

City of Miami

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



Meeting Minutes

Tuesday, May 1, 2012

10:00 AM

Commission Chambers

Civil Service Board

*Joseph Kaplan, Chief Examiner
Christine Gomez, Board Member
Sean Moy, Board Member
Gerald Silverman, Board Member*

PLEDGE OF ALLEGIANCE

The meeting was called to order at 10:02 a.m. Member Silverman served as Chair, having been elected to serve in the interim, at the April 17, 2012 meeting. The roll call for the Board Members at the commencement of the meeting was as follows:

Present: Chief Examiner Kaplan, Member Silverman and Member Gomez

Absent: Member Moy

Vacant: Member **Vacancy

A. APPROVING THE MINUTES OF:

Regular Meeting of April 17, 2012.

**Motion by Chief Examiner Kaplan, seconded by Member Silverman, to APPROVE.
PASSED by the following vote.**

Aye: Kaplan and Silverman

Abstain: Gomez

Absent: Moy

N/A: **Vacancy

B. PERSONNEL MATTERS

- B.1** Copy of a memorandum from Keith A. Carsell, Director, Department of Solid Waste, approved by Beverly Pruitt, Director, Department of Human Resources, notifying Devell King, Waste Collector II, of his involuntary return to former classification. Devell King is being rolled back to Waste Collector, effective April 16, 2012. (NOTIFICATION)

NOTIFIED

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

- D.1** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Jolexy Castillo, Police Officer, of his 40-hour suspension, effective May 1, 2012. (NOTIFICATION)

NOTIFIED

- D.2** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Jolexy Castillo, Police Officer, of his 20-hour suspension, effective April 29, 2012. (NOTIFICATION)

NOTIFIED

- D.3** Copy of a letter from Keith A. Carswell, Director, Department of Solid Waste,

notifying Alan Blonder, Administrative Aide I, of his three (3) day suspension, effective April 16, 2012. (NOTIFICATION)

NOTIFIED

E. GENERAL ITEMS

E.1

Hearing of Appeal on behalf of Luis Hernandez, Police Officer, relative to his 40-hour suspension, effective March 6, 2009. (DISCUSSION)
Rescheduled pursuant to continuance policy; pending settlement since March 6, 2012.

Chairman Silverman asked the Executive Secretary for the status of Officer Hernandez' case. The Executive Secretary responded that a settlement was expected to have been reached in this case; however, because the settlement agreement was not received, the hearing was scheduled in accordance with the Board's Continuance Policy.

Chairman Silverman asked for the status of the settlement in this case. Janeen Richard, Assistant City Attorney (ACA) responded that the settlement agreement has been signed by Officer Luis Hernandez and that she is currently awaiting the Police Chief's signature to finalize the settlement. Hearing no objection from Board Members, Chairman Silverman instructed the Executive Secretary to carry this matter over to the Board's next meeting.

DEFERRED : Rescheduled to May 15, 2012 meeting to allow time for settlement agreement to be finalized. Case will be closed and removed from the Board's docket upon receipt of written settlement agreement or rescheduled in accordance with the Board's Continuance Policy.

E.2

Hearing of Appeal on behalf of Eddy Rodriguez Jr., Police Officer, concerning his 40-hour forfeiture, effective February 4, 2010. (DISCUSSION)
Rescheduled pursuant to continuance policy; pending settlement since August 24, 2010.

Chairman Silverman asked for the status of Officer Rodriguez' case as a settlement was expected in this case. Teri Guttman-Valdes, Attorney on behalf of Officer Eddy Rodriguez responded that her client signed the settlement agreement. She went on to say that the last time her client signed the settlement agreement, it got lost so she wants the record to reflect that she personally handed over the signed settlement to ACA Richard at today's meeting so that this matter can be finalized.

DEFERRED : Chairman Silverman instructed the Executive Secretary to carry this matter over to the Board's next meeting. Case will be closed and removed from the Board's docket upon receipt of written settlement agreement or rescheduled in accordance with the Board's Continuance Policy.

E.3

Copy of Findings of Fact in the Grievance Hearing of Joan Greene, Secretary II, pursuant to Civil Service Rule 16.2, concerning a violation of Rule 12, Layoff, Resignation, and Reinstatement. (DISCUSSION)

Michael Braverman, Attorney on behalf of Joan Greene, stated his issue with this matter is the Board does not have a quorum of Members that actually heard the case. Chairman Silverman responded that he understands Attorney Braverman's position but this is the last meeting of this current Board and only two of the three Members present today heard his client's case. He went on to say he did not know how else to proceed

because at the next meeting, there will be a different Board.

Attorney Braverman stated that he contacted Special Counsel Everett yesterday after realizing there would be this issue and it was his understanding that Special Counsel Everett was going to research this matter to see whether or not the Board could legally act. He went on to say that he is concerned that if there is some dispute about the suggested findings of fact and recommendations that he presented to opposing counsel, he would be faced with the situation where only two Board Members would have insight as to what took place at the hearing when there were four Members who could have voted on the findings since the fifth Member, former Chairman de la O, had already resigned from the Board. Chairman Silverman after suggesting to defer this item to the next meeting stated that what he suggested would not work because there would still be only two of the five Members who heard the case at the next meeting. He suggested that the Board do whatever it can today since the Board would not have a quorum at the next Board meeting. The Executive Secretary responded there is also the issue of time because the longer the Board takes to consider this matter the [more likely that memories would fade].

Attorney Braverman stated the only other option he was contemplating to have the Board consider is to give some special consideration so that the Board Members who heard the case could come back for the limited purpose of hearing the findings of fact. He went on to say no disrespect to the present Members (Silverman/Kaplan) because he knows they would do an admirable job in trying to determine what version of the facts are going to become the ultimate determination in this matter. Attorney Braverman further stated he would be remiss if he did not bring this issue up and he thinks Board Members Silverman and Kaplan realize that he would have to bring the issue up. He stated that it would seem to him that if this situation had not occurred before there would be the ability for some limited purpose to have a special meeting to have this matter reviewed by at least three Board Members that heard the case.

Chairman Silverman suggested that the Board consider Attorney Braverman's suggested changes to the findings of fact and afterwards the Board could revisit his concern about there not being a quorum, if necessary.

After Attorney Braverman presented two of his suggested changes and no agreement could be reached by the attorneys, Member Kaplan stated that if both attorneys could not agree, it would be an impossible task for the parties to face because neither he nor former Chairman de la O will not be at the next meeting. He went on to say that the question is will there be any subsequent meeting for which a majority of Board Members that heard Ms. Greene's case would be present to consider the findings at the next meeting? Member Kaplan further stated the answer to the question is no, so he thinks both attorneys need to come to some agreement so that the possibility of a future problem arising will be negated. ACA Richard responded that if they cannot reach an agreement, the Board should accept Special Counsel Everett's report of the findings of fact and recommendations, as proposed.

Chairman Silverman stated that he would like to hear and consider all of Attorney Braverman's suggested changes to the findings first and then the Board can make a decision on how it would proceed at that time. Following consideration of Attorney Braverman's suggested changes to the findings and argument by opposing counsel, Chairman Silverman stated he and Member Kaplan heard Ms. Greene's case so he would suggest that the Board adopt the employee's recommended changes, conclude this matter, and forward the findings to the City Manager.

Member Kaplan responded that he agreed with Chairman Silverman's suggestion. He went on to say that his next question is why does the Board need disputed findings of

fact. Member Kaplan further stated it seemed to him that it would be simpler to summarize the things both sides can agree to and that ought to be enough to include in the findings. Chairman Silverman responded that the way it works is the Board's Special Counsel prepares the proposed findings of fact and either side can object. He went on to say that he thinks the Board should make a motion adopting the employee's recommended changes and incorporate the changes into the findings of fact prepared by Special Counsel Everett.

Member Kaplan stated there is a dispute between the two attorneys (as to what should be removed from or added to the findings). Chairman Silverman responded the Board is in place to settle the dispute which is why he suggested that the Board adopt the employee's recommended changes into the findings of fact prepared by Special Counsel Everett and move on because it is not going to get better since there would not be three Members who heard Ms. Greene's case at the next meeting. Member Kaplan responded that he thinks what the Chairman proposed is an excellent possibility but it is not going to work every time.

Following discussion, the Board entered a motion to adopt the findings of fact and recommendation submitted by Special Counsel Everett and to incorporate the changes submitted by the employee which resulted as follows:

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

Aye: Kaplan and Silverman

Abstain: Gomez

Absent: Moy

N/A: **Vacancy

F. REPORTS

F.1 Pending Hearings as of May 1, 2012. (NOTIFICATION)
PRESENTED

G. REQUESTS FOR HEARINGS

H. TODAY'S HEARINGS

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After completing all of the Board's business for today's meeting, Member Kaplan stated he would like to say a few words before the Board adjourns. He expressed how pleased he was to have served as a Member of the Civil Service Board. He went on to say that he can only wish the new Board Members all of the luck in the world, and a great job that needs to be done. Member Kaplan further stated he has worked on Boards, Commissions, and Courts for many years so he can say that the Board Members he worked with are an outstanding group of professionals. He stated as far as professional service is concerned, there is no one in the federal, state, county or city government that he knows of that has done a better job than the Board Members who served during his tenure as a Board Member. Member Kaplan went on to say that he is leaving the Board and is also retiring so if anyone were to ask him to return to the Civil Service Board, he will not do so because he is retiring.

ADJOURNMENT:

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

**Motion by Chief Examiner Kaplan, seconded by Member Gomez, to APPROVE.
PASSED by the following vote.**

Aye: Kaplan, Silverman and Gomez

Absent: Moy

N/A: **Vacancy

The meeting ADJOURNED at 10:18 a.m.

SIGNATURE:

Gerald Silverman, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary