



MIAMIBEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

PERSONNEL BOARD

MINTUES OF THE MEETING OF SEPTEMBER 5, 2012

Attending:	David Alschuler	Chairperson
	Moj Khaghan Danial	Associate Member
	Gabriel Paez	Associate Member
	Rosalie Pincus	Associate Member
	George Castell	Employee Member
	Christopher Diaz	Employee Member
	Evette Phillips	Employee Member
	Ramiro J. Inguanzo	Secretary
	Robert Rosenwald	Senior Assistant City Attorney
Absent:	Michael Perlmutter	Vice Chairperson

David Alschuler, Chairperson, convened the Personnel Board meeting at 9:30 a.m.

ITEM 1 – Police Captain, Fire Division Chief, Fraternal Order of Police (FOP) and International Association of Fire Fighters (IAFF) Unions Request for a Hearing on the Definition of the Word “Separated” in Personnel Rule VII Section 9 (b) as defined by the Personnel Board on September 16, 2011.

Chairperson Alschuler commenced the meeting by informing all present that approximately a year ago on September 16, 2011, pursuant to a referral by an arbitrator on the case of employee Candida Hernandez, the Personnel Board had a discussion of the meanings of the terms “separated”, “position” and “classification” as used in Personnel Rule VII Section 9 (b). At the September 16, 2011 Personnel Board meeting, both the City’s outside counsel and counsel for Communications Workers of America (CWA), Local 3178, presented their arguments and the Personnel Board voted that the term “separated” meant involuntary employment actions only and that the terms “position” and “classification” were not synonymous. Chairperson Alschuler further stated to the Board that at the September 16, 2011 meeting, he had to leave early and was not present for the arguments, deliberations or vote.

Chairperson Alschuler advised all those present that the meeting would be conducted as follows: twenty minutes for Attorney Eugene Gibbons to present on behalf of Police Captain Larry Bornstein; twenty minutes for Attorney Kathleen Phillips to present on behalf of the International Association of Fire Fighters (IAFF), Local 1510; twenty minutes for Fire Division Chief John Jaremko to present on his own behalf; twenty minutes for any other employee(s) to speak; twenty minutes for Attorney Pam Terranova to present on behalf of Communication Workers of America (CWA), Local 3178; twenty minutes for Attorney Susan Potter Norton as

outside counsel for the City; thirty minutes for the Board to ask questions; and five minutes per presenting party for closing arguments. He further advised all participants that all presentations should be directed only to the Board and personal attacks would not be tolerated.

Sitting in for Chief Deputy City Attorney Donald Papy was Senior Assistant City Attorney Robert Rosenwald. Chairperson Alschuler asked Senior Assistant City Attorney Rosenwald what options the Board had available today and he deferred that question for a detailed explanation to the City's outside counsel. Attorney Potter Norton advised the Board that in her opinion they couldn't do anything other than decide to amend the current definition of the term "separated."

Attorney Eugene Gibbons came before the Board on behalf of Police Captain Larry Bornstein. He explained to the Board that Captain Bornstein had been appointed to the rank of Captain over five year ago from the classified rank of Lieutenant. Captain Bornstein had asked the Chief of Police to allow him to voluntarily demote himself back to the rank of Lieutenant, which is a practice that had been allowed in the past. Attorney Gibbons further informed the Board that the Human Resources Director advised the Chief that this could not be done pursuant to the Personnel Board defining the term "separated" approximately a year ago in September 2011. Attorney Gibbons expressed to the Board that his position is the same which the City came before them with in the September 2011 meeting, arguing that the term "separated" applied to both voluntary and involuntary employment actions. Attorney Gibbons further solidified his argument by drawing the attention of the Board to Personnel Rule X where four ways for separations are listed as follows: suspensions; removal; resignations (he stated that this was a voluntary withdrawal); and lay-offs. In addition, Attorney Gibbons told the Board that Captain Bornstein had been reassured when first appointed to the rank of Captain, that he could always go back to his previously held classified position as stated in the Personnel Rules.

Captain Larry Bornstein addressed the Board and explained that his request for voluntary demotion from Captain to the rank of Lieutenant is for personal reasons. Captain Bornstein informed the Board that when he addressed Chief Martinez regarding his request to step-down to the rank of Lieutenant the Chief was agreeable. Captain Bornstein further informed the Board that subsequent to this conversation he received an e-mail from Director Inguanzo informing him of the Boards vote on the September 16, 2011 meeting regarding the meaning of the term "separation" no longer including voluntary employment actions so therefore his request for a demotion was denied. Captain Bornstein expressed to the Board that he would like to continue serving the City but in the capacity of a Lieutenant would allow him to work a four-day work week instead of a five-day work week.

Attorney Kathleen Phillips presented to the Board on behalf of the International Association of Fire Fighters (IAFF), Local 1510. Attorney Phillips stated that they are in agreement with the presentation and statements provided by Attorney Gibbons. Attorney Phillips further stated that she is not in agreement however, with the Board asking Attorney Susan Potter Norton on the Board's rights and remedies, given that she was litigant in the original case that came before the Board on September 16, 2011. Attorney Phillips believes that the Board has the

right to vote on individual issues that are coming before them at this meeting. Attorney Phillips stated that the Board needs to correct a wrong, because they enacted a rule that makes changes to a term that was already defined within set rules. In addition, the rules did not undergo the proper procedure for amendment, and the unions received no notice of this change. Attorney Phillips stated that the this new change protects the "bad" performers and not the "good" performers, by allowing a "bad" performer to be demoted back to their last classified position, but allowing a "good" performer to self-demote to their previous classified position. Lastly, Attorney Phillips informed the Board that in both of the cases presented it would be a simple "swap" of positions and not adverse impact would incur to another classified employee, unlike in the original case that came before the Board on September 16, 2011. Attorney Phillips deferred the remainder of her time to Adonis Garcia, Union President for the IAFF.

IAFF Union President Adonis Garcia stated that he would like the rules to continue the way they had always been. He explained to the Board as previously stated that no one would be impacted during the voluntary demotions being considered before them if a "swap" took place between the person seeking a demotions and someone who would be promoted in their place. Union President Garcia stated that he did not agree with the fact that the only way to step-down from an unclassified position back to a person's last classified position was for cause.

Division Chief John Jaremko explained that when he was promoted in late 2007, it came with the guarantee that he could always step-down. Division Chief Jaremko stated to the Board that the Personnel Board's definition of the term "separation" is a major career amendment and that at a minimum those who had entered a unclassified position with the option to step-down at the time, should be "grandfathered" in. Division Chief Jaremko informed the Board of several personal familiar with his medical issues leading to his decision to self-demote. Division Chief Jaremko informed the Board that Fire Chief Javier Otero had already approved his voluntary demotion request and the transition to train his successor was already in place. Division Chief Jaremko further informed the Board that this voluntary demotion request was going to be treated as a swap and no one was being impacted. A short while after the original approval of the voluntary demotion Chief Otero informed Division Chief Jaremko that his voluntary demotion and subsequent swap were placed on hold. Division Chief Jaremko expressed his concern about liabilities of forcing someone to remain in a job that they do not wish to continue in. Division Chief Jaremko stated to the Board that as in the past, Chief Otero should have the right to restructure his command staff as he deems necessary. Division Chief Jaremko expressed to the Board that he feels humiliated by having to come before them to request this demotion and explain his personal reasons for his decision, a procedure that was never requested from previous employees who have voluntarily demoted themselves in the past.

FOP Union President Alex Bello expressed the irony that a Board that is usually available to hear disciplinary matters was gathered today to hear the plea of two employees asking to do the right thing. Union President Bello stated to the Board that he feels the change made to the definition of the term "separated" is unfair. Union President Bello further stated that it has always been past practice to allow an incoming or existing Chief to restructure their command

staff as they deemed necessary, and that this definition was infringing on that ability, as the Chief is agreeable to the request for voluntary demotion submitted by Captain Bornstein. Union President Bello explained to the Board that he agrees that as long as there is no "bumping" involved causing an adverse employment action by the voluntary demotions they should be allowed.

