



Minutes Tempe Police Public Safety Personnel Retirement Board July 9, 2009

Minutes of the Tempe Police Public Safety Personnel Retirement Board, held on Thursday, July 9, 2009, 3:00 p.m., Tempe City Hall – Mayor’s Office, 31 E. 5th Street, Tempe, Arizona.

Board Members Present:

Mayor Hugh Hallman
Joe Brosius
Jim Foley
Todd Bailey
Jeff McHenry

Board Members Absent:

City Staff Present:

Jan Hort, Clerk’s Office

Guests Present:

David Niederdeppe, Attorney for the Board
Mark Mignella, Attorney for the Claimant
Ralph Tranter, Claimant

Mayor Hallman called the meeting to order at 3:03 p.m.

ITEM I – Meeting Schedule for August

The next PSPR Board meeting date is August 20, 2009.

ITEM III – Consideration of Meeting Minutes: June 11, 2009; Executive Session Minutes June 11, 2009

Motion by Joe Brosius to approve the meeting minutes of June 11, 2009. Second by Jim Foley. Motion passed unanimously.

ITEM V – New Recruits

Motion by Todd Bailey to approve the new recruit **Paul J. Colborn**. Second by Joe Brosius. Motion passed unanimously.

ITEM VI – Retirement Applications

Motion by Todd Bailey to approve the regular retirement of **Kenneth Harmon** and the DROP of **John Holdinsky** with a correction of the date to read 06/30/10. Second by Jim Foley. Motion passed unanimously.

ITEM VII – Review of Disability Retirement Application – Amy Wozniak

Joe Brosius requested the withdrawal of the application on behalf of Ms. Wozniak

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**Meeting temporarily adjourned at 3:07 p.m. for a Joint Meeting of the Fire and Police PSPR meeting.
Meeting reconvened at 3:15 p.m.**
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ITEM IV – Motion to Adjourn to Executive Session pursuant to A.R.S. §§ 38-431.03(A)(2) and 38-431.03(A)(3)
Motion by Joe Brosius to adjourn to Executive Session. Second by Jim Foley. Motion passed unanimously.

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**Meeting temporarily adjourned at 3:16 p.m. for an Executive Session.
Meeting reconvened at 3:26 p.m.**
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ITEM VIII – Disability Retirement Hearing – Ralph Tranter Jr.

An updated report from Dr. George M Yanik, MD/PhD in regards to Dr. Yanik's response dated June 19, 2009 to include "police chief/officer" in context to "police officer" and a memorandum from Ralph Tranter dated July 7, 2009 was provided to the Board.

Mr. Tranter explained that he has cooperatively supplied all information requested by the Board (including documentation from Mr. Manley and answering questions openly during Board meetings) and participated in the medical examine as directed by the board. Dr. Yanik answered the questions required for a decision of disability supporting the application for disability retirement. Additionally, his letter further explains his lack of ability to comply with the most basic AZ POST vision standards as required in the job description. These, coupled together, satisfy the criteria for disability retirement.

Mayor Hallman stated that based on the presentation of information the question as to whether his injuries made him eligible for disability retirement, the first element (totally and permanently disabling, making him unable to perform a reasonable range of duties) is met based on the medical conclusions submitted by the Board assigned medical examiner, Dr. Yanik.

Mr. Foley felt that Dr. Yanik, in preparing his medical findings, failed to compare his clinical findings with the duties of the position that Mr. Tranter held. He does not believe that a police officer and chief have the same duties. He believes that Dr. Yanik is out of his authority and not doing what he was asked to do. His experience is that the guy on the front line and the head of the agency are not in the same line of duties. There are significant differences, in his opinion.

Mr. Bailey asked if legislation gave any indication that job classifications have different requirements indicating that legislation understands that the police officer and police chief have different job. Mr. Niederdeppe was unaware of any case law regarding that particular issue; but legislation does recognize that one classification may differ from another. The intent of the laws were so that a person could not be told that, because he could not do one job, he could be forced into another career path just because there could be duties assigned that he could still do. Mr. Tranter pointed out that the AZ Post requirements are on both classifications and have the same qualifications. Job functions performed in the police officer classification are still performed in a police chief position; those duties are within the range of both classification. Mayor Hallman confirmed that the last two chiefs were required to be able to perform in full uniform, badge and gun, and to be prepared to perform all duties of a police officer when public events required their presence in that capacity.

At Mayor Hallman's request, Mr. Niederdeppe clarified to the Board that the amount of money received from a disability retirement is the same as the amount of money from a normal retirement and only the handling of the taxes from those proceeds differs.

Mr. Bailey felt that the doctor did not need to go on the POST standards as Mr. Tranter already possessed a Post certificate. Less contact with the public in full uniform decreases the chance of danger for a Police Chief compared to a Police Officer who is in full uniform and is therefore, more often to be placed in danger. Mayor Hallman felt that based on the information received in the medical examiner's assessment, Mr. Tranter's inability to perform the required duties because of his injuries would place him and other officers at risk because of his visual impairment, which renders him unable to perform during crucial times.

Mayor Hallman addressed the second standard for determining if his employment was terminated as a result of his injury. This was substantiated by Mr. Manley's letter requested by the Board.

Mr. Bailey asked Mr. Tranter when he felt his injury prevented him from performing a reasonable range of duties. Mr. Tranter stated that it became noticeable to him that his condition was deteriorating in probably the last three (3) or four (4) years. Vision continued to deteriorate over time. He has noticed over the last couple years a significant decline. Last year he no longer felt safe. Mr. Bailey asked, if it has only been in the last year that he no longer felt safe, why he fill out his application for Jan 30, 2009. Mr. Tranter stated that he was still with the City. Mr. Bailey reiterated that Mr. Tranter had the conversation regarding this issue with Mr. Manley two (2) years in advance and asked why he remained an employee past the time he felt disabled. Mr. Tranter explained that he had leave time on the books to use up before no longer becoming an employee.

Mayor Hallman conferred that he was part of the discussion regarding Mr. Tranter's concerns over his deteriorating vision, which Mr. Tranter felt would make him unable to perform his duties, which in turn led to the employment contract that was the result of Mr. Tranter's progressing incapacitation. Merit status was put in place to complete out the contract period. The question Mr. Bailey is asking is, if he was unable to perform the job, why didn't he break his contract. Mr. Bailey question whether he stayed on the job to increase his retirement benefit. Mr. Brosius responded that, since Mr. Tranter was already under the DROP program, additional time did not monetarily increase his retirement payment.

Mr. Bailey was of the opinion that, though Mr. Tranter meets all but one of the standards for disability, he does not meet the requirement that Mr. Tranter ended his employment by reason of accidental disability. It appears to be a planned retirement which does not meet the statutes so, therefore, cannot meet the requirements for disability.

Mr. McHenry stated that one of the elements that made Mr. Tranter feel that he could not perform his job was the degradation of his left eye. The report from the doctor says that the left eye is correctible to 20/20. The report does not talk about what his vision is without corrections. He inquired if Mr. Tranter knew. Mr. Tranter replied that he does not know exactly what his vision is without correction; it is below AZ Post standards. With his right eye, without corrective vision, he is unable to see his hand in front of his face. If the injury occurred in 1986 Mr. McHenry does not see why now Mr. Tranter feels it is an element that prevents him from performing. In his opinion Mr. Tranter is an excellent police chief and could manage any police department. He is a "cops' cop" and well respected. Mr. McHenry feels that rather than the employment being terminated by reason of disability, it was terminated because his contract ran out. He feels Mr. Tranter has the ability to perform a reasonable range of duties and go anywhere in the nation for the same classification of employment. Mr. McHenry also has a problem determining that the reason for retirement is based on reason of accidental disability. He read both submittals and finds that Mr. Manley's statement is less credible in supporting that termination was based on his disability. The statement has less

credibility because it was not put in the contract or officially documented in the record previously and Mr. Manley is not here to be put under oath and to be cross-examined by a litigator, the statement does not have enough credibility.

Mr. Mignella, Attorney for the Claimant, stated that the medical report that answers the question of whether he is prevented from performing his duties and Mr. Manley's letter that is based on supporting Chief Tranter's claim are the only items in the record that support his application. Whether he can determine the time, is beyond this stage of the proceedings. The doctor's medical report supports the claim in a straight forward, clear manner. The problem Tranter has is he cannot go out and apply for his job because of his disabilities.

Mr. McHenry stated that regardless of how the Board votes, Mr. Tranter will still have his post certification. Mr. Tranter stated that the problem is that he cannot apply as a Police Chief anywhere; he would still have to take a medical. He has applied elsewhere and this is what he has been told when applying. Mr. Brosius confirmed that Mr. Tranter would need to take the whole process over again, anywhere he would apply for similar employment, whether he currently holds a POST certification or not.

Mr. Bailey referred to the May 7 meeting minutes which reported that "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 went on to state that the contract covers everything except the injury. There is no reason that the contract couldn't mention the medical. He asked Mr. Brosius what changed his previous opinion.

Mr. Brosius stated that the Board received the verification letter from Mr. Manley and the physician examination gives needed information and he views those documents as sufficient. This was just a question he had at the time and had not, at that time, formed an opinion.

Mayor Hallman stated that the benefit received was being able to run out his contract through the use of vacation and sick leave. From January 2008-09 while vacation time was being used, he was not called on to perform the duties in question. Mayor Hallman stated that he had been witness to the discussions that led to the contract. It was a decision of the City Manager, in the best interest of the City, to negotiate the contract to allow Mr. Tranter to run out his vacation and sick leave. Whether the Board members like the contract or not, it was negotiated due to the psychological condition that the Chief found himself in because of the deteriorating condition that he was under and due to his grave concern that he could not do his job without putting his men in uniform at risk. He had served the City for decades. He asked that unless additional evidence is requested that would help form a decision, the Board entertain a motion.

Mr. Foley asked whether he was directed to go out in full uniform or if this was a desire of his. He stated that both conditions applied. The City Manager required it; Mr. Tranter also felt it necessary to stay in touch with his men and their duties. Sometimes he was directed to handle situations during Council meetings or handled situations in the garage around City Hall among numerous events that he participated in as a police officer. He was also call upon by

the Governor's Office of Highway Safety to participate in events at the capital. Citizens did not know he was the Police Chief and he often faced threats by the public which he addressed as part of his responsibilities. Any less than accepting his responsibilities would have been a violation of his oath of office.

Mr. Brosius made a motion to accept the disability retirement application. There was no second.

An alternative motion to deny the application for Mr. Tranter was made by Mr. Bailey. Second by Mr. Foley.

Mr. Brosius stated that he could not see how the guidelines have not been met for the disability claim based on the information the Board received.

Mr. Bailey clarified that the termination of the employment was not the result of disability but rather a planned retirement.

Motion passed 3 to 2 with Mayor Hallman and Joe Brosius voting no.

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

Meeting was adjourned at 4:16 p.m.

Jan Hort
City Clerk