

City of Miami

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



Meeting Minutes

Tuesday, February 17, 2009

9:00 AM

SPECIAL MEETING

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, Chairperson de la O, Member Dames and Member Angel-Capo

Absent: Member Cruz

NOTE: Member Cruz advised that he would be arriving late for today's meeting.

A. APPROVING THE MINUTES OF:**B. PERSONNEL MATTERS****B.1 09-00163**

Copy of a memorandum from Hector Lima, Director, Building Department, requesting to extend the probationary period of Fred Acosta, Plumbing Inspector III, three (3) additional months beyond March 10, 2009.

(DISCUSSION)

Item Addition

Chairman de la O asked Mr. Acosta if he was aware that the department requested to extend his probationary period.

Fred Acosta, Plumbing Inspector III, appeared before the Board and responded in the affirmative.

Chairman de la O asked Mr. Acosta if he had an objection to the department's request to extend his probationary period.

Mr. Acosta responded in the negative.

Following discussion, the Board entered a motion to APPROVE the department's request to extend Fred Acosta's probationary period an additional 3 months beyond March 10, 2009, which resulted as follows:

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

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

Absent: Member Cruz

B.2 09-00162

Copy of a memorandum from Hector Lima, Director, Building Department, requesting to extend the probationary period of Alejandro Pascual, Building Inspector I, three (3) additional months beyond February 20, 2009.

(DISCUSSION)

Item Addition

Chairman de la O asked if Mr. Pascual was present.

The Executive Secretary responded in the negative. She went on to say that Mr. Pascual is taking the State Certification exam this morning, but she received his signed concurrence memo which indicated that Mr. Pascual did not object to the extension of his probationary period.

Following discussion, the Board entered a motion to APPROVE the department's request to extend the probationary period of Alejandro Pascual for three additional months beyond February 20, 2009, which resulted as follows:

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

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

Absent: Member Cruz

C. MILITARY LEAVES OF ABSENCE

D. DISCIPLINARY MATTERS

- D.1 09-00156** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Marc Marcelin, Police Officer, of his 20-hour suspension, effective February 9, 2009. (NOTIFICATION)
NOTIFIED ---NO APPEAL TO DATE
- D.2 09-00157** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Ivan Moreno, Police Officer, of his 10-hour forfeiture, effective February 11, 2009. (NOTIFICATION)
NOTIFIED ---NO APPEAL TO DATE
- D.3 09-00158** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Octavio Piedro, Police Officer, of his 160-hour suspension, effective February 16, 2009. (NOTIFICATION)
NOTIFIED ---NO APPEAL TO DATE
- D.4 09-00159** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Shekita Johnson, Communications Operator, of her 8-hour suspension, effective February 8, 2009 and a copy of a request to appeal from Osnat K. Rind, Attorney on behalf of Shekita Johnson. A hearing will be scheduled in accordance with the Civil Service Rules and Regulations. (NOTIFICATION)
RECEIVED AND FILED
- D.5 09-00160** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Silvia Benitez, Communications Operator, of her 80-hour suspension, effective February 9, 2009 and a copy of a request to appeal from Teri Guttman Valdes, Attorney, on behalf of Silvia Benitez. A hearing will be scheduled in accordance with the Civil Service Rules and Regulations. (NOTIFICATION)
RECEIVED AND FILED
- D.6 09-00161** Copy of a letter from Kelly Barkett, Jr., Director, Department of General Services Administration, notifying Manuel Lucena, Heavy Equipment Mechanic,

of his 3-day suspension, effective February 9, 2009 and a copy of a request to appeal from Osnat K. Rind, Attorney, on behalf of Manuel Lucena. A hearing will be scheduled in accordance with the Civil Service Rules and Regulations. (NOTIFICATION)

RECEIVED AND FILED

E. GENERAL ITEMS

F. REPORTS

F.1 09-00002 Pending Hearings as of February 17, 2009. (NOTIFICATION)

G. REQUESTS FOR HEARINGS

H. TODAY'S HEARINGS

H.1 06-01337 Hearing of appeal on behalf of James D. Thomas, Administrative Assistant II, relative to his 3-day suspension, effective July 10, 2006.

Chairman de la O asked if the department was ready to proceed with its case today.

Assistant City Attorney Vizcaino stated that her understanding was the only matter before the Board today was the special set hearing concerning the case of Officer Leonel Tapanes, and she was not prepared for [the Thomas case]. She went on to say that with regards to Mr. Thomas' case, it is her understanding that he is no longer employed with the City of Miami and since 2006, he has repeatedly failed to appear before the Board when his matter was scheduled for a hearing.

Chairman de la O stated that he does not know anything about Mr. Thomas' case; therefore, he does not know what the argument or claim is concerning his case. He asked if the Board needs to hear Mr. Thomas' case since he is no longer a City employee.

The Executive Secretary responded that the Board would have to hear Mr. Thomas' case although he is no longer a City employee because according to [Civil Service Rule 14.7], she does not have the power to withdraw his case. She went on to say that although Mr. Thomas has the right to withdraw his case, he has not done so as yet. The Executive Secretary further stated that the Board could hear Mr. Thomas' case in his absence, but as far as removing his case from the Board's docket, that cannot be done; it has to either be heard by the Board or withdrawn by Mr. Thomas.

Chairman de la O stated that he does not know what Mr. Thomas' claim is. The Executive Secretary stated that Mr. Thomas was ordered to serve a 3-day suspension.

Chairman de la O asked if the Board were to reverse the suspension, would Mr. Thomas be paid for the three days that he was without pay and is this reason the Board still has jurisdiction.

The Executive Secretary stated that the Board has jurisdiction because the Rules do not allow the Board to dismiss Mr. Thomas' case although he is retired; but the case could either be withdrawn or heard in his absence.

Chairman de la O stated that since the department's witnesses are not present, the

hearing would have to be continued and charged to the department.

Member Scarola stated that whenever this hearing is rescheduled, he would ask that the Executive Secretary send a letter to Mr. Thomas via certified mail so that he is aware of his scheduled hearing.

The Executive Secretary responded that she has sent certified mail to Mr. Thomas concerning his hearing on three occasions and in each instance, Mr. Thomas did not call to say whether he would be in attendance for his hearing. She went on to say that the last time she spoke with Mr. Thomas, she verified his address and Mr. Thomas confirmed that he wanted to proceed with his hearing; therefore, his case was reset twice since she last spoke with him.

Member Scarola asked when Mr. Thomas retired from the City of Miami.

The Executive Secretary responded that Mr. Thomas retired in September 2007.

Member Dames stated that he thinks the Board should hear Mr. Thomas' case today.

Chairman de la O responded that the City's witnesses are not available; therefore, the department cannot proceed today. He asked Assistant City Attorney Vizcaino if she had an idea when she would be ready to go forward with Mr. Thomas' case.

Assistant City Attorney Vizcaino responded that Mr. Thomas' case could be rescheduled to the regular Board meeting of March 10, 2009. She went on to say that she did not know how long her case would take, but it should not take an entire day to conclude with Mr. Thomas' hearing.

Member Scarola asked what the effective date was of Mr. Thomas' suspension.

Assistant City Attorney Vizcaino stated that the suspension became effective in 2006.

For clarification purposes, Member Scarola asked if the only thing Mr. Thomas would receive is backpay for 3 days should he prevail and that [this pay] would not affect his pension and the Executive Secretary responded in the affirmative.

Member Scarola stated that if this was a pensionable issue, he just wanted to make sure the case is heard in the right way and effort is made so that Mr. Thomas receive what is owed to him, but since it is only three days that he would be paid for should he win his case, Mr. Thomas needs to show up [for his hearing].

Following discussion, the Board entered a motion to CONTINUE the appeal hearing of James Thomas and charge the continuance to the department, which resulted as follows:

Motion by Member Angel-Capo, 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 and Chief Examiner Scarola

Absent: Member Cruz

The Board took a recess at 9:44 a.m. to await Member Cruz' arrival so that they could convene for Officer Leonel Tapanes' hearing. Upon Member Cruz' arrival, a second roll call was taken. The roll call for Board Members following the recess was as follows:

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

H.2 06-02034

Hearing of appeal on behalf of Leonel Tapanes, Police Officer, relative to his 40-hour suspension, effective June 4, 2004.

The Board entered into the appeal hearing of Officer Leonel Tapanes.

Diana Vizcaino, Assistant City Attorney, represented the Department.

Osnat K. Rind and Ronald J. Cohen, Attorneys, Law Offices of Cohen & Rind, represented the Appellant.

The Rule of Witnesses was invoked and the Chairman instructed all witnesses that would be testifying to leave the room and not discuss their testimony with one another.

Assistant City Attorney Vizcaino waived and Attorney Rind reserved opening statements.

All witnesses were sworn in individually. Witnesses for the Department appeared in the following order:

- 1. Rudy Herrera, Police Officer, City of Miami, Department of Police.*
- 2. Deborah Payne, Police Officer, City of Miami, Department of Police.*

Questions were posed by Board Members de la O, Scarola, Angel-Capo, Dames and Cruz during the testimony of witness Deborah Payne.

- 3. Fabrice Nelson, Crime Scene Investigator, City of Miami, Department of Police.*

Questions were posed by Chairman de la O during the testimony of witness Fabrice Nelson.

The Department rested its case.

Chairman de la O asked Attorney Rind if she would be calling any witnesses.

Attorney Rind responded that she would move for a directed verdict and provided argument in support of her position that the department had not met its burden of proof.

Following argument by both attorneys and discussion by the Board, the Board entered a motion to APPROVE the Appellant's motion for a directed verdict, finding the Appellant NOT GUILTY of all of the charges. The motion resulted as follows:

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

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

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

The meeting adjourned at 12:02 P.M. Breaks were taken at 9:44-10:02 A.M. and 11:20-11:32 A.M.

SIGNATURE:

Miguel M. de la O, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary