



Minutes Tempe Police Public Safety Personnel Retirement Board May 7, 2009

Minutes of the Tempe Police Public Safety Personnel Retirement Board, held on Thursday, May 7, 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
Joe Brosius
Jim Foley

Board Members Absent:

Joe Schiefer

City Staff Present:

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

Guests Present:

David Niederdeppe
Mark Mignella
Ralph Tranter

Mayor Hallman called the meeting to order at 3:11 p.m.

ITEM II – Consideration of Meeting Minutes: April 9, 2009; Executive Session Minutes April 9, 2009

Motion by Todd Bailey to approve the Minutes and Executive Minutes of April 9, 2009. Second by Joe Brosius.
Motion passed unanimously.

ITEM III – Motion to Adjourn to Executive Session, if necessary, pursuant to A.R.S. §§ 38-431.03(A)(2) and 38-431.03(A)(3)

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

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Meeting temporarily adjourned at 3:11 p.m. for Executive Session.

Meeting reconvened at 3:30 p.m.

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ITEM IV – New Recruits

None.

ITEM V – Retirement Applications

None.

ITEM VI – Disability Retirement Hearing for Ralph Tranter Jr.

Mayor Hallman summarized that at the last meeting, everyone agreed to continue the hearing because of lack of sufficient board members in attendance. He had asked Jan Hort to contact Mr. Tranter to ascertain if he wanted to continue with the hearing today. He understood with Mr. Tranter's presence that he has decided to proceed.

Mr. Tranter confirmed.

Mayor Hallman continued that at the last meeting, the board discussed the basis for his application to have his retirement considered a disability/medical retirement.

Mr. Tranter thanked the board members for their consideration of this matter. During the original meeting, he explained the background, the nature of his injury and the fact that his vision has declined since that time. When he was injured, his uninjured eye charted at 20/15, and it has since declined to the point where it has an effect on his vision. He had this discussion with Will Manley and had agreed to depart the City. He was asked by the board to produce a letter from Mr. Manley. That letter has been received. His medical condition is at the point where he is no longer POST certified in terms of his medical eyesight requirements.

Mayor Hallman clarified that he currently maintains his POST certification, but from his understanding of the matter, he would not be able to get re-certified.

Mr. Tranter clarified that he has a POST certification which has not been tested or challenged. If he would apply, he could not meet the requirements. He maintained his physical fitness, but the only eyesight exam that he had taken was a simple chart which did not include the peripheral vision, night vision, etc., and did not require a review of the POST standards. At the same time the Police Department declined a standard POST physical fitness test because of the number of individuals asking for exemptions. The Police Department made the decision that it was timely and costly to test individuals, so there were a number of individuals in the Police Department that would have had difficulty achieving the POST basic physical fitness test. Once an individual receives the initial certification, unless it is challenged, the individual is certified for the remainder of their career. He brought this matter up to Mr. Manley and they had the discussion. He is now at the point where he cannot maintain POST certification. Should he apply to another agency, his eyesight would preempt him from meeting the standards.

Mayor Hallman stated that the legal standard the board is to apply is that Mr. Tranter incurred an accidental injury in the line of duty that totally and permanently made him unable to perform a reasonable range of services within the range of the classification and that his employment was terminated by reason of that disability.

Mr. Brosius clarified that after the injury, Mr. Tranter was at some point released back to full duty.

Mr. Tranter confirmed.

Mr. Brosius clarified that at that time, the eye was enough for full duty, though not challenged. Would he have passed POST certification at that point if someone had challenged it?

Mr. Tranter agreed that if he had been challenged, he probably would not have passed the challenge. He uses the vision in his good eye to carry his overall vision, which at the time was 20/15. It has since declined to where he has a

considerable correction for that eye. The doctor gave a release based upon the fact that he had 20/15 vision in his good eye.

