

City of Miami

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

Tuesday, June 3, 2008

10:00 AM

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 10:10 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 and Member Angel-Capo

Absent: Member Cruz and Member Dames

A. APPROVING THE MINUTES OF:

Regular Meeting of May 20, 2008

The Board entered a motion to APPROVE the minutes of the May 20, 2008 meeting which resulted as follows:

Motion by Member Angel-Capo, seconded by Chief Examiner Scarola, to APPROVE. PASSED unanimously.

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

- C.1 08-00622** Reginald Williams, Police Officer, requests re-employment as a Police Officer following his return from military leave. (DISCUSSION)

The Board entered a motion to APPROVE Officer Reginald Williams' request for re-employment following his return from military leave which resulted as follows:

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

D. DISCIPLINARY MATTERS**E. GENERAL ITEMS**

- E.1 08-00120** Copy of Findings of Fact concerning the appeal hearing of Anton Forbes, Police Officer, relative to his 20-hour suspension, effective January 11, 2008. (DISCUSSION)

Chairman de la O asked Assistant City Attorney Abbott if she'd reviewed the proposed changes to the Findings of Fact that were suggested by Attorney Rind and if she had any objections to the recommended changes.

Assistant City Attorney Abbott responded in the affirmative. She referred the Board to page 2, finding #6 of the Findings of Fact, which states, "There is disagreement within the Department as to whether a center console is considered a trunk, and on at least two occasions, the Department has approved the use of a console as a trunk." Assistant City Attorney Abbott stated that in line with the departmental order, the department has not approved the use of a console or metal box as being a trunk, so she objects to the findings as proposed by [Special Counsel] and also Attorney Rind's proposed amendment to the findings.

Chairman de la O stated that Assistant City Attorney Abbott is not only objecting to Attorney Rind's proposed changes, but she is also objecting to finding #6 as a whole to be included in the Findings. He went on to say that he did not see that big of a

difference between Attorney Rind's recommended change and what the Board proposed. He asked Assistant City Attorney Abbott if she objects to Attorney Rind's proposed change to finding #5.

Assistant City Attorney Rind stated that as far as her understanding of finding #5, the charging document is what is being referred to (as the Reprimand) and not the Record of Formal Counseling, so she has no objection to finding #5.

Cynthia A. Everett, Special Counsel to the Board, stated that it might not make a difference, but when she wrote finding #5, her understanding was that Officer Forbes did receive a Record of Formal Counseling and he ultimately received a Reprimand. She went on to say that she does not think it makes a difference, but that is what she was talking about (in Finding #5) when she made reference to the Record of Formal Counseling as opposed to the Reprimand that Officer Forbes appealed to the Board.

Attorney Rind stated that if the Board wants to talk about why she thinks finding #5 should read "reprimand" instead of "formal counseling", she can but she thinks there is already an agreement on the word usage as expressed by opposing counsel.

Special Counsel Everett asked Attorney Rind if she is referring to the reprimand that Officer Forbes is grieving versus the formal counseling.

Attorney Rind responded in the affirmative. She went on to say that she does not believe that Officer Forbes actually received the formal counseling because it was not signed off [by the chain of command].

Special Counsel Everett stated that Officer Forbes mentioned that he received a record of formal counseling and that is why she referenced it in the findings. She went on to say that since there is agreement between both attorneys as to the reference, she can change the words, "formal counseling" to "reprimand."

Member Scarola stated that he is aware that Officer Forbes received a Record of Formal Counseling; however, he wants to know if the formal counseling was thrown out and the reprimand was issued.

Attorney Rind responded that she really did not know since there was a Record of Formal Counseling that was signed off by a police sergeant and Officer Forbes, but it was not signed off by the chain of command so she does not know if he received the formal counseling or not (since all of the signatures were not affixed to the form). She went on to say that this was going to be a part of her argument on double-jeopardy, but she does not think that it really played into the Board's decision and she does not think Officer Forbes received the formal counseling because it would then be double-jeopardy.

Chairman de la O asked Attorney Rind to share her reason for wanting to amend finding #6.

Attorney Rind responded that she changed finding #6 only because she thought it was accurate. She went on to say that she changed "department" to "City" only because her witness, Al Cotera, testified that it was through the Grievance Procedure and a decision by Labor Relations that these things (center console, metal box) were permissible (to be considered as a trunk).

Chairman de la O asked if there were any proposed motions for approving finding #6 as suggested by Attorney Rind. He went on to say that the Board could either approve finding #6 as suggested by Attorney Rind, leave it as it is currently written, or someone

can make the motion to strike all of paragraph #6, which is what he understands to be the department's position. For clarification purposes, Chairman de la O asked Assistant City Attorney Abbott if she is asking that finding #6 be stricken from the Findings of Fact.

Assistant City Attorney Abbott responded in the affirmative.

Following discussion, the Board entered a motion to AMEND findings #5 and #6 to read as follows:

Finding #5 - "After the second theft, Appellant received a REPRIMAND from the department.

Finding #6 - "There is disagreement within the Department as to whether a center console is considered a trunk, and the CITY has approved the use of a console AND A METAL BOX AFFIXED TO THE BACK OF A TRUCK AS TRUNKS IN THE PAST."

The motion resulted as follows:

Motion by Chief Examiner Scarola, seconded by Chairperson de la O, that this matter be APPROVED. PASSED unanimously.

The Board entered a motion to APPROVE the Findings of Fact as amended which resulted as follows:

Motion by Chief Examiner Scarola, seconded by Member Angel-Capo, to APPROVE. PASSED unanimously.

F. REPORTS

F.1 08-00018 Pending Hearings as of June 3, 2008. (NOTIFICATION)

G. REQUESTS FOR HEARINGS

H. TODAY'S HEARINGS

H.1 06-00249 Hearing of appeal on behalf of Juan Casiano, Police Sergeant, relative to his 20-hour forfeiture, effective February 2, 2006.

Chairman de la O stated that he understands that there will be a motion for a continuance.

Assistant City Attorney Abbott responded that she is requesting that Sgt. Casiano's hearing be continued because the Police Captain who wrote the reprimand (Rafael Suarez) was present the last two times this hearing was scheduled, but he is unable to be present today.

Chairman de la O asked for the employee's position on the department's request.

Teri Guttman-Valdes, Attorney at Law on behalf of Sgt. Casiano, responded that the Board was gracious enough to grant a continuance when her client was ill so she has no objection to the continuance. She went on to say that she does not understand why Captain Suarez, who was at the last meeting did not mention that he would not be available when she made the request to reschedule Sgt. Casiano's hearing within two weeks because if he had, there would have been no need for her and her client to come to today's meeting. Attorney Guttman-Valdes asked if her client's case could be scheduled to the Board's next meeting.

Chairman de la O asked the Executive Secretary if Sgt. Casiano's hearing could be reset for [the next meeting] or was that date already booked.

The Executive Secretary responded that three hearings are scheduled for the June 17 meeting.

Member Scarola stated that there would be only three Board Members to hear Sgt. Casiano's hearing next meeting because he will not be available.

Chairman de la O stated that Sgt. Casiano's hearing would have to be scheduled some time after the June 17 meeting because three hearings are already scheduled for that date.

Member Scarola asked Assistant City Attorney Abbott when she found out from Captain Suarez that he would not be available for today's hearing.

Assistant City Attorney Abbott responded that she found out yesterday that her witness would not be available. She went on to say that she knows that Captain Suarez is retired and is working somewhere else and that he has been present twice awaiting the hearing to go forward [but the hearing was continued both times]. Assistant City Attorney Abbott further stated that she does know that Captain Suarez wanted to come today, but he is not available.

Member Scarola stated that his concern is that this hearing was specially set and at the eleventh hour the department's attorney received a call that her witness would not be available, which was a waste of everyone's time today. He went on to say that in the future if continuance requests are short-noticed, the requesting attorney will need to provide the Board with a good reason other than a witness not being available because in such instances, he probably will not vote in favor of a continuance. Member Scarola further stated that the cases need to be heard especially when witnesses are present and have been waiting for a case to go forward. He stated that Captain Suarez was present at the last meeting and he should have made known his unavailability to someone at that time. Member Scarola went on to say he can understand a witness being called to court at the last minute or a witness that is hospitalized to be legitimate reasons for a witness' absence, but he would reiterate that a good reason must be provided to the Board as to why the continuance is being requested and perhaps documentation because anything short of this, he more than likely will not vote in favor of the continuance request.

Chairman de la O stated that he thinks that is a fair warning (to all requesting a continuance). He went on to say that a day has been wasted because there are no cases to be heard by the Board. Chairman de la O further stated that it could be that Assistant City Attorney Abbott did not get enough information from Captain Suarez as to his availability today because something could have come up yesterday. He stated that in the future, persons requesting continuances want to make sure they have all of their ducks in a row by finding out from witnesses the reason they cannot be available should a last-minute continuance is requested especially since the requester will have to persuade the Board to grant the continuance.

Following discussion, the Board entered a motion to grant the department's request for a CONTINUANCE of Sgt. Juan Casiano's hearing which resulted as follows:

Motion by Chief Examiner Scarola, seconded by Member Angel-Capo, that this matter be CONTINUED. PASSED unanimously.

ADJOURNMENT:

The Chairman called for a motion to ADJOURN. The meeting adjourned at 10:22 A.M.

Motion by Chief Examiner Scarola, seconded by Chairperson de la O, to APPROVE. PASSED unanimously.

SIGNATURE:

Miguel M. de la O, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary