

City of Miami

3500 Pan American Drive
Miami, FL 33133
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Meeting Minutes

Tuesday, November 28, 2023

10:00 AM

Commission Chambers

Civil Service Board

Troy Sutton, Chairperson
Rodrigo Jimenez, Chief Examiner
Rafael Cabrera, Board Member
Ulysses Garcia, Board Member
Wilbur Jackson, Jr., Board Member

Pledge of Allegiance

The meeting was called to order at 10:24am, with the Pledge of Allegiance. At commencement of the meeting, attendance was as follows:

Attendee Name	Title	Status
Troy Sutton	Chairperson	Present
Rodrigo Jimenez	Chief Examiner	Present
Rafael Cabrera	Board Member	Present
Ulysses Garcia	Board Member	Present
Wilbur M. Jackson, Jr.	Board Member	Present

Adoption of Agenda

Motion by Board Member Jackson, seconded by Board Member Cabrera, that this matter be Approved, passed by the following vote:

AYES: Sutton, Jimenez, Cabrera, Garcia, Jackson, Jr.

A. Approving of the Minutes

A.1 Civil Service Board - Regular Meeting - November 14, 2023, 10:00 AM

Motion by Board Member Jackson, Jr., seconded by Board Member Garcia, that this matter be Approved, passed by the following vote:

AYES: Sutton, Jimenez, Cabrera, Garcia, Jackson, Jr.

B. Personnel Matters

C. Military Leaves of Absence

C.1 John Romero, Police Officer, requests re-employment as a Police Officer, following his return from Military Leave through September 30, 2023. Copy of memorandum from the Air Force indicating Honorable Discharge submitted. (DISCUSSION)

Motion by Board Member Jimenez, seconded by Board Member Garcia, that this matter be Approved, passed by the following vote:

AYES: Sutton, Jimenez, Cabrera, Garcia, Jackson, Jr.

C.2 John Romero, Police Officer, requests Active Duty Military Leave without pay from October 16, 2023 through December 17, 2023. Copy of Orders submitted. (DISCUSSION)

Motion by Board Member Jackson, Jr., seconded by Board Member Garcia, that this matter be Approved, passed by the following vote:

AYES: Sutton, Jimenez, Cabrera, Garcia, Jackson, Jr.

D. Disciplinary Matters

D.1 Copy of a letter from Chief Joseph F. Zahralban, Director, Department of Fire Rescue, notifying Judith Fernandez, Emergency Dispatcher, of an 8-hour suspension, effective November 20, 2023. (NOTIFICATION)

E. General Items

F. Reports

F.1 Hearings Pending List as of November 28, 2023. (NOTIFICATION)

G. Requests for Hearings

H. Today's Hearings

H.1 Appeal Hearing on behalf of Saens Dorcely, Police Officer, concerning his 20-hour suspension, effective January 18, 2023.

Chair Sutton called for the Appeal Hearing on behalf of Saens Dorcely, Police Officer, concerning his 20-hour suspension, effective January 18, 2023.

Eugene Gibbons, Attorney, appeared on behalf of Saens Dorcely, Police Officer and Jazmine Preston-O'Neill, Assistant City Attorney, appeared on behalf of the Miami Police Department.

ACA Preston-O'Neill presented a copy of a Motion to Dismiss, due to Officer Dorcely's retirement. This Motion is similar to the one filed prior to Sergeant Edwin Gomez' Appeal that was scheduled on November 14, 2023; however, it was Sergeant Gomez' position that he was "forced" to resign.

Chair Sutton stated that although the City's Motion was granted in Sergeant Gomez' case, it would not be precedent setting given the circumstances surrounding his separation.

Attorney Gibbons asked the Board to refer to the Civil Service Rules, specifically, Rule 14.6 – Resignation Before Appeal, which states "The acceptance by a Department Director of the resignation of an employee suspended, reduced in rank or dismissed, before final action on the part of the Board, shall be considered a withdrawal of the charges and the separation of the employee concerned shall be recorded as resignation, and the proceedings shall be dismissed without judgment. A copy of the dismissal charge shall remain in the personnel file of the employee and a notation shall be made on the copy of the dismissal charge to the effect that charges were withdrawn pursuant to subsection 6 of Rule 14 hereof." He went on to explain that his client's effective date of suspension was January 18, 2023, he appealed his suspension February 2, 2023, and his hearing was scheduled for November 28, 2023; however, his client retired in August 2023.

