

Clearwater, Florida, November 7, 2013

The Unified Personnel Board (UPB) met in regular session at 6:30 P.M. on this date in the County Commission Assembly Room, Fifth Floor, Pinellas County Courthouse, 315 Court Street, Clearwater, Florida, with the following members present: Daniel M. Andriso, Chair; Ricardo Davis, Vice-Chair; Keith Bailey; Andrea S. Daggett; Keith C. Dekle; Angela Outten; and Joan Vecchioli.

Also Present: Peggy Rowe, Director of Human Resources; Jason Ester, Senior Assistant County Attorney; Michelle A. Wallace, Senior Assistant County Attorney; Laura M. Todd, Board Reporter, Deputy Clerk; and other interested individuals.

AGENDA

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| EAC | <u>Item I. Employees' Advisory Council Representative</u> |
| | <u>Item II. Consent Agenda</u> |
| Human Resources | 1. Request Approval of the Minutes of the Regular Personnel Board Meeting held September 12, 2013. |
| | 2. Request Approval of the Minutes of the Regular Personnel Board Meeting held October 10, 2013. |
| Public Safety Services | <u>Item III. Motion for Reconsideration</u>
Karen Darby-Mack. |
| Human Resources | <u>Item IV. Informational Items</u>
Action Taken Under Authority Delegated by the Unified Personnel Board to the Human Resources Director. |
| County Attorney | <u>Item V. Workshop</u>
Review of the Personnel Act. |

CALL TO ORDER

Chair Andriso called the meeting to order at 6:30 P.M.; whereupon, he led the Pledge of Allegiance to the Flag.

EMPLOYEES' ADVISORY COUNCIL (EAC) REPRESENTATIVE

Mr. Toney reported that the EAC unanimously reappointed Personnel Board member Keith C. Dekle for a two-year term; that the reappointment will help maintain consistency; and that the current members represent a knowledgeable Board whose efforts are greatly appreciated; whereupon, Chair Andriso stated that Mr. Dekle is a welcome member.

Mr. Toney stated that the December 18 meeting of the Employees' Advisory Council will be held jointly with the Appointing Authorities; that the joint meetings are held a couple of times a year to update the Authorities on employee needs, wants, and wishes; and that the Personnel Board members are welcome to attend; whereupon, he extended an invitation to the members of the Personnel Board to attend the November Delegate meeting to update EAC members.

CONSENT AGENDA – APPROVED

Motion	-	Mr. Davis
Second	-	Ms. Vecchioli
Vote	-	7 – 0

- #1 Minutes of regular meeting held September 12, 2013, approved.
- #2 Minutes of regular meeting held October 10, 2013, approved.

MOTION FOR RECONSIDERATION OF KAREN DARBY-MACK – DENIED

Motion for Reconsideration was filed by Karen Darby-Mack, Senior Office Specialist, Emergency Medical Services (EMS). Senior Assistant County Attorney Nancy S. Meyer represented the Department of Safety and Emergency Services, and Attorney Jan Press represented the Appellant.

Responding to queries by Chair Andriso and Mr. Dekle as to whether the two members of the Board that were not in attendance at the initial hearing should recuse themselves from the proceeding, Attorney Ester related that under state law, board members are required to vote on all issues that come before the board, unless the decision to vote would benefit the member financially.

In response to queries by Chair Andriso and Mr. Bailey, Attorney Ester confirmed that tonight's proceeding is a motion to reconsider, not a full rehearing; whereupon, he related that the motion is to reconsider, modify or amend the findings or decision; that the motion would only be granted if the modification or amendment was based upon (1) evidence previously presented, or newly discovered evidence which, by due diligence, could not have been discovered prior to the formal hearing; or (2) that the Board's decision was made through or based upon fraud, collusion, deceit or mistake of fact or law. He stated that the movant has the

November 7, 2013

burden to prove that reconsideration is necessary and that it is supported by references to the transcript or other evidence as allowed in *Personnel Rule 11-1*.

Following statements by the parties, with input and discussion by the members, Attorney Ester related that the motion from the movant is to request that the Board reconsider, modify, or amend its findings or decision; whereupon, Ms. Outten moved to amend the decision of the Board relating to the appeal of Karen Darby-Mack.

Attorney Ester reviewed the specific findings and decision, noting that based upon the presentation made by Appellee, the Board found by unanimous vote that the Appellant committed the activities for which she was terminated; and that there were three items which the Board could vote to amend or modify: (1) that she committed the activity for which she was terminated; (2) that there was cause for the disciplinary action taken, in that the Appellant's actions did violate the *Personnel Rules*; and (3) that the disciplinary action of termination was appropriate.