Mayor Hallman stated that in examining the matter, there is very little precedential value set by this case, given a fairly tight set of circumstances which include:

- an injury that was incurred two decades ago, that one could examine and recognize that this officer could continue to deteriorate physically and be incapable at some point of performing a reasonable range of duties, both physically and to the extent that individual questions his ability mentally;
- the injury was incurred in the line of duty;
- the injury was accidental;
- he is permanently and totally disabled;
- letter from former City Manager Will Manley indicating that the physical disability was a significant consideration in negotiating the final contract terminating Mr. Tranter's services;
- Mr. Tranter currently holds a POST certification. But that certification, once it expires or is challenged, would fall;
- the specific incident giving rise to the injury has not only undermined his physical capability to perform within the range of services, whether the Chief or the Emeritus classification, and the loss of eyesight has undermined his own sense of ability to perform those duties

Given the lack of precedential value of this matter, and given his view that the evidence touches each of the five touchstones required for determination, he would award the retirement as a disability.

Mr. Brosius added that his issue is the reason for retirement. There is a contract with the City and according to a letter from Mr. Manley, Mr. Tranter's physical disability was a significant consideration in the negotiation. Why wasn't that included in the contract? There was a contract, now the contract is done, and now Mr. Tranter is asking for a medical retirement.

Mr. Tranter responded that it was mentioned in the contract that it would not affect his industrial injury case, and that it would not undermine his ability to file for industrial or receive continued industrial care for his injury.

Mark Mignella, Attorney for Mr. Tranter directed the board to look at the end of Paragraph 1.2. Mr. Tranter's understanding was, although it references the status of any open industrial claim, it included anything that emanated from this work-related injury that he had sustained.

Mr. Brosius stated that he considers retirement quite a bit different than industrial.

Mr. Bailey added that the industrial claim gives eye contact cleaner and exam every other year.

Mr. Tranter clarified that he gets continuing care for the remainder of his life.

Mr. Bailey asked if there is anything in there that talks about retirement or anything other than continued eye care.

Mr. Tranter clarified that the industrial case was for eye care and didn't address retirement. That was put together while he was still working and before his eyesight declined.

Mr. Brosius added that he didn't feel it was within the board's purview to be concerned whether Mr. Tranter can become POST certified after leaving the City.

Mayor Hallman added that POST certification is part of the range of services and although Mr. Tranter currently maintains it, if it is not something he could maintain or could re-achieve, and that goes to the question of whether he can perform a reasonable range of services. The issue is whether he was terminated by reason of disability and within a reasonable range of services. The difficulty for termination by reason of disability is the time between the actual incident and the final retirement. In this instance, even though Mr. Tranter came back to work full time, at some point the disability interfered with his ability to perform, including his mental state about whether he could perform those duties. Those are both relevant here for that reasonable range of services.

Mr. Brosius asked what Mr. Tranter can't do.

Mr. Tranter responded that it has to do with firearms, driving at night with limited night vision, and reading material and computer screens.

Mr. Bailey asked about the contract. Mr. Tranter was in discussion at length with Mr. Manley in 2006 about the injury affecting his ability to work. The wording of the contract states, "throughout the term of the agreement, Tranter will retain his position of authority as a fulltime sworn police officer. Tranter must attend any training necessary to maintain POST..." By signing that statement, didn't he indicate he was capable of doing the job and continuing to do the job while in the contract?

Mr. Tranter stated that he signed that statement. He did not attend POST training and did not officially pass the last firearms training. He achieved a score that was not within the allocation within the last six months.

Mr. Bailey added that there are several factors that play into it. There's no question it was accidental, it was in the line of duty. He added that the issue is whether Mr. Tranter can perform a reasonable range of duties, and there is some question as to whether the range is Police Chief, a mixture of Emeritus, or both. The POST certification comes in under the Police Chief. Other than the POST certification, he didn't think there has been any discussion that Mr. Tranter could continue any of the other activities. POST seems to be the biggest issue going into the contract.

Mr. Tranter responded that the capability of reading printed material, reading computer screens, and night driving affect both the position of Police Chief and Police Officer. A Police Chief is required to meet the same physical fitness standards and vision standards as police officers.

Mr. Bailey added that the only thing he saw in Police Chief relates to POST. The rest of it talks about creating budgets, etc. The wording on the classification is the possession of or the ability to obtain POST certification. Since Mr. Tranter currently has POST, it isn't the board's responsibility to see if he can get POST if he goes somewhere else. It's the board's responsibility that if the injury causes him to no longer be employed with the City, not if the injury prevents him from going out and getting POST somewhere else. If POST had called Mr. Tranter and said he couldn't be a police officer anymore, that would be very clear, but it is very muddy because POST hasn't done that.

Mr. Tranter clarified that he had a discussion with Mr. Manley about his ability to serve and it was specifically addressed.

Mr. Bailey stated that is a gray area for him and although Mr. Manley has provided additional information, it is not written in the contract. He is not convinced of a reasonable range of duties.

James Foley stated that he had concern with the reasonable range of duties. He has looked at the job description of Police Chief and it is clearly an executive position. He saw a distinction between an executive position and a patrolman's duties. He is not convinced that visual impairment is so much of an impediment that the duties of Police

Chief couldn't be performed. Regarding the POST certification, it is clear that Mr. Tranter has the certification and it is something that is not routinely challenged. He was not clear how POST certification fits into the statutory framework for disability retirement. The statute is silent on POST certification.

Mr. Tranter responded that POST assigns medical standards for hearing, vision, and physical fitness. It is very specific on vision and he does not meet the standards.

Mr. Foley added that Mr. Tranter made a statement earlier that the department in general has chosen not to impose physical performance standards on the officers.

Mr. Tranter clarified that there were times when a number of people had requested exemptions or provided medical statements that they could not perform the POST physical fitness test. They found that a number of people were being injured during those tests and the number of individuals needing to be assigned to light duty became cumbersome and expensive. Therefore, they did not pursue the POST physical fitness standards. The difference in his case is that his injury and physical condition vs. personal situations.

Mr. Foley asked how frequently POST certifications have been challenged in general.

Mr. Tranter responded that POST conducts audits of actual academic training. The physical fitness and medical training were very haphazard to the point where it wasn't done for years prior to his departure.

Mr. Foley clarified that the likelihood is that Mr. Tranter's certification would not be challenged. What is the likelihood that his certification would be challenged?

Mr. Mignella responded that is speculative. To the extent that in a circumstance where someone has a medical condition that deteriorates over time and may then call into question their ability to continue that certification, the likelihood of that being challenged would increase.

Mr. Foley clarified that the practice over a period of time has been not to challenge.

Mr. Tranter stated that during his tenure as Police Chief, Mr. Manley required department heads to spend at least one day a month out in the field. There were times when he worked shifts in uniform and it was difficult. He had to select day shifts rather than night shifts. There were also times when he came to the Council meetings and he performed security duties when officers were not present. In terms of the Police Chief position, many of the positions he took required intercession and to physically subdue people as well as arrest people. He can't go out into the community and say he is the Police Chief and he won't step into something. That is why he was expected to be armed at all times to protect himself as well as the public. He always stepped forward when he was faced with a conflict or confrontation. His career was not simply doing budgets or sitting behind a desk.

Mr. Bailey asked during his last role as Emeritus whether he did any of those things.

Mr. Tranter responded that as Emeritus he did not.

Mr. Brosius stated that as part of this process the board had not yet considered sending Mr. Tranter to one of the City doctors for examination so that the board can have that information.

Mr. Brosius made a motion to refer Ralph Tranter to a medical doctor of the board for examination and determine a reasonable range of services. Second by Todd Bailey Motion passed unanimously. Mr. Bailey will arrange the examination.

Ralph Tranter and Mark Mignella left the room.

Copies of the contract and the job description were provided to the board members.

ITEM VII – Expiration of Term: Joe Schiefer / Update on Election of New Board Member

Mr. Bailey stated that Joe Schiefer's term ends in June. He has verbally expressed in the past that he will not be willing to run again. A notice has been sent to the officers for anyone interested in running. Two officers have expressed interest and there will be a vote in the next two weeks with a new representative beginning in July.

ITEM VI – Future Agenda Items

Discussion on Procedures of Tempe Police & Fire Pension Board

Motion by Joe Brosius to adjourn the meeting. Second by Todd Bailey. Motion passed unanimously.

Meeting was adjourned at 4:06 p.m.

Jan Hort
City Clerk