He went on to say it is his position that a retirement is the same as a resignation with the exception that a retirement allows an employee to be eligible to receive pension benefits. He further opined that if a department director accepts an employee's resignation when the employee has a pending hearing with the Civil Service Board, Rule 14.6 is clear when it states that the acceptance is considered a withdrawal of the charges, and the proceedings are supposed to be dismissed without judgment. The department brings forth the charges, not the employee and that is why the Rule says the acceptance by the department director of the employee's resignation means that the charges are withdrawn.

Chair Sutton asked Attorney Gibbons what remedy his client was seeking. Attorney Gibbons responded that in accordance with the Rule, he wants the charges to be considered withdrawn and his client's 20-hours should be restored.

Special Counsel Clyne stated that he would agree with Attorney Gibbons, that both actions are synonymous, but he would assume most people would agree there is a difference in the way a person separates from their employment. He further stated that the same would apply with a resignation versus a retirement because when a person retires, they leave their place of employment, but they receive some type of benefit, which is the whole point of having a retirement. Special Counsel stated that he would agree with Member Jackson that the Rule needs to be changed to include that if you retire the charges should be withdrawn and the City shall restore the time lost.

Attorney Preston-O'Neill stated that the department objects to the charges being withdrawn because in essence the employee's attorney is asking the City to forget about the 20-hour suspension and pay his client, but this is not what Rule 14.6 is designed to do.

Chair Sutton asserted that he agrees with Special Counsel and Attorney Gibbons. He went on to say that the Board governs its' Rules, and he thinks that the City should follow the Rule for retirements the way it is written for resignations. in which a resignation and a retirement are synonymous for the purposes of Civil Service Rule 14.6. Therefore, the charges against Officer Dorcely should be withdrawn, and the case dismissed. Chair Sutton also asked if the office would draft a Rule amendment which clarifies that for the Board.

Member Cabrera stated that when a person separates, the employee's time should be restored pursuant to the Rules. He went on to ask Special Counsel the proper way to make the motion. Special Counsel responded that the interpretation of the Rule should be included, and the case should be dismissed, charges withdrawn, and the time restored.

Following discussion, a Motion was made to affirm that resignation and retirement are similar forms of separation, and to dismiss the case in accordance with Civil Service Rule 14.6, which resulted as follows:

Motion by Board Member Garcia, seconded by Board Member Jackson, that this matter be Approved, passed by the following vote:

AYES: Sutton, Jimenez, Cabrera, Garcia, Jackson, Jr.

H.2 Appeal Hearing on behalf of Barbara Reyes, Public Service Aide, concerning her 80-hour suspension, effective February 18, 2023.

Prior to the start of the hearing, Chair Sutton asked the parties if they wanted to take a break to discuss a possible settlement. The parties responded in the affirmative.

Upon return from break, ACA Preston-O'Neill advised the Board that the parties reached an amicable resolution, and the agreement will be drafted and sent to Attorney Libby Navarrete, on behalf of PSA Reyes. She advised that once finalized, a copy of the executed agreement will be forwarded to the Civil Service Board Office.

Without objection, Chair Sutton instructed the Executive Secretary to reschedule this matter in accordance with the continuance policy.

ADJOURNMENT:

Breaks were taken at: 10:52am – 12:39pm.

There being no further business before the Board, a motion was entered to adjourn the meeting at 12:44 pm, which resulted as follows:

Motion by Board Member Cabrera, seconded by Board Member Garcia, that this matter be Approved, passed by the following vote:

AYES: Sutton, Jimenez, Cabrera, Garcia, Jackson, Jr.

SIGNATURE: Troy Sutton, Board Chairperson

ATTEST: Tishria L. Mindingall, Executive Secretary