

City of Miami

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



Meeting Minutes

Tuesday, May 14, 2013

10:00 AM

Commission Chambers

Civil Service Board

*Gerald Silverman, Chairperson
Sean Moy, Chief Examiner
Lillie Harris, Board Member
Javier Baños, Board Member*

PLEDGE OF ALLEGIANCE

The meeting was called to order at 10:00 a.m. The roll call at the commencement of the meeting was as follows:

Present: Chairperson Silverman, Chief Examiner Moy, Member Harris and Member Baños

A. APPROVING THE MINUTES OF:

Special Meeting of May 6, 2013.

The Board entered a motion to APPROVE the minutes of the May 6, 2013 meeting which resulted as follows:

Motion by Member Baños, seconded by Member Harris, to APPROVE. PASSED by the following vote.

Aye: Silverman, Moy, Baños and Harris

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 Jerry Sutherland, Police Officer, of his 240-hr suspension, effective May 11, 2013. (NOTIFICATION)

NOTIFIED

E. GENERAL ITEMS**F. REPORTS**

- F.1 Pending Hearings as of May 14, 2013. (NOTIFICATION)

PRESENTED

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

- H.1 Hearing of appeal on behalf of Favian Rodriguez, Police Officer, relative to his 40-hour suspension, effective January 3, 2009.

Chairman Silverman took attendance on the hearings and asked if anyone was present with regards to the hearing of Officer Favian Rodriguez. Attorney Gibbons responded that Attorney Ronald J. Cohen asked him to speak on his behalf concerning this case. He went on to say that Attorney Cohen requested that the case be withdrawn pursuant to Rule 14.6 because Officer Rodriguez resigned.

Chairman Silverman asked for the department's position on this case. ACA Richard

responded that she was not sure of the interpretation of Rule 14.6 because she did not know if Attorney Cohen was withdrawing the appeal or what in fact was being withdrawn. Chairman Silverman asked the department's attorney if Officer Rodriguez' resignation was accepted by the department director. ACA Richard responded in the affirmative. She went on to say that Officer Rodriguez' case had been around since 2009. ACA Richard further stated that at some point, the Board dismissed the charges due to the fact there were some settlement talks; however, the City Manager remanded this action back to the Board for a hearing.

Member Banos suggested that the Chairman wait until Special Counsel Everett arrived and at that time she could give the Board some direction on this matter. Chairman Silverman agreed with Member Banos' suggestion and proceeded to consider other items on the agenda.

Special Counsel Everett arrived at 10:04 a.m. and the Board took up the matter concerning Officer Rodriguez's hearing [as it related to the issue of Rule 14.6.] Chairman Silverman stated as he understood it, Officer Rodriguez asked for a hearing to appeal his 40-hour suspension, but had since then resigned. He went on to say that Officer Rodriguez' resignation was accepted by the director of the Police Department and his attorney's position was that the department's acceptance of the resignation would conclude the matter pursuant to Rule 14.6; however, the department's attorney wanted to discuss the matter further.

Cynthia A. Everett, Special Counsel to the Board, stated that she knew Officer Rodriguez' case was before the Board many times and the Board opined certain things so she needed more time to review the matter in order to know exactly what the issue was and also to try to understand what was said before [on this issue] so that the Board was consistent.

Following the other Agenda matters, the Board revisited discussion on the interpretation of Rule 14.6 in this case. Special Counsel Everett advised the Board that there is nothing pending pursuant to Rule 14.6. because the employee (Officer Rodriguez) resigned pending appeal which deemed the charges withdrawn and therefore, the matter should be dismissed.

Following discussion, the Board entered a motion to dismiss the appeal of Officer Favian Rodriguez which resulted as follows:

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

Aye: Silverman, Moy, Baños and Harris

H.2

Hearing of Appeal on behalf of John Kocur, Police Officer, relative to his 10hr suspension, effective July 9, 2012.

Chairman Silverman asked for the status of Officer Kocur's case. ACA Cohen responded that this matter was settled. Chairman Silverman asked opposing counsel if he reached an agreement with the City in this case. Attorney Gibbons responded if the department accepts the terms he submitted, he could then say that this matter was settled.

