

City of Miami

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

Tuesday, September 27, 2016

10:00 AM

Commission Chambers

Civil Service Board

*Lillie Harris, Chairperson
Vishwani Ramlal, Chief Examiner
Michael Dames, Board Member
Travis Lindsey, Board Member
Troy Sutton, Board Member*

PLEDGE OF ALLEGIANCE

The meeting was called to order at 10:00 am, with the Pledge of Allegiance. At commencement of the meeting, attendance was as follows:

Present: Member Dames, Chairperson Harris, Chief Examiner Ramlal, Member Sutton and Member Lindsey

ADOPTION OF TODAY'S AGENDA

Chair Harris asked if there were any revisions to the Agenda. Hearing none, a motion to adopt the Agenda as printed was considered and resulted as follows:

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

Aye: Lindsey, Ramlal, Sutton, Dames and Chairperson Harris

A. APPROVING THE MINUTES OF:

Regular Meeting of September 13, 2016.

Motion by Member Sutton, seconded by Member Lindsey, to APPROVE. PASSED by the following vote.

Aye: Lindsey, Ramlal, Sutton, Dames and Chairperson Harris

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

- D.1** Copy of a letter from Chief Rodolfo Llanes, Director, Department of Police, notifying Ruddens Cherrelus, Police Officer, of his 10-hour suspension, effective September 15, 2016. (NOTIFICATION)

NOTIFIED

E. GENERAL ITEMS

- E.1** Copy of Findings of Fact concerning the Hearing of Appeal on behalf of Noel Chavez, Business Tax Receipts Supervisor, relative to his 20-day suspension, effective February 1, 2016. (DISCUSSION) Deferred from the meeting of September 13, 2016.

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

Aye: Lindsey, Ramlal, Sutton, Dames and Chairperson Harris

- E.2** Copy of a Settlement Agreement between the City of Miami and Jose Rilo, Parks Coordinator, concerning his 3-day suspension, effective August 25, 2016. (NOTIFICATION)

NOTIFIED**F. REPORTS**

- F.1 Pending Hearings as of September 27, 2016. (NOTIFICATION)

PRESENTED

- F.2 Copy of a Report from the Chief Examiner, concerning the Preliminary Investigation on behalf of Derrick Cook, Antonio Perez, and Sergio Garrido, concerning the interview process for the classification of Chief of Land Development. (DISCUSSION)

The Chief Examiner reviewed several points of her report and responded to questions and comments from the Board. She advised that the interview process must be perceived as fair and based on merit, and departments miss out on talent that they help to cultivate when they don't consider long-term employees for interviews. She reiterated her request to the AFSCME Summit members to update LMP-3-92, to provide for additional consideration of these employees, and in general, make the policy better for the City and all stakeholders. The Board Members congratulated the Chief Examiner and thanked her for her work.

Following discussion, the Board entered a motion to ACCEPT the Report of the Chief Examiner without further action, which resulted as follows:

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

Aye: Lindsey, Ramlal, Sutton, Dames and Chairperson Harris

G. REQUESTS FOR HEARINGS**H. TODAY'S HEARINGS**

- H.1 Investigation Hearing on behalf of Lazaro Cabezas, Telecommunications Technician, from Osnat K. Rind, Attorney, Phillips, Richard, & Rind, P.A., pursuant to Civil Service Rule 16.1- Investigation by the Board.

Chair Harris called forth the matter, and asked for statements of representation. Attorney Christina Gornail, Phillips, Richard and Rind, P.A., appeared on behalf of the Grievant. Assistant City Attorney Barbara Diaz appeared on behalf of the City.

Prior to entering into the hearing, Assistant City Attorney Diaz renewed the City's objection to the matter moving forward, and asked that the Board dismiss the hearing, under the concept of res judicata, which precludes claims from being re-litigated once a final judgement has been entered and the appeal time has passed. She went on to remind the Board that in October 2010, Mr. Cabezas presented the same matter before the Board under a Rule 14 Appeal, and the Board recommended that the salary range for the Telecommunications Technician be returned to the higher range, just as it was for Mr. Jimenez. The Manager at the time issued a final judgment agreeing with the Board's Findings, but rejecting the recommendation that the salary range be returned. Assistant City Attorney Diaz stated that Mr. Cabezas could have taken the matter to the Appeals Court in 2010, based on disagreeing with the Manager's final Judgment, which is the normal procedure.

Attorney Gornail responded that the employee was not here to re-litigate the matter, but to ask the Board to find that the City's misinterpretation of the Findings has resulted in an abuse of power against Mr. Cabezas.

Chair Harris asked if Mr. Cabezas was travelling under a different Rule than before, to which Attorney Gornail responded in the affirmative.

Assistant City Attorney Diaz asked if, to save time, the Board could submit the previously entered Findings of Fact to the current Manager, to determine if he would adopt the Findings and issue a revised Judgement. She went on to say that what the City is objecting to is re-litigating this matter, and if the employee is asking that the Board affirm its previous Findings, the Board could forward the previous Findings to the Manager for a new Judgement, which is the same process that would happen were the Board to hear the matter today.

Attorney Gornail responded that the issue is that there is a difference of opinion regarding what the Board said in 2010, so that needs to be put on the record. She went on to say that they have the records to show that what the City is doing does not comply with the spirit and intent of the Rules.

Member Sutton asked for clarification of what the employee was seeking. Attorney Gornail responded by reading from the Findings from the 2010 hearing, and explained that what the City was doing was not in compliance with the Board's rulings. Member Sutton asked if the employee was in agreement with the way that the paragraph #14 of the Findings was written, to which the response was in the affirmative. Member Sutton asked why then was the employee not in favor of resubmitting the 2010 Findings. Attorney Gornail responded that the City was miss-applying the recommendations based on a misinterpretation, which has resulted in an abuse of power. Attorney Gornail added that they would also ask that in the alternative, that a new classification survey be conducted. Member Dames asked for clarification regarding what Attorney Gornail added. Attorney Gornail repeated her request. Assistant City Attorney Diaz reiterated that there is an appellate process to take up these matters, and that the time for that has passed, but bringing the matter before the Board again is improper. She went on to say that though the matter today was brought under Rule 16, and the previous one was under Rule 14, that the issues are the same. She confirmed that this matter concerns salary ranges, not actual salaries.

Member Dames asked why the Appellant didn't follow procedures and take the matter to circuit court, when the Manager issued the Judgement that he disagreed with. Attorney Gornail responded that Mr. Cabezas was told he had no recourse and received bad legal advice. However, that does not take away his right to file an abuse of power claim, as a separate course of action.

Member Sutton responded that he was not sure that he received all of this information (in March 2016) when this matter was brought as a request for hearing, but he doesn't want to provide anyone "two bites at the apple", and if the Board is going to come to the same conclusion, rather than rehearing the matter, the Board should just forward the 2010 Findings to the current Manager. He went on to ask if the Board could find the previous Manager guilty of abusing his power. Chair Harris responded that no one knows what the outcome of the hearing would be, and whatever the Board decides would be a recommendation to the Manager.

Following further discussion, the Board entered a motion to overrule the objection and proceed with the hearing, which resulted as follows:

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

Aye: Lindsey, Ramlal, Dames and Chairperson Harris

No: Sutton

The Board entered into the scheduled Investigation hearing on behalf of Lazaro Cabezas, pursuant to Civil Service Rule 16.1 - Investigation by the Board.

The Grievant was represented by Christina Gornail, Attorney at Law, Phillips, Richard and Rind, P.A.

The City was represented by Barbara Diaz, Assistant City Attorney, Office of the City Attorney.

The attorneys provided opening statements. Witnesses testifying at the request of the Grievant appeared in the following order:

1. Lazaro Cabezas, Grievant. Questions were asked of witness Cabezas by Member Sutton.

The Grievant rested.

No witnesses testified at the request of the City. The City rested.

The Board called the following to testify:

1. Ricardo Martinez, Assistant Director, Department of Human Resources. Questions were posed to witness Martinez by Member Ramlal.

Closing arguments were made by both sides. Chair Harris read Rule 16.1 into the record, then asked for motions. Prior to the making of any motion, Member Sutton stated that though he voted at the March 2016 meeting to grant the hearing, he did not agree that there was an abuse of power, and he would ask that the City Manager review the Findings from the 2010 hearing. He went on to say that he did not want to set precedent in having everyone who did not agree with a Manager's decision or received what they thought was bad advice to come to the Board and get a re-hearing of an issue.

Member Dames moved that the City did violate Rule 16.1, which was seconded by Member Lindsey. During discussion on the motion, Member Sutton stated that he would be voting against the motion. Chair Harris advised that she wants all who come before the Board to feel that they have gotten a fair hearing. She went on to say that the burden of proof, regardless of which side bears it, is very heavy and the Board should be about fairness. She further stated that she doesn't feel that what the City did rises to the level of an abuse of power, and she would vote no on the motion as well; however, when a person is in a position where they can use their power to right a wrong, then they should do so, and she would support that recommendation to the current manager.

Member Dames stated that Member Sutton was correct and he also didn't want to hear this matter again; however, when the Board heard this matter (in 2010) under Rule 14, it was a unanimous decision that the Range be re-instated for Mr. Cabezas. He went to

say that he believes that there was an abuse of power when the manager at the time disregarded the recommendation of the Board, and although [Mr. Cabezas] did not take the judgement to court, there was an abuse. Chair Harris responded that according to the Rule (Rule 14), the manager does not have to agree with the Board. She went on to explain that when an employee "wins" a Civil Service Board appeal, per circuit court decisions, the manager has to uphold that. Chair Harris expressed that this issue is a terrible wrong, and she respects whatever decision the Board makes, but in her consciousness, it does not rise to the level of an abuse of power.

Special Counsel Barrow suggested that the Board consider forwarding the previous Findings to the manager under Civil Service Rule 4.1, rather than determine that a violation had occurred. Member Ramlal asked if she could amend the motion on the floor and add that the abuse of power reference the previous city manager. Chair Harris asked if Member Dames would accept Member Ramlal's amendment to his motion, to which he responded that Special Counsel's suggestion would be acceptable to him, and he would rather withdraw his motion.

Chair Harris advised that for Rule 16 hearings, the Board generally would make a motion, vote on it, and from there make recommendations, then asked if Member Ramlal would make a motion. Member Ramlal replied that she had a recommendation, and added that she would like to proceed as Special Counsel suggested. Chair Harris reminded the Board that there was a motion on the floor, and further, that the employee was granted a hearing based on Rule 16.1, so the Board's responsibility is to at least make an effort to rule on the violation before it. Therefore, if the motion on the floor fails or is withdrawn, she would ask for another motion. Hearing none, Chair Harris passed the gavel and moved that there was no violation of Rule 16.1, which resulted as follows:

**Motion by Chairperson Harris, seconded by Member Sutton, to APPROVE.
FAILED by the following vote.**

Aye: Sutton and Chairperson Harris

No: Lindsey, Ramlal and Dames

The previous motion having failed, Member Dames asked to reinstate his previous motion, that there was an abuse of power, in violation of Rule 16.1 by the previous City Manager. Following discussion, the motion on the floor resulted as follows:

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

Aye: Lindsey, Ramlal and Dames

No: Sutton and Chairperson Harris

The Board discussed recommendations to add to its Rule 16.1 Report to the City Manager. Following discussion, the Board entered a motion to recommend that the manager reinstate the 32M salary range for the other incumbent (Mr. Cabezas), which resulted as follows:

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

Aye: Lindsey, Ramlal, Dames and Chairperson Harris

No: Sutton

Under discussion on the previous motion, Member Sutton stated that he was concerned that other employees, who found fault with the manager's handling of the Board's Findings and Recommendations, would come to the Board and attempt to get a

re-hearing of the matter, by filing under Rule 16. He went on to say that he is firmly against people getting two bites at the apple, and would vote against such requests in the future.

Following additional discussion, the Board entered a motion to forward the Findings & Recommendations from the 2010 hearing to the current city manager for consideration, in addition to its report, which resulted as follows:

Motion by Member Sutton, seconded by Member Lindsey, to APPROVE. PASSED by the following vote.

Aye: Lindsey, Ramlal, Sutton, Dames and Chairperson Harris

Chair Harris commended the Board for its diligence in deliberation of the issues, because the decisions and recommendations made impact the current and future of the City. She went on to thank the Mr. Cabezas for his work and asked again that the manager acts within his power and correct a very terrible wrong. Members Sutton and Dames concurred.

ADJOURNMENT:

Breaks were taken at: 11:07 am - 11:14 am; and 12:26 pm - 1:14 pm (Lunch).

There being no further business before the Board, a motion was entered to adjourn the meeting at 2:17 pm, which resulted as follows:

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

Aye: Lindsey, Ramlal, Sutton and Chairperson Harris

No: Dames