

---

## Minutes Tempe Merit System Board September 19, 2011

---

Minutes of the Tempe Merit System Board Meeting, held on Monday, September 19, 2011, 8:00 a.m., City of Tempe Council Chambers, 31 East 5<sup>th</sup> Street, Tempe, Arizona.

**Board Members Present:**

James P. Foley, Chair  
Russell Schoeneman  
Penny Higginbottom

**City Staff Present:**

Renie Broderick, Human Resources Director  
Colleen Pacheco, Human Resources  
David Park, Assistant City Attorney  
Assistant Chief Angel Carbajal  
Andrew Ching, City Attorney  
Raquel Gomez, Paralegal

**Others Present:**

Jason Giardino  
Dale Norris  
Deborah Gonzalez

**Witnesses Present**

Commander Fran Santos (via telephonic video)  
Commander Mark Perkovich  
Sergeant Mike Pierce  
Lieutenant Ed Ouimette  
Lieutenant Marcel Spaulding  
Police Chief Tom Ryff

Chairman James Foley called the Meeting to order at 8:17 a.m.

Chairman Foley addressed Agenda Item I, the meeting minutes from September 7, 2011. Dr. Schoeneman moved to approve the minutes as written, Ms. Higginbottom seconded and the minutes were approved with a voice vote of 3-0.

Chairman Foley addressed Agenda Item III, the Hearing on Personnel Matters concerning Jason Giardino. Chairman Foley stated that in the previous session on September 7, 2011, the Appellant presented their case and rested while the City had called one witness and was going to continue with their case today.

Mr. Norris stated he wanted it on the record that earlier this year he made a motion to disqualify the City Attorney from this case, yet Andrew Ching is assisting City today. Chairman Foley so noted.

Chairman Foley stated the amount of time used for each party; The Appellant has used 171 minutes and had 159 minutes left and the City has used 182 minutes and had 148 minutes left for today's Hearing.

Commander Fran Santos was called to testify, was sworn in by Chairman Foley and questioned by both Mr. Park and Mr. Norris. She testified as to her career with the Tempe PD and her involvement with the disciplinary actions taken against Mr. Giardino. She testified as to how she was brought into the Giardino investigation, the information she received and her own review processes of this case including the resulting disciplinary action. She testified that there is no mention of the suspect causing herself injury, as Mr. Giardino has alleged, and was not aware of any mention that the suspect may have been injured prior to her arrest. She testified as to her interpretation of Mr. Giardino's actions the night of September 29, 2007. She testified that due to available alternative actions, size differences and the injuries the suspect received she came to the decision that he violated Tempe PD's Use of Force policy. She also testified as to past incidents where Mr. Giardino was disciplined which contributed to her decision to recommend termination of his employment.

Board asked clarifying questions regarding her incident report, Tempe PD's Use of Force policy and Mr. Giardino's history of injury to suspects. She testified that her decision to recommend termination of employment was based majorly on his history, rather than the one specific incident on September 29, 2007. The Board then excused the witness.

Andrew Ching left the proceedings after the telephonic appearance of Commander Santos.

The Hearing recessed from 9:27 a.m. to 9:35 a.m. for a brief break.

Commander Mark Perkovich was called to testify, was sworn in by Chairman Foley and questioned by both Mr. Park and Mr. Norris. Commander Perkovich testified as to his career with the Tempe PD and his involvement with the disciplinary action against Mr. Giardino after the incident on the night of September 29, 2007. He testified that the Tempe PD received a notification of claim regarding the suspect's injuries and his involvement and opinions regarding the resulting investigation. He testified that he felt the investigation was conducted thoroughly. Commander Perkovich also testified as to the takedown of the suspect and possible alternatives. He testified as to his awareness of suspect's injuries and use of her medical records in this investigation.

The Board asked clarifying questions regarding techniques taught to Tempe PD on how to control handcuffed prisoners, injuries the suspect received and the position of other officers in regards to Mr. Giardino on September 29, 2007. The Board then excused the witness.

Sergeant Mike Pierce was called to testify, was sworn in by Chairman Foley and questioned by both Mr. Park and Mr. Norris. Sgt. Pierce testified as to his career with the Tempe PD. He testified as to his assignment in the defensive tactics training area, the training provided to officers in 2007, and the Use of Force policy as defined by both the City of Tempe and AZPOST. He testified as to how each incident where force is used is different depending on the circumstances. He testified as to the capability of any suspect to injure an officer as well as takedown maneuvers on handcuffed prisoners.

The Board asked clarifying questions regarding techniques taught to control versus take down handcuffed prisoners, reasonableness in regards to the Use of Force policy, techniques specifically taught to control a prisoner and alternatives to takedowns. The Board then excused the witness.

Lieutenant Ed Ouimette was called to testify, was sworn in by Chairman Foley and questioned by both Mr. Park and Mr. Norris. Lt. Ouimette testified as to his career with the Tempe PD and his involvement with Mr. Giardino's case as the IA investigator. He testified about his investigation processes and the logic he used. He also testified that through his investigation he sustained that the amount of force Mr. Giardino used in the September 29, 2007 incident was excessive, violating Tempe PD's policy and his reasons for coming to that conclusion. He testified as to his interviews with Mr. Giardino during his IA investigation regarding his actions and alternatives to the takedown. He testified as to his understanding of Mr. Giardino's actions and the suspect's actions as heard on the tape recording Mr. Giardino took during the takedown. Lt. Ouimette also testified as to his knowledge of the suspect's injuries as a result of Mr. Giardino's actions.

The Board asked clarifying questions regarding the tape recording of the takedown and the amount of force used during the takedown. The Board then excused the witness.

The Hearing recessed from 12:08 p.m. to 12:49 p.m. for lunch.