Chairman Silverman stated that he needed to know if a settlement had been reached and asked to hear from the department's attorney. ACA Richard responded that they have reached a 90% deal in terms of the settlement. She went on to say there was one

more element she needed to speak to the police department about, so other than this one issue, they should have an agreement.

Chairman Silverman asked ACA Richard if she wished to continue the hearing since they did not reach a 100% agreement on settling Officer Kocur's case. ACA Richard responded in the affirmative. Chairman Silverman asked Attorney Gibbons if he was in agreement with the continuance. Attorney Gibbons responded in the affirmative.

Following discussion, the Board entered a motion to CONTINUE the hearing of Officer John Kocur and charge the continuance to both parties. The motion resulted as follows:

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

Aye: Silverman, Moy, Baños and Harris

H.3

Hearing of Appeal on behalf of Workmond Napoleon, Police Officer, relative to his 80-hour suspension, effective January 4, 2013.

The Board entered into the scheduled hearing of appeal on behalf of Workmond Napoleon.

Casey P. Cohen, Assistant City Attorney, represented the Department.

Eugene G. Gibbons, Attorney at Law, represented the Employee.

ACA Cohen presented opening statements and Attorney Gibbons deferred opening statements. The Rule of Witnesses was invoked and all witnesses were sworn in individually. Witnesses for the Department appeared in the following order:

- 1. William Cook, Sergeant, City of Miami, Department of Police. Questions were posed by Board Members Harris, Moy, and Banos during the testimony of Sgt. Cook.*
- 2. Magdiel Armenteros, Sergeant, City of Miami, Department of Police. Questions were posed by Board Members Harris and Moy during the testimony of Sgt. Armenteros.*
- 3. Max Gabriel, Sergeant, City of Miami, Department of Police. Questions were posed by Board Members Harris and Banos during the testimony of Sgt. Gabriel.*
- 4. Harold Cummings, Police Officer, City of Miami, Department of Police. Questions were posed by Board Member Harris during the testimony of Officer Cummings.*

The Department rested its case and Attorney Gibbons presented opening statements. Following opening statements, Attorney Gibbons began with the calling of his witnesses. Witnesses for the Employee appeared in the following order:

- 1. Glenda Perez, Police Officer, City of Miami, Department of Police. Questions were posed by Board Member Harris during the testimony of Officer Perez.*
- 2. Aiesha Fortune, Police Officer, City of Miami, Department of Police. Questions were posed by Board Member Harris during the testimony of Officer Fortune.*
- 3. Roger Jackson, Police Officer, City of Miami, Department of Police.*
- 4. Johnny Brutus, Police Officer, City of Miami, Department of Police. Questions were posed by Board Member Harris during the testimony of Officer Brutus.*

5. Workmond Napoleon, Police Officer, City of Miami, Department of Police, testified on his own behalf. Questions were posed by Board Members Harris and Banos during the testimony of Officer Napoleon.

The Employee rested his case and the Board proceeded to closing arguments that were presented by both attorneys. Following final argument, the Board entertained discussion concerning the Fact-Finding Phase of Officer Napoleon's hearing.

Member Harris stated she wished to say a few things to Officer Napoleon and she starting by saying that she always respected persons who come before the Board to speak for themselves regardless of the outcome [of their case.] She went on to say that in and of itself was a big step [for Officer Napoleon to take.] Member Harris further stated that Officer Napoleon is a new officer and he has what she hoped to be a long career ahead of him. She stated according to testimony, she consistently heard that Officer Napoleon is a good officer and that thought was echoed by his Field Training Officer [Cummings] when he said that Officer Napoleon was one of the best officers he trained. Member Harris went on to say that one of the things that the job of police officer requires is humility and that it was a very important [quality] to possess. She further stated she could say that when she joined the police force 24 years ago, it was unheard of to question a superior. Member Harris stated she did, however, understand it is very important to establish a relationship between a subordinate and a supervisor because in her opinion, discipline should be the last result in trying to correct a behavior. She went on to say that the decisions made by the Board are about setting the tone and the future of City departments so she recognizes and commends her fellow Board Members because the decisions made by them are not easy, to say the least. Member Harris further stated she would ask Officer Napoleon not to let this one act [of discipline] define him because it seemed to her that in totality, Officer Napoleon is an excellent person and officer. She stated that at times, we all, including herself, have fallen short of what we could have done better so she would again ask Officer Napoleon not to let this one act [of discipline] define him, but to learn from it and take this opportunity to do better because he has a long time to be an officer with the City if that was his plan. Member Harris went on to say we can always do things better and a good place to start is by taking responsibility for what we do or could have done better.

Member Banos stated this was one of those cases of who you believed the most and whether or not you can live with the consequences. He went on to say that the burden of proof was on the department so he disregarded the fact that the higher-ranking police officers would give better testimony than officers who had only been on the police force for a short period of time. Member Banos further stated he had a real problem with a higher ranked officer whose perspective was that the police department should be run like the military when it is a paramilitary organization. He stated that he was somewhat disturbed because he felt the matter [between Sgt. Cook and Officer Napoleon] could have been handled differently, but primarily by Officer Napoleon. Member Banos went on to say that he was also concerned about the way in which the rules read because the language was broad in that any action could be deemed disrespectful. He further stated that according to the testimony he heard from Sergeants Cook, Armenteros, and Gabriel, he felt that Officer Napoleon was made an example by those sergeants by charging him with an 80-hour suspension for raising his voice when he should not have done so. Member Banos stated if the Board were to find Officer Napoleon guilty on all of the violations [cited in the charging document], it seemed to him there would still be a vote recommending to uphold the 80-hour suspension; however, he did not think Officer Napoleon's behavior merited an 80-hour suspension. He went on to say that he was not here to make an example of anyone and that he was sure after that incident [in the Roll Call Room], that Officer Napoleon was not going to ever speak out at roll call because he learned his lesson.

Chairman Silverman stated that you cannot run an organization with a police officer "mouthing off" at a sergeant. He went on to say that he did not think the Board should consider the penalty that was assessed without first considering whether Officer Napoleon was guilty or not guilty of the charges. Chairman Silverman further stated if Officer Napoleon was found guilty of the charges then that would be the time to consider the penalty.

Following discussion, the Board entered a motion to find the Employee NOT GUILTY of Charge #1 - Departmental Order 1.11.6.13.8 - Conduct Unbecoming. The motion resulted as follows:

Motion by Member Baños, seconded by Chief Examiner Moy, that this matter be APPROVED. FAILED by the following vote.

Aye: Moy and Baños

No: Silverman and Harris

The motion having failed, the Board entered a motion to find the Employee GUILTY of Charge #1, which resulted as follows:

Motion by Member Harris, seconded by Chairperson Silverman, that this matter be APPROVED. FAILED by the following vote.

Aye: Silverman and Harris

No: Moy and Baños

The Board entered a motion to find the Employee NOT GUILTY of Charge #2 - Departmental Order 1.11.6.13.11 - Courtesy Towards Others. The motion resulted as follows:

Motion by Member Baños, seconded by Chief Examiner Moy, that this matter be APPROVED. FAILED by the following vote.

Aye: Moy and Baños

No: Silverman and Harris

The motion having failed, the Board entered a motion to find the Employee GUILTY of Charge #2, which resulted as follows:

Motion by Member Harris, seconded by Chairperson Silverman, that this matter be APPROVED. FAILED by the following vote.

Aye: Silverman and Harris

No: Moy and Baños

The Board entered a motion to find the Employee NOT GUILTY of Charge #3 - Departmental Order 1.11.6.13.12 - Obeying/Executing Orders. The motion resulted as follows:

Motion by Member Baños, seconded by Chief Examiner Moy, that this matter be APPROVED. FAILED by the following vote.

Aye: Moy and Baños

No: Silverman and Harris

The motion having failed, the Board entered a motion to find the Employee GUILTY of Charge #3, which resulted as follows:

Motion by Member Harris, seconded by Chairperson Silverman, that this matter be APPROVED. FAILED by the following vote.

Aye: Silverman and Harris

No: Moy and Baños

The Board entered a motion to find the Employee NOT GUILTY of Charge #4, Departmental Order 1.11.6.17.8 - Insubordination. The motion died for lack of a second. The motion having died, the Board entered a motion to find the Appellant GUILTY of Charge #4, which resulted as follows:

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

Aye: Silverman, Moy and Harris

No: Baños

The Board entered a motion to find the Employee GUILTY of Charge #5 - Departmental Order 1.11.6.31.3 - Respect for Superior Officers. The motion resulted as follows:

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

Aye: Silverman, Moy, Baños and Harris

The Board entered a motion to find the Employee NOT GUILTY of Charge #6 - Departmental Order 1.11.6.32.4 - Carrying Out Order. The motion died for lack of a second. The motion having died, the Board entered a motion to find the Employee GUILTY of Charge #6, which resulted as follows:

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

Aye: Silverman, Moy and Harris

No: Baños

The Board entered a motion to find the Employee GUILTY of Charge #7 - Civil Service Rule 14.2(e) 1 - Act of Insubordination. The motion resulted as follows:

Motion by Member Harris, seconded by Chairperson Silverman, that this matter be APPROVED. FAILED by the following vote.

Aye: Silverman and Harris

No: Moy and Baños

The motion having failed, the Board entered a motion to find the Employee NOT GUILTY of Charge #7, which resulted as follows:

Motion by Member Baños, seconded by Chief Examiner Moy, that this matter be APPROVED. FAILED by the following vote.

Aye: Moy and Baños

No: Silverman and Harris

The Board entered a motion to find the Employee GUILTY of Charge #8 - Civil Service Rule 14.2(e) 2, Breach of Proper Discipline. The motion resulted as follows:

Motion by Member Harris, seconded by Chairperson Silverman, that this matter be APPROVED. FAILED by the following vote.

Aye: Silverman and Harris

No: Moy and Baños

The motion having failed, the Board entered a motion to find the Employee NOT GUILTY of Charge #8, which resulted as follows:

Motion by Member Baños, seconded by Chief Examiner Moy, that this matter be APPROVED. FAILED by the following vote.

Aye: Moy and Baños

No: Silverman and Harris

The Board entered a motion to find the Employee NOT GUILTY of Charge #9 - Civil Service Rule 14.2(h) - Disgraceful Conduct. The motion resulted as follows:

Motion by Chief Examiner Moy, seconded by Member Baños, that this matter be APPROVED. FAILED by the following vote.

Aye: Moy and Baños

No: Silverman and Harris

The motion having failed, the Board entered a motion to find the Employee GUILTY of Charge #9, which resulted as follows:

Motion by Member Harris, seconded by Chairperson Silverman, that this matter be APPROVED. FAILED by the following vote.

Aye: Silverman and Harris

No: Moy and Baños

The Board entered a motion to find the Employee GUILTY of Charge #10 - Civil Service Rule 14.2(r) - Antagonistic Toward Superiors. The motion resulted as follows:

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

Aye: Silverman, Moy, Baños and Harris

Hearing of Appeal on behalf of Workmond Napoleon, Police Officer, relative to his 80-hour suspension, effective January 4, 2013.

After consideration of all of the charges, Chairman Silverman asked if there was any Board Member who wished to change his/her vote on Charges #1, 2, 3, 7, 8, and 9 that resulted in a tie. Member Banos responded in the affirmative. He went on to say that on any motion for which the Board moved for a finding of guilty and he voted no, he wished to change his vote to yes. Chairman Silverman stated in light of Member Banos having changed his votes, that meant that all votes for a finding of guilty that resulted in a tie (2-2) would now be changed to a vote of (3-1). He went on to say that for the sake of there being no misunderstanding with the votes, Chairman Silverman asked Member Banos again if he was changing his vote from no to yes on all of the motions for a finding of guilty of the charges [that resulted in a tie vote.] Member Banos responded in the affirmative. Chairman Silverman stated that being the case, Officer Napoleon was now found guilty of all 10 charges by the Board.

The Board proceeded to the Penalty Portion of Officer Napoleon's hearing. The Board reviewed the Employee's personnel file which revealed Officer Napoeleon was hired on April 1, 2009 and since that time, he received one (1) reprimand.

Keith Cunningham, Police Major, City of Miami, Department of Police was called as a penalty witness on behalf of the department. Questions were posed by Board Members Harris and Banos during the testimony of Major Cunningham. The department rested and the Employee waived rebuttal.

The Board proceeded to closing arguments and both attorneys presented their positions on the case. Following final argument, Chairman Silverman called for Board discussion on the penalty.

Member Harris stated that when it comes to progressive discipline, she concurred with Major Cunningham's recommended penalty of an 80-hour suspension since this was Officer Napoleon's second occurrence of what she considered to be a critical area of discipline - related to following a supervisor's instructions.

Member Banos stated that the Board found Officer Napoleon guilty of all of the charges and he had gone through a prolonged process. He went on to say that assuming the City Manager accepts the Board's recommendation (of an 80-hour suspension), two weeks of pay would be taken away from Officer Napoleon for something he had already received a great deal of grief. Member Banos further stated that the process sometimes could be more of a punishment than the actual punishment so from his view, he thought it would be adding insult to injury (by recommending to uphold the 80-hour suspension). He stated he felt that a recommendation of the original penalty (from Sgt. Cook) of a 10-hour suspension or a reprimand only would be enough to send a message to Officer Napoleon and his fellow officers that such actions would not be tolerated.

Member Harris stated that Major Cunningham used the term "egregious" in his addendum to the reprimand and that was one of the exceptions to progressive discipline. She went on to say that Officer Napoleon's behavior was so egregious that it could have a ripple effect which is why she agreed with the Chairman when he stated that a police department cannot be run in such a fashion [where there is no respect.] Member Harris further stated what concerned her most was if an officer could demonstrate that type of behavior towards his supervisor at Roll Call, it made her wonder what behavior Officer Napoleon was demonstrating on the streets when dealing with the public. She stated that she did not know Officer Napoleon but she believed that everyone deserved a second opportunity so her hope was that Officer Napoleon would use this case to better himself. Member Harris went on to say it was okay to be [the focus of] what seemed to be a bad example because it still could work towards the good of being an example to fellow workers as to what they should not do. She further stated when talking about defiance towards a supervisor, Officer Napoleon's behavior was egregious and not to mention, this was his second occurrence. Member Harris went on to say that [considering Officer Napoleon's behavior], she believed the supervisors were trying to help him to understand that he works for a paramilitary organization which cannot be run [with the type of behavior he displayed] and to save Officer Napoleon from himself to ensure that he has a productive career.

Member Banos stated he thought the Board should punish Officer Napoleon for what he had done and not what he might be doing on the streets because the Board had not heard any testimony to that fact. He went on to say that he believed the original penalty of a 10-hour suspension was more appropriate given the situation.

Chairman Silverman stated he thought Officer Napoleon "mouthed off" and he thought he should not have done so. He went on to say that he felt the 80-hour suspension was severe and believed that a 40-hour suspension was sufficient.

Following discussion, the Board entered a motion to recommend to the City Manager

that Officer Napoleon receive a 10-hour suspension in lieu of the 80-hour suspension imposed by the department director. The motion failed for lack of a second.

The motion having failed, the Board entered a motion to recommend to the City Manager that Officer Napoleon receive a 40-hour suspension in lieu of the 80-hour suspension imposed by the department director which resulted as follows:

Motion by Chief Examiner Moy, seconded by Chairperson Silverman, that this matter be APPROVED. PASSED by the following vote.

Aye: Silverman, Moy and Baños

No: Harris

ADJOURNMENT:

The meeting ADJOURNED at 1:31 p.m. Breaks were taken at 10:58 - 11:04 and 12:11 - 12:15 p.m.

SIGNATURE:

Gerald Silverman, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary