

**Minutes
Tempe Police Public Safety Personnel
Retirement Board
February 5, 2009**

Minutes of the Tempe Police Public Safety Personnel Retirement Board, held on Thursday, February 5, 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
Joe Schiefer

City Staff Present:

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

Guests Present:

David Niederdeppe, Board Attorney
Susan Kelley

Mayor Hallman called the meeting to order at 3:08 p.m.

ITEM I – Consideration of Meeting Minutes

Todd Bailey stated that a change should be made to the January 8, 2009, Minutes on page 2. “Motion by Todd Bailey to approve the DROP applications of Marshall Cook and Laura Forbes” should be changed to “Motion by Todd Bailey to approve the DROP to Retirement applications of Marshall Cook and Laura Forbes.”

Motion by Joe Schiefer to approve the minutes of January 8, 2009, as corrected, and Executive Session Minutes of January 8, 2009. Second by Jim Foley. Motion passed unanimously.

ITEM III – New Recruits

Motion by Joe Schiefer to approve new recruit, **Alfredo Jimenez**. Second by Joe Brosius. Motion passed unanimously.

ITEM IV - Retirement Applications

Motion by Todd Bailey to approve the retirement applications of **Stanley Archer** to enter into DROP as of 2/1/2009, **Arthur Brian Hall** from DROP to Retirement 1/6/2009, and **Ralph Tranter, Jr.**, from DROP to Retirement 1/31/2009, with a note that there is a medical pending that may change his retirement from normal to medical in the future. Second by Joe Brosius. Motion passed unanimously.

ITEM II – Executive Session

Motion by Joe Brosius to convene an Executive Session on Mark Barber, Alexander Pina, and Ralph Tranter, Jr.. Second by Todd Bailey. Motion passed unanimously.

=====
Meeting temporarily adjourned at 3:10 p.m. for Executive Session.

Meeting reconvened at 3:25 p.m.
=====

ITEM III – New Recruits

Motion by Joe Brosius to accept into the system **Mark Barber** and **Alexander Pina**, subject to the medical issues as noted in the Executive Session. Second by James Foley. Motion passed unanimously.

ITEM V – Request for Disability Retirement Hearing for Ralph Tranter, Jr.

Mayor Hallman noted that this will be read as “Requested Disability Retirement Hearing for Ralph Tranter, Jr.” He asked if everyone was comfortable to go forward with the hearing and asked Mr. Tranter if he was comfortable and knew of anyone else who would want to be present.

Ralph Tranter was comfortable and was not aware of anyone else that should be present.

Mayor Hallman asked if Mr. Tranter was comfortable that this was an acceptable group for the hearing and whether he felt there was any reason for conflict of anyone participating.

Mr. Tranter agreed that it was an acceptable group.

David Niederdeppe suggested hearing from the applicant with respect to the paperwork before the Board.

Mr. Tranter thanked the Board and staff for entertaining his request. He served with Tempe since August 9, 1976. It was during the course of his employment in 1986 that he was seriously injured in the line of duty during an armed confrontation with an individual who had previously killed a police officer and taken a six-year-old boy hostage. He was involved in the entry of a residence where the hostage was being held. He could not return fire until he was well aware of where the hostage was located. If there is any question as to the level of violence from that shooting, he showed the radio he had attached to a D-ring over his heart and the radio took a direct hit. Unfortunately the suspect shot through the window of the residence and bullet fragments hit him in the side of the face, the neck and shoulder. One of the bullet fragments went through his right eye. He was blinded on the spot. He was able to get the hostage out of the house and he immediately went to Desert Samaritan Hospital for treatment. Dr. Lewis performed the original surgery to his eye and thereafter the follow-up surgeon was Dr. Randy Campo who did the retina repair work. He was looking down at the time the bullet fragment went through his eye, and it went through the retina above the optic nerve. He lost the lens out of his eye, has a permanently distorted pupil, and has a number of consequences as a result of that injury. To see, he has to wear both a contact lens and corrective spectacles. As a result of the injury, he has a permanently dilated, distorted pupil, so during the daytime, he has over-exposure to light and must wear sunglasses. Because of the injury and the laser surgery performed on that eye, he has lost considerable night vision as well. It was Dr. Campo's recommendation that he take a medical retirement, but at that point he wasn't prepared to retire, he had a family, and this was his career. His left eye was charted at 20/15 and prior to the injury, his right eye was every bit as strong, so he wanted to continue his career. His left eye has carried it. Unfortunately, he feels he doesn't meet the POST standards. The standards list 20/200 non-corrected eyesight. Without the contact lens and spectacle, he cannot discern his right hand in front of his face. With both lenses and his chin in the apparatus at the eye doctor, he can achieve 20/20 vision. He has no peripheral vision and is constantly in a position of having to apologize to people when he goes around a corner to the right because it is not uncommon to walk into people. If the Board reviews the POST standards, he believes his injury is in such a category that if he tested for a POST position, he would not be qualified. Over time, his left eye, which he has relied upon for the last twenty years, undergoes corrective vision as well. He doesn't have the vision he once

did. His vision has degraded over the past twenty years. He doesn't drive at night as frequently as he would like, and he has difficulty reading for extensive periods of time. Because of the POST medical standards, he would be unlikely to remain eligible for employment.

Mr. Bailey asked if Mr. Tranter currently has a POST certification.

Mr. Tranter responded that he does.

Mr. Bailey stated that the Board was provided information that Mr. Tranter's current assignment was Police Chief Emeritus. He asked about the responsibilities for that position.

Mr. Tranter responded that he was on call to former City Manager Will Manley for any questions. He knew he would be used minimally and during that year he also served as executive director for the Association of Arizona Chiefs of Police.

Mr. Bailey asked whether, while he was contracted, there was an end-of-employment date.

Mr. Tranter responded that he exercised his vacation time and sick leave over the past year to January 1, 2009.

Mr. Bailey clarified that effectively his employment with the City ended on January 1, 2009.

Mr. Foley asked for clarification that Mr. Tranter's position is that the disability precludes future employment in other law enforcement agencies as opposed to continued employment with the City.

Mr. Tranter stated that he is no longer employed by the City. His injury arguably precluded both, given the extent of the injury and the medical standards. He struggled with that disability and worked past it, and he explained this to the former City Manager, Will Manley, in discussions concerning his role and explained that in all likelihood he would not be able to be employed. He essentially relied on his original doctor who recommended not returning to work, but he did.

Mayor Hallman stated that the issue the Board faces, under the statute, is that it says Mr. Tranter must have been terminated by reason of the accidental disability. Because he did not take disability retirement then, and continued to serve for twenty years, it is difficult to say that he was terminated by reason of disability, even if the Board gets to the point that he was totally and permanently disabled from the reasonable range of job duties. Disability was incurred in the employment, that's obvious, but the Board has to look at the contract job duties as a minimum, but he would even then look at the job duties of a Chief. The Board is supposed to apply the standard of the job he was in. He would take the position that everything Mr. Tranter was asked to do as Chief could have been asked to do as the Chief Emeritus in support of Tom Ryff. The Board faces two issues. First, Mr. Tranter must have been terminated by reason of accidental disability and, second, is the contract itself which states that he desired to voluntarily retire as opposed to being retired because of the accidental disability.

Mr. Tranter stated that in the job description of Police Chief it discusses meeting POST standards. He does not meet the standards.

Mayor Hallman asked how he maintains his current qualification.

Mr. Tranter responded that it isn't something anyone has to re-apply for. That certification is what he had originally. Secondly, the voluntariness of the contract is questionable.

Mr. Bailey asked for any information on why the medical application was not turned in 2007, 2006, or 2005 before the contract was signed.

Mr. Tranter responded that he seriously considered getting employment with another agency and while on contract, it probably wouldn't be appropriate to do that, so he didn't. He could pass the physical, but not the medical.

Mr. Bailey asked whether POST certification is required in order to be Police Chief in Tempe or any other Valley agency.

Mr. Tranter responded that every Chief position or any law enforcement position requires POST certification or the ability to be certified.

Mayor Hallman stated that the hearing could be continued if there are other issues Mr. Tranter would like to present or other individuals to attend.

Mr. Tranter agreed to continue.

Mr. Niederdeppe stated that the standard has been shared with the Board and the standard states that with an application like this, the statute states that a person is eligible for accidental disability if their employment is terminated by reason of accidental disability and accidental disability is defined as the total and permanent inability to perform a reasonable range of duties in the employee's classification.

There was a question if there was a definition of reasonable range.

Mr. Niederdeppe responded that there is not. He has only seen one case that has gone to the Court in dealing with reasonable range and it had to do with a temporary disability pension and what someone might have been asked to do for a short period of time. Generally, the courts would look at a reasonable range of duties and say most of what the person's classification calls should be able to be done.

Mr. Schiefer stated that apparently one of the requirements for being a Police Chief is the POST certification.

Mayor Hallman added that one of the ironies of this would be that because someone possesses one, they wouldn't need to obtain it.

Mr. Brosius clarified that Mr. Tranter has certification and will have that for another three years after retirement.

Mayor Hallman stated that based on that one item alone, the reasonable range of job duties could be fulfilled, except to the extent of a POST certification. Given things like "plan and supervise the enforcement of traffic and safety regulations" could require a Chief to end up in a line position, and we probably have reserve senior officers ending up in circumstances where they are handling matters directly that one would think below their pay grade, but the goal in climbing the ladder is that one is still obligated to undertake those duties. That's not a particularly compelling issue. The issue is rather "terminated by reason of accidental disability."

Mr. Bailey stated that the Board has to have a vote today for permission from Mr. Tranter to waive the 90-day hearing or it will be automatically approved. Unless there is indication that the Board's thought process will change, the Board should go with the information it has.

Mayor Hallman clarified that Mr. Tranter has a right to a hearing in 90 days, and he has applied and the Board has extended the hearing. The Board needs Mr. Tranter's agreement to waive that while the Board determines how to deal with "terminated by reason of accidental disability" given that the termination process and the contract were associated potentially with the disability. The statute requires that the termination of the employment had to do with the disability, and the difficulty is that he served for twenty years with the disability.

Mr. Tranter responded that his eye has further degraded and the good eye can no longer support the right eye. His eye has not improved, but has actually deteriorated.

Mr. Brosius added that with that information, it isn't probably something that the Board should look at. It should probably be referred to a medical board.

Mr. Bailey responded that a medical board won't get the Board over the hurdle that the reason for leaving employment was not based on disability. That is one of the reasons why he didn't send Mr. Tranter to a doctor.

Mayor Hallman added that the Board can accept the disability and assume the disability is true. If the Board accepts the disability, the question to answer is whether termination was due to disability. At the moment, there hasn't been evidence presented that the termination was related to the disability. He asked Mr. Tranter if he had any evidence.

Mr. Tranter responded that he has a prevailing underlying physical condition that precludes him from working. The larger question is how he worked so long.

Mayor Hallman clarified that his ultimate reason for retiring was a voluntary retirement, that he articulated in various ways at the time including that he believed he could not perform in that job given the physical state he had gotten to, and that his eyesight had deteriorated to the point that he was not capable of serving in that type of capacity.

Mr. Tranter added that he had that discussion with Mr. Manley during the contract discussions.

Mayor Hallman was aware of part of that discussion and wondered if he was an appropriate person to participate in the hearing, given that he actually had a piece of fact information.

Mr. Niederdeppe added that the system contemplates that elected officers will have knowledge of people that come before them. If that experience is not the kind of thing that would create a bias or prejudice, the system would contemplate that would happen.

Mr. Bailey asked if a motion is unheard today and this is not approved, what is the process if Mr. Tranter gets additional information? Can he appeal, or does he have the ability to re-present evidence to the Board in a certain number of days.

Mr. Niederdeppe responded that a decision of the Board becomes final if there is not a request for reconsideration of that after 60 days.

Mr. Bailey clarified that if the Board took a hearing today and new evidence developed in the next 60 days, that could be presented to the Board.

Mr. Niederdeppe clarified that an applicant before a board would have a right to request re-hearing if dissatisfied with the result. There is a time constraint, however, and he believed it is 60 days.

Mayor Hallman clarified that, for example, a letter from the former City Manager who had a conversation with Mr. Tranter would be additional evidence, and that the Board discussed the deterioration of his eyesight was putting him in a position where he did not feel appropriate filling the position as Chief.

Mr. Bailey stated that after reviewing the medical application for Ralph Tranter and the contract regarding employment, he would make a motion to deny the application for disability retirement for Ralph Tranter at this time based on the fact that the reason for leaving employment does not appear to be based on the injury as it may appear to be more towards the end of employment date listed in the contract. Second by Joe Brosius for discussion.

Mr. Brosius stated that he would like to see a letter from Will Manley with the basis for the conversation or spelled out from Mr. Tranter based on the conversation with Will Manley. The basis for entering a retirement contract was that he ultimately volunteered to retire because his medical condition was deteriorating to the point he did not feel it appropriate to continue as Chief. That has to be among the reasons cited.

Mayor Hallman asked if Mr. Tranter would like to take a continuance.

Mr. Tranter agreed that a continuance would be a good idea. When he contracted out, he had a detailed discussion with Will Manley regarding the effect of his injury on his health, the long hours he was working, the limitations the injury presented, how it was affecting his career, and that in all likelihood he was not going to be able to continue his career.

Mr. Niederdeppe clarified that if the action is to continue, the 90-day obligation to commence a hearing was met and commenced today. It can continue for whatever period is appropriate.

Todd Bailey withdrew the motion.

Motion by Joe Brosius to continue the hearing for 60 days. Second by Todd Bailey. Motion passed unanimously.

VI - Future Agenda Items

Mayor Hallman noted the continuance at Mr. Tranter's request to the extent additional evidence is gathered, but no later than 60 days.

Motion by Joe Brosius to adjourn the meeting. Second by Jim Foley. Motion passed unanimously.

Meeting was adjourned at 3:55 p.m.

Prepared by: Connie Krosschell



Jan Hort
City Clerk