Attorney Pam Terranova came before the Board on behalf of Communication Workers of America (CWA), Local 3178. Attorney Terranova stated to the Board that she does not believe that the Board did anything wrong on September 16, 2011 nor was it outside of the scope of their authority; the Board acted on a case as instructed by an arbitrator. However, Attorney Terranova does feel that the application of the interpretation is being incorrectly applied by the Human Resources Director. Attorney Terranova agrees with Attorney Phillips that Attorney Potter Norton is not the best suited person to advise the Board of their rights and remedies as she was litigant in the Candida Hernandez case that came before the Board on September 16, 2011. Attorney Terranova also stressed the fact that unlike the CWA case that came before the Board which did have to do with an adverse employee action, these two cases do not. Attorney Terranova stated that the Board needed to get clarification on the "bumping" application which is not covered by the rules and is only referenced in the collective bargaining agreements when discussing layoffs and their appropriate application.

Attorney Susan Potter Norton as outside counsel for the City stated that in September 16, 2011, the Board was asked to define an ambiguous term (the term "separation"). The term separation is used in various sections of the City's Personnel Rules. The Board currently has a Subcommittee working on a wholistic review of the entire Personnel Rules and will be making recommendations on possible amendments. Attorney Potter Norton stated that Employee Member Christopher Diaz was the elected representative for the Public Safety employee group representing the Fire, Police and Ocean Rescue employees and he should have notified the employees he represents regarding this issue previously brought up by the other parties. Elected employee representatives have an obligation to pass on the information discussed and voted upon at the meetings to the respective employees they are elected to represent. Attorney Potter Norton informed that not bumping is not always guaranteed due to reduction in available positions and the also the City Manager's right to not approve a given swap. Attorney Potter Norton stated to the Board that they have the right to amend their September 16, 2011 definition of the term separated if they choose to. Attorney Potter Norton recommends the continuation of the review of the Personnel Rules.

Chairperson Alschuler briefly stated that he agrees with Attorney Phillips and Attorney Terranova that asking the City's outside counsel on what the parameters of the Board are for today's meeting was probably not a wise decision. However, the attorney sitting-in for the City Attorney was not up to speed on the issues and therefore could not advise the Board.

Associate Member Moj Khaghan Danial addressed all those in attendance and expressed her gratitude and that of the Board for unionized employees who have devoted many years of service to the City. She stated that she was at the September 16, 2011 meeting that as the minutes reflect she was the only member who voted that the term separation be defined as both "voluntary" and "involuntary." Associate Member Danial is the chairperson of the

subcommittee reviewing the City's Personnel Rules. Associate Member Danial stated that she does not believe the September 16, 2011 vote was well considered and she asked the Board to reconsider their vote.

Chairperson Alschuler asked if retirement benefits are more substantial for unclassified employees who demote to a classified position. Attorney Terranova stated their pension is fixed, but by demoting they become eligible to work overtime. Union President Garcia stated that this is based on the individual and the circumstances and he also believes the Personnel Board should not be hearing financial matters. Secretary Inguanzo clarified that the City has two pension plans and that the plan Attorney Terranova was referring to was the Miami Beach Employee's Retirement Plan for general employees and not the Fire and Police Pension Plan.

Associate Member Danial made a Motion to define the term "separation" and/or "separated" or any other tense of this word to mean voluntary and involuntary employment action within the City's Personnel Rules. This would restore the City's original interpretation of the term prior to the September 16, 2011 vote.

Motion by Associate Member Danial; seconded by Employee Member Castell

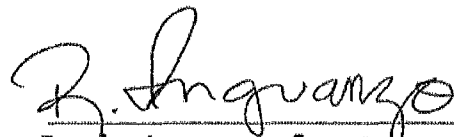
A roll call vote was called and the following was the outcome of the vote:

Chairperson Alschuler	Yes
Associate Member Danial	Yes
Associate Member Paez	Yes
Associate Member Pincus	No
Employee Member Castell	Yes
Employee Member Diaz	No
Employee Member Phillips	No

The employee vote counts as one and given that two out of the three employees voted no, their collective vote was a No.

The Motion therefore passed on a vote of 3 to 2.

David Alschuler, Chairperson, adjourned the Personnel Board meeting at 12:12 p.m.


Ramiro Inguanzo, Secretary