Attorney Meyer expressed concern regarding due process for the parties because two of the Board members did not hear the testimony at the formal hearing; whereupon, Attorney Press stated that he is requesting that the Board modify or amend the decision and find that the discipline imposed was inappropriate; and that a lesser measure, such as suspension, be provided under the *Rules*.

Chair Andriso indicated that the motion should be made by a member of the Board; whereupon, responding to query by Chair Andriso, Attorney Ester reiterated that the standard is that the request should be granted if it is shown that the decision of the Board was made through or based upon a mistake of fact or law.

Attorney Ester responded to query by Ms. Daggett regarding misapplication; whereupon, Ms. Outten moved that the Board amend section three of its findings, where it approved the decision to terminate based upon a mistake of fact or law, specifically, whether the law was violated, thus giving rise to the zero tolerance policy leading to termination. Attorney Meyer reiterated her concern that due process was not being provided, and discussion ensued concerning the two Board members that were not present.

Mr. Bailey stated that if the Board denies the appeal, then the case is over; and that if the appeal is correct, then the case would go back to the Board to hear the case all over again; whereupon, Attorney Ester indicated that the rule does not provide for another hearing;

November 7, 2013

and that the rule provides an opportunity to modify or amend the findings or the decision, noting that the motion was not to rehear the case.

Attorney Meyer offered for the record case law in support of her due process concerns in the case of *Metropolitan Dade County versus Florida Processing Company*, 229 So.2d 254 (1969). She indicated that the Court found that the Board is flexible in how it can gain understanding of the case and testimony; and that the Board members that were not present must have opportunity to review the record; whereupon, Attorney Press argued that a ruling against his client would be a due process violation.

Responding to query by Mr. Bailey, Chair Andriso indicated that he was unsure if a motion was on the floor; whereupon, Mr. Bailey offered to make a motion.

After reviewing case law provided by Attorney Meyer, Attorney Ester indicated that he did not agree with the case and conclusions provided in support of her due process concerns; whereupon, he explained to the members that as long as the decision made tonight is based upon the transcript from the previous hearing and not new evidence presented, the composition of the Board could change, and the entire Board had to vote on the motion for reconsideration.

In response to query by Mr. Davis as to whether a motion was on the floor, Attorney Wallace stated that the members need to dispose of the motion by Ms. Outten before proceeding; whereupon, Ms. Vecchioli stated that the motion was not seconded.

Thereupon, Ms. Outten moved, seconded by Mr. Dekle to amend the decision that Ms. Darby-Mack was terminated; and that the decision was a proper decision by the Board based upon the mistake of fact or law, specifically, as to whether there was a violation of law.

In response to queries by the members as to the remedy, Chair Andriso, with input by Attorney Ester, stated that in *Rule 10-4*, if the Board finds that the action taken was not appropriate, it shall remand the matter to the Appointing Authority for a recommended alternative disciplinary action, which shall be considered by the Board before it renders its final decision, and discussion ensued as to the ramifications of the motion.

During discussion and in response to query by Ms. Daggett, Chair Andriso, with input by Attorney Ester, indicated that if the Board votes to approve the motion, it only takes one vote; whereupon, Chair Andriso stated that a “yes” vote would indicate that termination was inappropriate. Following discussion and upon call for the vote, the motion failed by a vote of 2

November 7, 2013

to 5, with Chair Andriso, Messrs. Davis and Bailey, and Mses. Daggett and Vecchioli casting the dissenting votes.

Thereupon, Mr. Bailey moved, seconded by Mr. Davis, that the appeal be denied. Upon call for the vote, the motion carried 5 to 2, with Ms. Outten and Mr. Dekle casting the dissenting votes.

This proceeding has been electronically recorded, a copy of which has been filed and made a part of the record.

Human Resources Director Action Taken Under Authority Delegated by the UPB

This item was not addressed in the meeting. The document titled *Action Taken Under Authority Delegated by the Personnel Board* has been attached and made a part of the minutes.

County Attorney Workshop

Earlier in the meeting, Chair Andriso indicated that a workshop that was to be conducted by County Attorney James Bennett will be postponed; whereupon, Ms. Rowe stated that Attorney Bennett became unexpectedly ill; and that the workshop would be held at the December meeting.

MISCELLANEOUS INFORMATION ITEMS RECEIVED

The following miscellaneous information items were received for filing:

1. Management and Supervisory Notes for November 2013.
2. Training Schedule for November 2013.
3. Minutes of the EAC Representatives meeting of September 18, 2013.

November 7, 2013

ADJOURNMENT

The meeting was adjourned at 8:23 P.M.

Chair