



Minutes Tempe Police Public Safety Personnel Retirement Board January 8, 2009

Minutes of the Tempe Police Public Safety Personnel Retirement Board, held on Thursday, January 8, 2009, 3:00 p.m., Tempe City Hall – Mayor’s Office, 31 E. 5th Street, Tempe, Arizona.

Board Members Present:

Mayor Hugh Hallman
Todd Bailey
Jim Foley

Board Members Absent:

Joe Brosius
Joe Schiefer

City Staff Present:

Jan Hort, Clerk’s Office
Lourdes Robertson, Human Resources

Mayor Hallman called the meeting to order at 3:06 p.m.

ITEM I – Consideration of Meeting Minutes

Motion by Todd Bailey to approve the minutes of November 6, 2008, Joint Meeting Minutes of November 6, 2008, and Executive Session Minutes of November 6, 2008. Second by Jim Foley. Motion passed unanimously.

Motion by James Foley to adjourn to Executive Session. Second by Todd Bailey. Motion passed unanimously.

ITEM II – Executive Session

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Meeting temporarily adjourned at 3:07 p.m. for Executive Session.

Meeting reconvened at 3:10 p.m.

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ITEM III – New Recruits

Motion by Todd Bailey to approve the new recruits as follows: **Austin Wade Brant, Brandon DeSpain, Robert R. Dufresne, Ryan Garnett, Trevor Paul Grayston, Kasey Marsland, JD Glen Snell, Joshua A. Stowell, and T. A. Sullivan IV**, with exceptions noted in the record of the Executive Session discussion for Austin Wade Brand, Robert R. Dufresne, and Ryan Garnett. Second by James Foley. Motion passed unanimously.

ITEM IV - Retirement Applications

Motion by Todd Bailey to approve the retirement applications of **Arthur Hall, Jr.** and **Michael Velten** to enter into DROP, noting 20.498 years of credited service for Michael Velten and 25.328 years of credited service for Arthur Hall, Jr. Second by James Foley. Motion passed unanimously.

Motion by Todd Bailey to approve the DROP to Retirement applications of **Marshall Cook** and **Laura Forbes**. Second by James Foley. Motion passed unanimously.

ITEM V – Procedures for New Recruit Medical Forms/Process

Mayor Hallman summarized that at the last meeting, the Board accepted the Phoenix Fire procedures, and had asked Lourdes Robertson to research the Phoenix Police procedures.

Lourdes Robertson summarized that Phoenix has specific staff research the medical reports prior to coming to the board and the board does not look at the medical reports. They address the pre-existing conditions and they keep their medical files. Tempe keeps the medical documents in the Police Department only until they are audited by Arizona Post, which could be shortly after the recruits start in the academy. Phoenix would have the ability to resurrect records if needed.

Jan Hort added that the Clerk's Office keeps the records permanently only if they are put through to the board. In February 2007, it was discovered that there were twenty plus that had never gone through the board for approval, so they weren't actually approved by the board. A catch-up was done at that time, and it was difficult to retrieve the medical records from doctors or determine if others may have missed being board approved. Procedures have since been placed to monitor this with the payroll system to ensure that as recruits graduate from the academy, we are aware of them entering the system.

Mayor Hallman clarified that the Clerk's Office keeps the records for everyone that comes to the board and everyone should make it to the board.

Ms. Robertson clarified that Phoenix has its own office for public safety where everything is kept. The only time a physical is addressed is when the person has a dispute with their medical paperwork. They can request to come to the board to hear that. Also, if there is a disability retirement and there are conditions related to that, they bring that forward to the board, as well, at the time application is made. The membership paperwork (not medically related, but merely administrative) doesn't come through the board, but staff handles it and sends it to Public Safety so the board never sees the membership paperwork.

Mayor Hallman clarified that the direction from the last meeting was to research what Phoenix uses as their board process rules and whether they have a written set of rules.

David Niederdeppe, Board Attorney, responded that Phoenix is in the process of developing those rules, and he is waiting to see that.

Mayor Hallman suggested that the board wait until Phoenix finishes its work. In the meantime, the board will default to the simplified rules adopted at the last meeting.

ITEM VI – Hearing for Medical Retirement Application of Curtis Baumgarth

Motion by James Foley to convene an Executive Session. Second by Todd Bailey. Motion passed unanimously.

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Meeting temporarily adjourned at 3:25 p.m. for Executive Session.

Meeting reconvened at 3:45 p.m.

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Mayor Hallman opened the hearing for the medical retirement application for Curtis Baumgarth. Under the board's procedures, the applicant would have the opportunity to present evidence. The applicant is not present, although a letter from the board's physician has been received.

Mr. Foley clarified that Mr. Baumgarth's job title was Police Officer.

Mr. Bailey added that when the injury occurred in 2006, Mr. Baumgarth was a patrolman. After that time, he stayed in patrol for approximately six to eight weeks feeling pain in his hand before being put on light duty. He was put on light duty for a period of time at a desk taking reports over the phone and was transferred to different positions because of his experience, such as mail runs, delivering paperwork to the courts, collecting evidence and copying it for court purposes, all of which duties sworn officers can do.

Mr. Foley asked whether, as an officer during the course of his career, he was expected to rotate through all different assignments or was it typical that some officers would be assigned to administrative or desk duties.

Mr. Bailey responded that initially everyone from the academy is required to start in patrol. After either 18 months or 3 years, they are eligible to test and go to different areas. They are still a police officer classification but they can become detectives, canine officers, motorcycle officers, bicycle officers, administrative officers, etc. Once in those positions, there is some expectation that they can't stay there for the rest of their career, but they will do some rotation. However, there have been detectives that have been employed as detectives for the last eighteen years. It is possible that someone could stay in the same position and not be rotated to another assignment.

Mr. Foley asked what is required of a detective.

Mr. Bailey responded that a detective is not required to wear a uniform or drive a patrol car, but is required to carry a firearm. They are required to pass the yearly post qualification and for safety reasons are required to carry a gun.

Mr. Foley asked whether physical testing is required to meet the post requirements.

Mr. Bailey clarified that there is no physical testing, but there is a yearly shooting score.

Mayor Hallman asked for clarification that officers who have suffered hand injuries often go back and train to shoot with their other hand.

Mr. Bailey responded that it is possible.

Mayor Hallman stated that he didn't know if it was necessary, in his view, to decide whether Mr. Baumgarth could serve in the role of officer in a reasonable range of duties when he considered that the initiating basis on which Mr. Baumgarth sought retirement does not appear to have been a medical circumstance. The medical circumstance occurred significantly before he sought medical retirement and it appears he sought disability retirement only after he was under investigation and had been arrested. It raises an aura of suspicion that someone suddenly decided that they had a medical problem that required them to retire and that they could not perform the duties after having spent many months continuing to perform as a police officer. It was only after his behavior caused him to be arrested that he sought to retire based on a disability. It strains credibility to believe that in this instance this officer sought

disability based on a medical issue. He thought this retirement was sought purely as a defensive measure. Given the lack of evidence demonstrating any movement toward retirement prior to his arrest, without presenting evidence from Mr. Baumgarth demonstrating he was actually considering it or seeking retirement prior to his arrest, he believed this was not motivated by a medical disability. He started from the first principle of whether this was a reason for retirement, and he thought it was not.

Mr. Bailey added that the injury was reported in November of 2006, and it wasn't until March of 2008 that the application was turned in. He had been seeing doctors throughout that time frame and never once indicated to the Police Department or the Human Resources Department that he was going to seek a medical retirement, and he continued working in different positions that police officers do within the City. He had the capability of doing that for the three and a half years until his normal credit of service. He agreed that the medical application appears to be in response to his pending disciplinary action and not in response to the actual injury.

Mr. Foley added that Mr. Baumgarth was assigned to the range of duties that satisfied the department and was conducting productive work that could well have continued. In the absence of any complaints up to the time of his disability application, regardless of what restrictions or disabilities were spelled out in the medical report, he was able to perform to the satisfaction of the department. The disability application was inappropriate at this point.

Mayor Hallman added that there is nothing in the record that indicated that the department had any interest in terminating his employment but for misbehavior. There were no medical concerns demonstrated from the City's side.

Motion by Todd Bailey to deny the medical disability application of Curtis Baumgarth. Second by James Foley. Motion passed unanimously.

ITEM VII – Future Agenda Items

Todd Bailey stated that he has received a medical retirement application for Ralph Tranter and he will begin the process of finding a doctor and notifying Mr. Tranter to set up a medical exam for the injury indicated on the medical retirement application. The process will start.

Motion by James Foley to adjourn the meeting. Second by Todd Bailey. Motion passed unanimously.

Meeting was adjourned at 3: 56 p.m.

Prepared by: Connie Krosschell

Jan Hort
City Clerk