Assistant Chief Angel Carbajal was called to testify, was sworn in by Chairman Foley and questioned by both Mr. Park and Mr. Norris. Asst. Chief Carbajal testified as to his career with the Tempe PD and his involvement with the disciplinary termination of Mr. Giardino as part of the Police Executive Committee. He testified that he wrote the majority of the Use of Force policy that was in place in 2007 and the intent of the policy. He testified as to his reasons why he concurred with Commander Santos' recommendation for termination of employment. He demonstrated a straight-arm takedown on a woman named Raquel from the City Attorney's office who said she was 4'11.5" and 115 lbs., then demonstrated his understanding of the takedown used by Mr. Giardino on 9/29/07 and explained how the two differed. He also demonstrated both straight-arm takedowns and alternative options on Mr. Park while Mr. Park was both free and handcuffed. He then testified to the procedures an officer should follow if a suspect causes injury to themselves. Asst. Chief Carbajal also testified as to his knowledge of takedown maneuvers, the threat of the suspect and her positioning the day of the takedown.

The Board asked clarifying questions regarding the reasons the Executive Committee decided to terminate Mr. Giardino's employment. The Board then excused the witness.

Police Chief Tom Ryff was called to testify, was sworn in by Chairman Foley and questioned by both Mr. Park and Mr. Norris. Chief Ryff testified as to his involvement with the disciplinary action and resulting termination of Mr. Giardino. He testified that he looked at the total picture of everything he had done as an employee and factors that determined his position. He also testified that he does not feel Mr. Giardino should be a police officer because of his past dangerous actions. He testified that as Chief he commonly reviews performance of the police officers.

The Board asked clarifying questions regarding Officer Giardino's history and how Chief Ryff makes his determinations concerning police officers. The Board then excused the witness.

Mr. Park stated that the City rested their case.

The Hearing recessed from 1:49 p.m. to 1:56 p.m. for a brief break.

Lieutenant Marcel Spaulding was called to testify as a rebuttal witness, was sworn in by Chairman Foley and questioned by both Mr. Norris and Mr. Park. Lt. Spaulding testified as to his career with the Phoenix PD, his role as a defensive tactics subject matter expert for AZPOST, the State of AZ, and reviewer of Use of Force incidents with the Phoenix PD. He testified as to his knowledge of straight-arm takedowns and then demonstrated different variations of the straight arm takedown on Mr. Giardino. He testified as to his knowledge of defensive tactics, general guidelines regarding Use of Force and stated his opinion regarding the takedown Mr. Giardino used on the night of September 29, 2007. Lt. Spaulding also testified his opinion regarding the effectiveness of handcuffs and use of force while suspects are in handcuffs. Lieutenant Spaulding also demonstrated speed-cuffing.

The Board asked clarifying questions regarding takedowns. The Board then excused the witness.

Mr. Norris stated that he did not have anything further.

The Hearing recessed from 2:26 p.m. to 2:31 p.m. for a brief break.

Mr. Norris presented his closing statement commenting that he has taken new view on this case and he believes that this case is based on bad assumptions and poor investigation methods by the City of Tempe. He stated that Mr. Giardino's actions on the night of September 29, 2007 were appropriate and there is no evidence to support that the suspect was injured by Mr. Giardino's actions; there was actually testimony presented that said it could not have been

cause by him. He recapped many of the witnesses' testimony regarding the occurrences on September 29, 2007 and the defensive maneuver techniques used by Tempe police officers. He stated that Mr. Giardino's termination was unfair and asked the Board to make it right.

Mr. Park presented his closing statement that Mr. Giardino has repeated his story multiple times in the past several years as he has unsuccessfully tried to appeal his termination of employment, so he has now made up a new story that does not agree with the evidence. He stated that all of the evidence points to Mr. Giardino as being responsible for the suspect's injuries and replayed the tape recording of the takedown. He stated the Tempe PD's Use of Force Policy states a police officer has to use the minimum level of force and it is clear that he did not and there were other alternatives. He recapped how the Board has heard from multiple witnesses that a face-first takedown on a handcuffed prisoner is excessive, and that the suspect's injury was most likely caused by Mr. Giardino. Mr. Park also discussed Mr. Giardino's disciplinary history regarding force and the inability to control his emotions which has had multiple negative results. He asked that the Board support the City's decision and upholds the termination.

Chairman Foley stated the Board would now begin deliberations and asked Mr. Giardino if he wanted the deliberations to be held in Open Session or if he would like to convert the deliberation portion of the Hearing to Private. Mr. Norris said they would like the deliberations to be held in private to let the Board be as thorough as possible.

Dr. Schoeneman moved to go into Executive Session for Deliberations. Ms. Higginbottom seconded and Chairman Foley ordered the court reporter to stop recording and the members of the Merit System Board began deliberations at 3:30 p.m.

Deliberations ended at 4:25 p.m. and all parties were brought back into the room. Chairman Foley instructed the Court Reporter to go back on the record.

Chairman Foley stated that the Board has come to a decision. Dr. Schoeneman moved the Board make a recommendation to the City Manager to uphold Mr. Giardino's termination of employment. Ms. Higginbottom seconded and the recommendation was approved with a voice vote of 3-0. Chairman Foley told Mr. Giardino that the Staff to Board will draft a letter to be sent to the City Manager with their recommendation and copies will be forwarded to Appellant and the City. He told Mr. Giardino that he could challenge this recommendation by filing a written appeal to the City Manager within 3 business days of notification to City Manager.

Motion by Russell Schoeneman to adjourn the Meeting; second by Penny Higginbottom. Motion passed unanimously by a voice vote 3-0 and the Meeting was adjourned at 4:33 p.m.



Renie Broderick, Merit System Board Secretary