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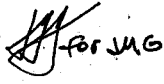
OFFICE OF THE CITY MANAGER

2012 JUN 15 PM 4:15

NO. LTC # **161-2012**

LETTER TO COMMISSIONER'S OFFICE

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager 

DATE: June 15, 2012

SUBJECT: Dade County Police Benevolent Association – Letter regarding Manuel Moraga

This Letter to Commission (LTC) is in response to the attached letter from John Rivera, President of the Dade County Police Benevolent Association, dated June 14, 2012, which was addressed to the Mayor and City Commission. As you may be aware, former Police Sergeant Manuel Moraga was terminated from his employment with the City on November 4, 2011. Mr. Moraga has retained legal representation from the Dade County Police Benevolent Association concerning his termination. In his letter, Mr. Rivera alleged that the internal affairs investigation and the administration of discipline was unfair and therefore, Mr. Moraga has requested that an item be placed on the City Commission agenda to review the fairness of the internal affairs investigation and the disciplinary action taken against him.

The collective bargaining agreement (CBA) between the City and the Fraternal Order of Police, William Nichols Lodge No. 8 (FOP), Article 3, Sections 3.1 – 3.7, provide for a grievance and arbitration process to address disputes involving the interpretation or application of the express terms of the collective bargaining agreement, including but not limited to disciplinary matters and discharges (copy of this section of the FOP CBA is attached). Pursuant to the collective bargaining agreement, both parties are required to adhere to the grievance process outlined in the Agreement. The City and the Grievant (Manuel Moraga) have been properly adhering to the grievance process afforded in the FOP collective bargaining agreement. At this time, an arbitration hearing concerning Mr. Moraga's termination has already been scheduled for August 2012. The City Attorney's Office and the Human Resources Department are working closely together to handle this matter. Given that the arbitration process is the appropriate way to handle this dispute and that Mr. Moraga has already elected to pursue this matter through the arbitration process, Mr. Moraga's request to have an item placed on a City Commission Agenda to review the fairness of the internal affairs investigation and the administration of the disciplinary action taken against him should not be granted.

If you have any questions or need any additional information, please feel free to contact me.

JMG/RI/cg

c: Jose Smith, City Attorney
Donald Papy, Chief Deputy City Attorney
Kathie Brooks, Director, Office of Budget and Performance Improvement
Ramiro Inguanzo, Director, Human Resources



THE VOICE OF LAW ENFORCEMENT

DADE COUNTY POLICE BENEVOLENT ASSOCIATION, INC.

Via Email and Regular U.S. Mail

June 14, 2012

Honorable Matti Herrera Bower
City of Miami Beach
Office of the Mayor and Commission
1700 Convention Center Drive
Miami Beach, FL 33139

**RE: City of Miami Beach and Sergeant Manuel Moraga
Review of Termination**

Dear Mayor Bower:

My name is John Rivera and I am the President of the Dade County Police Benevolent Association. Although the PBA is not the certified bargaining agent for officers and sergeants employed by the City of Miami Beach, there are many individual officers and sergeants whom are PBA members and utilize the PBA for legal representation. One of those employees is Sergeant Manuel Moraga. As you may know, Sergeant Moraga was terminated from the City on November 4, 2011. He has filed a grievance and a two-day arbitration hearing has been scheduled for August 15th and 16th. In light of recent events in the City, including the resignation of City Manager Jorge Gonzalez and the City Commission's decision to have the disciplinary action taken against another City officer Eric Dominguez reviewed, I am writing this letter to request that the City do the same for Sergeant Moraga. I apologize in advance for the length of this letter, but as this matter involves the termination of a long-tenured City employee, I believe it is necessary to set forth some of the more important reasons we are requesting this review.

Sergeant Moraga was terminated based upon an internal investigation into supervision of the police department on the midnight shift on the July 2-3, 2011 and the police department as a whole. As you know, during the early morning hours of July 3rd, a City officer was involved in an ATV accident on the beach causing injuries to civilians, one of which was riding on the back of the ATV. It has been alleged that this officer was drinking at the Cleveland Bar with another officer prior to taking one of the civilians for the ride on the ATV. This incident brought a great deal of negative media attention and scrutiny to the City of Miami Beach. The City terminated the two officers promptly and opened up an internal investigation into the supervisors assigned to the midnight shift during the time of the incident, which morphed into a broader investigation involving various levels of supervision in the police department.

From the start the City's investigation and its administration of discipline was willfully lacking any indicia of fairness and was clearly directed to make Sergeant Moraga a political scapegoat. We believe this was entirely at the direction of the soon to be former City Manager, vis a vis, the City's Human

Resources Department, namely Ramiro Ignuanzo and Robin Porter. Unlike any investigation into alleged police misconduct I have ever seen, this investigation was transparently facilitated by Mr. Ignuanzo and Ms. Porter to be done in a vacuum by ignoring the totality of the circumstances surrounding the incident, including the presence of mitigating circumstances, systemic breakdowns in policy, and lax culture of supervision in the police department. The facts were manipulated to paint a picture that Sergeant Moraga was grossly negligent in failing to supervise the officer who was assigned to the middle district who was at the Cleveland Bar with the officer involved in the ATV accident and that he left early without permission and without submitting a leave slip. Exculpatory and mitigating evidence was omitted or downplayed. We believe that an unbiased review of the totality of this matter will prove that the termination was not just.

On the night of the incident, Sergeant Moraga was the assigned supervisor in area three (north district) of the city. Despite the fact that this was a Saturday night on a holiday weekend and the very next holiday after the Memorial Day holiday (which also brought a great deal of media scrutiny to the City), the City did not assign a sergeant to area two (middle district) on that evening and thus Sergeant Moraga was informed at the beginning of the shift that he was required to cover the sergeant responsibilities for that area as well. He was assigned to supervise twelve officers, which according to Department policy and a generally accepted principle for accredited law enforcement agencies, is the maximum span of control for any one supervisor. Moreover, it is undisputed that on this evening there were 42 calls for service, including a strong-armed robbery call and missing juvenile call, that went out in areas two and three where Sergeant Moraga was the only sergeant assigned, as opposed to area one (south district) where there were two regularly assigned sergeants, along with another sergeant and lieutenant assigned in an overtime basis, for 58 calls for service, only slightly more than the areas that Sergeant Moraga was supervising by himself. Sergeant Moraga was heard on the radio assisting his officers throughout the shift, in addition to completing any other administrative tasks expected of him as a supervisor.

Sergeant Moraga was **not** in charge of supervising the officer involved in the ATV accident, who was the primary cause of this entire incident. While the second officer who was seen at the Cleveland Bar was assigned to the middle district that Sergeant Moraga was covering that evening, there were multiple systemic policy breakdowns that contributed to this officer not being in his assigned district, along with, of course, the officer's own intentional act of choosing not to be. There were policy changes regarding areas of patrol and radio procedures subsequent to this incident, which sought to rectify these contributing factors.

Moreover, while it is true that Sergeant Moraga did leave early on this evening; he had permission to do so, had been ill since beginning of the shift, was never told he was required to stay, and even notified the dispatcher on the radio that he was leaving. The policies that Sergeant Moraga allegedly violated regarding officers and supervisors coming in late or leaving early and not submitting leave slips and/or the lax enforcement of these policies have all been changed subsequent to this incident to ensure enforcement going forward.

Despite the fact that Sergeant Moraga was not assigned to supervise the officer who was actually involved in the ATV accident, nor was he assigned to supervise the area where the accident occurred, he was the only supervisor that the City fired. It would seem logical that out of all the supervisors working that evening, Sergeant Moraga would be the least culpable, not the most. In light of the City's investigation that revealed systemic breakdowns in policy and a lax culture of supervision, it is incomprehensible that one sergeant supervising the middle and north areas at the maximum span of control on a busy holiday weekend and who was not even assigned to supervise the

officer involved in the ATV accident can be the only supervisor in the entire department to pay the ultimate price of losing his job.

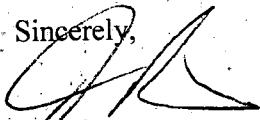
It does not make sense and is cruelly unfair to an employee who has been employed by the City since 1997 and as a police officer since 1999. This is not an employee, who like other City employees that have been in the media recently, committed deliberate misconduct for personal gain. Nor, is this an employee who defiantly and flagrantly thumbed his nose at City policies. Rather, this is a hard-working employee, who even after this incident, at the same time the City was conducting its one-sided investigation into this matter, continued to work as a supervisor and received a commendation in August 2011 for his interaction with the public.

We believe there is no plausible explanation for what happened to Sergeant Moraga other than he was the former City Manager's political scapegoat. This is further evidenced by the fact that, prior to the final disciplinary action being taken against Sergeant Moraga, The City's Human Resources Department released information contained in the internal affairs file to the media, although pursuant to state law, such information is not subject to public records disclosure until the disciplinary action becomes final. The effect of Sergeant Moraga's friends and family reading this information even before the City had fired him was demoralizing, but it pales in comparison to the difficulty he has had in attempting to provide for his family and the emotional stress he has been under since his termination.

In conclusion, Sergeant Moraga is asking the City place an item on the Commission agenda to review the fairness of the internal investigation and the administration of the disciplinary action taken against him, just like it is doing for Officer Dominguez. Obviously, this review could potentially save the time and expense of a lengthy arbitration hearing and further litigation, but more importantly, just like the information that was presented at the May 9th Commission meeting in support of Officer Dominguez, who was given a suspension without pay and suspension from utilizing a take-home vehicle, this is about a good employee who has been treated unjustly for political motives. While in no way intending to downplay the significance of the case involving Officer Dominguez, the only difference is that this is a man's career at stake.

Thank you in advance for your attention to this matter.

Sincerely,



John Rivera
PBA President

Cc: Vice-Mayor Jerry Libbin
Commissioner Jorge Exposito
Commissioner Michael Gongora
Commissioner Jonah Wolfson
Commissioner Edward Tobin
Commissioner Deede Weithorn
Manuel Moraga

ARTICLE 3
GRIEVANCE PROCEDURE

Section 3.1. Definition of Grievance and Time Limit for Filing. A grievance is a dispute involving the interpretation or application of the express terms of this Agreement, excluding matters not covered by this Agreement; or where Personnel Board rules and regulations are involved; provided that disciplinary actions, including discharges, may be grieved under this Article, as provided herein. See Section 3.7 (Election of Remedies) for procedures to be utilized in particular circumstances. No grievance shall be entertained or processed unless it is submitted within twenty (20) workdays (excluding Saturday, Sunday, or holidays recognized by the City) after the occurrence of the first event giving rise to the grievance or within twenty (20) workdays after the employee, through the use of reasonable diligence, should have obtained knowledge of the occurrence of the first event giving rise to the grievance.

Section 3.2. Grievance Procedure. The FOP shall have the right to initiate and process grievances on its own behalf or on behalf of named members of the bargaining unit. However, the FOP shall have the right in its sole discretion not to process grievances on behalf of bargaining unit members who are not members of the FOP, provided it notifies said employee of its decision not to proceed. Grievances shall be processed, individually, as follows:

Step 1: The grievance shall be presented, in writing on the Grievance Form supplied by the City, to the employee's unit or division commander or a designated representative, who shall answer within five (5) workdays after such receipt. The employee will also provide the FOP with a copy of said grievance.

Step 2: If the grievance is brought by the FOP on its own behalf, or if the grievance is brought on behalf of an individual(s) and is not settled in Step 1 and an appeal is desired, it shall be referred in writing to the Chief of Police (Chief) or his designee. The Election of Remedy Form shall be completed and signed by the FOP and/or the grievant, and attached to the Step 2 grievance. The Chief shall discuss the grievance within ten (10) workdays with the employee and the FOP grievance committee at a time designated by the Chief. If no settlement is reached, the Chief shall give the City's written answer to the employee and the FOP grievance committee within five (5) workdays following their meeting.

Step 3: If the grievance is not settled in Step 2 and both the employee and FOP grievance committee desire to appeal, or if it is a class grievance filed by the

FOP and at least one employee of the named class and FOP grievance committee desire to appeal, it shall be appealed in writing to the City Manager or his designee for Labor Relations within fifteen (15) workdays after the City's answer in Step 2. A meeting between the City Manager or his designee, the employee, and the FOP grievance committee shall be held at the time designated by the City Manager within fifteen (15) workdays. If no settlement is reached, the City Manager shall give City's written answer to the employee and the FOP grievance committee within fifteen (15) workdays following the meeting.

Section 3.3. Binding Arbitration. If the grievance is not resolved in Step 3 of the grievance procedure, the FOP grievance committee, with the concurrence of the employee who filed the grievance, or if it is a class grievance filed by the FOP, with the concurrence of at least one employee of the named class; or if it is a grievance filed by the FOP on its own behalf, may refer the grievance to binding arbitration within fifteen (15) after receipt of the City's answer in Step 3. The parties shall attempt to agree upon an arbitrator within fifteen (15) workdays after receipt of notice of referral and in the event the parties are unable to agree upon an arbitrator within said fifteen (15); the parties shall jointly request the Federal Mediation and Conciliation Service to submit a panel of five (5) arbitrators. Both the City and the FOP shall have the right to strike two names. The name remaining after the City strikes shall be the arbitrator. The arbitrator shall be notified of his selection within five (5) workdays by a joint letter from the City and the FOP requesting that he advise the parties of his availability for a hearing. The parties may select a permanent arbitrator in lieu of the selection procedure set forth in this section.

Section 3.4. Authority of Arbitrator. The arbitrator shall have no right to amend, modify, ignore, add to, or subtract from the provisions of this Agreement. He shall consider and decide only the specific issue submitted to him in writing by the City and the FOP, and shall have no authority to make a decision on any other issue not so submitted to him. The arbitrator shall submit in writing his decision within thirty (30) days following the close of the hearing or the submission of briefs by the parties, whichever is later, provided that the parties may mutually agree in writing to extend said limitation.

The decision shall be based solely upon his interpretation of the meaning or application of the express terms of this Agreement to the facts of the grievance presented. If the arbitrator acts in accordance with this Section, the decision of the arbitrator shall be final and binding.

Section 3.5. Expenses of Arbitration. The fee and expenses of the arbitrator and the cost of a written transcript shall be divided equally between the City and the FOP; provided, however, each party shall be responsible for compensating its own representatives or witnesses.

Section 3.6. Processing Grievances. All grievance discussions and investigations shall take place in a manner which does not interfere with the operation of the Police Department. Any time spent by the Grievance Committee of the FOP in discussions or processing grievances at Step 1, 2, or 3 during their working hours shall not result in a loss of earnings or benefits.

Section 3.7. Election of Remedies. Disciplinary actions may be grieved (1) under the grievance/arbitration provisions contained in this Article or (2) to a Hearing Examiner, who shall be selected by utilizing the procedures outlined in Section 3.3 of this Article. A grievance involving the interpretation or application of this Agreement may be grieved solely under the grievance/arbitration provisions contained in this Article. Grievances regarding certain non-disciplinary matters, such as disagreements as to the waiving or application of changes to personnel rules or other work rules or policies may be filed via the Personnel Board procedures.

The decision of the hearing officer shall be final & binding. The cost of a Hearing Examiner shall be borne by the City. Any proceedings before the Hearing Examiner shall be conducted pursuant to the attached Hearing Examiner Rules.