad's complaint is that the candidates received diagrams with detailed information and he received a blank diagram that

placed him at a disadvantage. He went on to say that he understands Lt. Muhammad's purpose for wanting to show the diagrams to the Board; however, if the department is saying that the diagrams cannot be revealed to the public, he would ask that Lt. Muhammad comply by not showing the diagrams.

Member Cruz stated that the documents are subject to the public records law.

Assistant City Attorney Forte responded that examination contents are exempt under the public records law.

Acting Chairman Scarola asked for the department's position on Lt. Muhammad's request for an investigation.

Assistant City Attorney Forte stated that Lt. Muhammad met with Dr. Kraus reference a concern he had about the 2008 Fire Captain exam and as a result Dr. Kraus went to the vault where the examinations were kept and pulled Lt. Muhammad's actual examination. She went on to say that when Lt. Muhammad was shown his examination, it contained the diagram with all of the information as all of the other candidates' exams that were submitted. Assistant City Attorney Forte further stated that to their knowledge, Lt. Muhammad was the only candidate that made the claim that he received a blank diagram; therefore, he has suggested there was a conspiracy in his particular case; however, when he was shown the information from the vault, his paperwork did contain the diagram with the detailed information; therefore, an investigation was performed by the ER Director which revealed there was no conspiracy. Assistant City Attorney Forte further stated that Dr. Kraus is available and that he could better explain to the Board the exam process which was also explained to Lt. Muhammad. She reiterated that Lt. Muhammad is the only candidate that made the claim that he received a blank diagram, but there was no evidence provided to suggest that he did.

Dr. Eyrn Kraus, Testing Project Administrator, Testing & Validations Section, stated that the ER Department takes all promotional processes seriously and that security and fairness are of utmost concern. He went on to say that to ensure all candidates are treated the same, his staff used the same exam process that was used for sworn promotional exams held in previous years and to prove his claim that security and fairness is of utmost concern, Dr. Kraus provided a detailed overview of the exam process used by the Testing & Validations Section for sworn promotional exams.

Following argument by both sides and discussion by the Board, the Board entered a motion to grant Fire Lieutenant Neal Muhammad's request for an investigation pursuant to Civil Service Rule 4.2, which resulted as follows:

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

Aye: Member Dames, Chief Examiner Scarola and Member Cruz

No: Member Angel-Capo

Absent: Chairperson de la O

H. TODAY'S HEARINGS

H.1 08-00892 Hearing of appeal on behalf of Osian Cruz, Automotive Equipment Operator II, relative to his termination, effective August 6, 2008.

Prior to hearing the case of Osian Cruz, Acting Chairman Scarola stated that the Board was faced with a dilemma concerning the hearings scheduled for today and that he

needed to obtain the attorneys' positions on this issue. He went on to say that Member Dames had to leave at 12:00 noon and the arrival time of the Chair was uncertain; therefore, he needed to know if the attorneys wished to proceed with a three-Member Board or hold off on conducting the hearings until the Chairman's arrival.

Assistant City Attorney Vizcaino stated that Attorney Mitrani asked her to let the Board know that he wished to proceed with his client's case when the Chairman was present.

Following discussion, the Board took a recess to wait for the Chairman to arrive. Upon the Chairman's arrival at 11:07 a.m. and Member Dames' departure at approximately 11:30 a.m., a second roll call was taken. The roll call for Board Members after the recess was as follows:

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

Absent: Member Dames

The Board entered into the scheduled appeal hearing of Osian Cruz.

Diana Vizcaino, Assistant City Attorney, represented the Department.

Isaac J. Mitrani, Attorney at Law, represented the Appellant.

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

Both attorneys waived opening statements.

Witnesses for the Department appeared in the following order:

1. Luis Vega, Labor Crew Leader II, City of Miami, Department of Public Works testified and questions were posed by Board Members Cruz and Scarola during his testimony.

Chairman de la O terminated the calling of witnesses for a short time to address an issue with both attorneys concerning this case. He went on to say that the fact that four Board Members are available to hear Mr. Cruz' case today, raises the possibility of having a tie vote. Chairman de la O further stated that one way the Board has broken ties in the past was to allow the fifth Board Member to view either the videotape or transcripts of the case. He stated that both attorneys would have to agree to the procedure before the Board took any [voting] actions on this case if they desired to include the fifth Board Member in the event of a tie, and if there was no agreement, the case would be sent to the City Manager for him to decide the outcome of the case.

Attorney Mitrani stated that his client has been out of work since August 2008; therefore, he wanted to move on the case. He went on to say that in the event of a tie, he would have no problem with involving the fifth Board Member to review the videotape, transcripts, and speak to the other four Board Members in order to break the tie.

Chairman de la O stated that the only thing the Board could not act on as stated by Attorney Mitrani is to allow the fifth Member (Dames) to speak to the other four Board Members, except in open session, because of the Sunshine Act.

Attorney Mitrani stated that he understood and that he was not suggesting to the contrary.

Assistant City Attorney Vizcaino stated that she had no objection.

Member Scarola stated that he did not think this case would be finished today. He

asked if it would be proper to instruct Member Dames to review the videotape before the next meeting so that he is up to speed (for the continuation of the hearing).

Chairman de la O stated that Member Scarola's suggestion made sense to him and asked both attorneys if they were in agreement and they responded in the affirmative.

Following discussion, the Department continued with the calling of its witnesses as follows:

2. Osvaldo Munizaga, Labor Crew Leader II, City of Miami, Department of Public Works testified and questions were posed by Board Members Angel-Capo, Cruz, and de la O during his testimony.

3. Jaquin Perez, Police Officer, City of Miami, Department of Police testified and questions were posed by Board Members Scarola, de la O and Cruz during his testimony.

4. Lauren Richmond, Administrative Aide I, City of Miami, Department of Public Works testified and questions were posed by Chairman de la O during her testimony.

5. Marcia Valenzuela, Senior Labor Relations Specialist, City of Miami, Department of Employee Relations/Labor Relations testified and questions were posed by Board Members de la O, Scarola, and Angel-Capo during her testimony.

6. Lee Wilkins, Supervisor, City of Miami, Department of Public Works testified and questions were posed by Board Members de la O, Angel-Capo and Scarola during his testimony.

7. Julianne Diaz, Assistant Director, City of Miami, Department of Public Works testified and questions were posed by Board Member Angel-Capo during her testimony.

8. Gisella Rodriguez, Administrative Assistant II, City of Miami, Department of Risk Management testified and questions were posed by Board Members Angel-Capo and Scarola during her testimony.

Attorney Mitrani motioned for a directed verdict and provided the basis for his motion.

Without objection from other Board Members, Chairman de la O denied Attorney Mitrani's motion for a directed verdict on the basis that the Board needs to hear from both sides especially since Attorney Mitrani alleged that this was a case of self-defense.

Due to time constraints, the Board was unable to conclude Mr. Cruz' hearing today.

HEARING TO BE CONTINUED --- The Board heard from the Department's witnesses only and it is anticipated that the Department's attorney may have one more witness to call before resting her case. The next regular meeting is on February 24, 2009 and the Board will resume with Mr. Cruz' hearing at that time.

H.2 08-01477

Hearing of appeal on behalf of Clive Vernon, Police Officer, relative to his termination, effective December 1, 2008.

The Board took no action on this case because a continuance was granted at today's meeting.

CONTINUED

H.3 07-01266

Hearing of appeal on behalf of Pedro C. Torres, Automotive Equipment Operator II, relative to his 24-hour suspension, effective September 20, 2007.

Attorney Guttman-Valdes stated that she was prepared to go forward with a four-Member Board today, but since Member Dames has to leave, and it is not known when the Chair will arrive, she would have to wait until the case is rescheduled.

NOTE: Later during the meeting, Acting Chairman Scarola stated that there would not be enough time to hear Mr. Torres' case, and asked for a motion to continue the hearing and charge the continuance to the Board.

Following discussion, the Board entered a motion to CONTINUE the appeal hearing of Pedro C. Torres and charge the continuance to the Board, which resulted as follows:

Motion that this matter be CONTINUED. PASSED by the following vote.

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

Absent: Chairperson de la O

ADJOURNMENT:

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

Motion by Member Angel-Capo, seconded by Member Cruz, to APPROVE. PASSED by the following vote.

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

Absent: Member Dames

The meeting adjourned at 4:46 p.m. Breaks were taken at 11:07-11:47 a.m., 12:45-12:47 p.m., 1:09-2:02 p.m. (LUNCH) and 3:51-4:00 p.m.

SIGNATURE:

Miguel M. de la O, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary