



Minutes Tempe Police Public Safety Personnel Retirement Board August 4, 2011

Minutes of the Tempe Police Public Safety Personnel Retirement Board, held on Thursday, August 4, 2011, 3:00 p.m., Tempe City Hall, third floor Council Conference Room, 31 E. 5th Street, Tempe, Arizona.

Board Members Present:

Joe Brosius
Jim Foley
Todd Bailey
Jeff McHenry

Board Members Absent:

Mayor Hugh Hallman

City Staff Present:

Brigitta Kuiper, City Clerk
Lourdes Robertson, Human Resources representative
Angel Carbajal, Assistant Police Chief

Guests Present:

Cynthia Kelley, Legal Counsel
Tom Magazzeni

Joe Brosius called the meeting to order at 3.33 p.m.

ITEM III – Consideration of Meeting Minutes

Motion by Jeff McHenry to approve the board meeting minutes of July 7, 2011; second by Jim Foley. Motion passed unanimously on a voice vote 4-0.

Motion by Jeff McHenry to approve the Executive Session meeting minutes of July 7, 2011; second by Jim Foley. Motion passed unanimously on a voice vote 4-0.

ITEM IV – Motion to Adjourn to Executive Session, if necessary

Motion by Todd Bailey to convene into Executive Session; second by Jeff McHenry. Motion passed unanimously on a voice vote 4-0. The Board convened into Executive Session at 3:34 p.m.; the Board meeting was called back to order at 3:36 p.m.

ITEM V – New Member

Motion by Todd Bailey to accept the membership application of **Aaron N. Williams** to enter into the Public Safety Personnel Retirement System noting the medical findings as contained in the Medical Examination Report dated 1/27/11 and discussed in Executive Session; second by Jeff McHenry. Motion passed unanimously on a voice vote 4-0.

ITEM VI – Retirement Application

Motion by Jeff McHenry to accept the application of **Carolyn K. Shumaker** to enter into the **Deferred Retirement Option Plan (DROP program)**; second by Todd Bailey. Motion passed unanimously on a voice vote 4-0.

It was noted that a retirement date was added to the Accidental Disability Retirement application for Amy D. Wozniak. Motion by Todd Bailey to accept the Accidental Disability Retirement application of **Amy D. Wozniak**; second by Jeff McHenry. Motion passed unanimously on a voice vote 4-0.

ITEM VII – Status Updates

Cynthia Kelley, Legal Counsel, provided an update on the Kathrine A. Welker case. Oral arguments took place on July 25, 2011. The Judge ruled that the Tempe Police Public Safety Personnel Retirement System Board was not arbitrary or capricious; their decision was correct. The Judge did take the opposing counsels' argument under advisement; however, the Judge's final decision upheld the Board's decision. Opposing counsel has 60 days to appeal the ruling. No further action is need from this Board at this time. Ms. Kelley was asked to notify Board members if the case is appealed.

ITEM VIII – Reemployment of Retired Detective Tom Magazzeni

Jeff McHenry referred to the background information provided by Tom Magazzeni regarding his employment history with the City of Tempe Police Department. Mr. Magazzeni is seeking the Board's recommendation on whether he is eligible to be re-hired by the City of Tempe Police Department. Mr. Magazzeni was asked to explain his employment duties during his tenure with the Police Department. Discussion highlights include:

- Mr. Magazzeni was a long term employee of the Tempe Police Department, retiring May 31, 2011
- 1994 – worked as a homicide detective; criminal and death investigations; officer involved shootings
- Instructor for Criminal Investigations Bureau (CIB); teaching death investigation techniques
- Duties include: facilitating arrests; enforcement of laws; testifying in criminal court
- 2004 – background investigator for the Personnel Services Bureau; civilian investigations for officers and civilian applicants; assist internal affairs with internal investigations; assist with hiring, testing, preparing applicants for certification

Jeff McHenry outlined the statutory requirements for being eligible to be rehired by the most recent employer:

- 1) 60-day separation from previous employer
- 2) Cannot have the same job as defined as "substantial or similar duties" or "substantial or similar authority"

Mr. Magazzeni stated he was a background investigator for the last seven years of employment with the Tempe Police Department. When hiring practices decreased, Mr. Magazzeni stated that he was assigned additional duties, such as assisting with the CIB. Some of the duties included cold cases, however he did not serve as the cold case agent; he primarily assisted in an administrative capacity; no arrests were made.

Jeff McHenry clarified that Mr. Magazzeni worked in homicide for ten years, then conducted administrative background investigations for new hires and later assisted with various investigations, some of which were high profile. Mr. Magazzeni stated that the most recent cold case he worked on was approximately 8-9 months prior to retiring from the City, before December 2010.

Todd Bailey asked for legal clarification regarding "same authority" and "same responsibility". Todd Bailey referenced a similar rehire situation when Joe Brosius was re-hired. Mr. Bailey questioned the Board's authority to review pre-hire requests. Jeff McHenry stated that the Board reviewed a similar situation for Police Chief, Tom Ryff.

Todd Bailey stated that this is a difficult process because the job duties of the position have not been approved yet. This could lead to reviewing each retiree that wishes to return to work. It is unclear what the criteria are for looking at these cases and what the responsibilities of the Board are in these situations. Jeff McHenry clarified that the statutory language includes the words "substantially similar" not "same".

Jim Foley questioned whether the re-hire statement has been compared to the job description. Todd Bailey stated that the job descriptions all have the same *authority*, but there is a distinction in the area of *responsibilities*.

Angel Carbajal, Assistant Police Chief, stated that a majority of employees that move from one assignment to another, within the Police Department, do so by choice through a competitive process. In this particular case, Officer Magazzeni was asked by Command Staff to assist with cases that were of concern to the community and Police Department; public safety issues. Mr. Magazzeni was not given a choice to serve in this capacity. If a position is created in the future that

Mr. Magazzeni might be available for or interested in, the position would be specifically for cold cases and no other functions that homicide detectives perform.

Joe Brosius clarified that this conversation is about allowing Mr. Magazzeni to be hired as a contract employee, not to be re-hired as a regular employee. Jeff McHenry stated that the statutes reference contract employees. Cynthia Kelley stated that contractors are considered sworn officers; contracted employees are treated the same as regular employees. This issue has arisen in other jurisdictions.

Todd Bailey noted that Mr. Magazzeni has been retired from the City for more than 60 days, as required by statute, and that Mr. Magazzeni's responsibilities would be different from the responsibilities he previously performed as a City employee.

Jeff McHenry stated that Mr. Magazzeni is requesting to be employed as a contract employee to work as a homicide investigator, strictly on cold cases.

Motion by Jeff McHenry finding Tom Magazzeni as eligible to be re-hired by the Tempe Police Department, after the expiration of 60 days if that has not occurred yet, with the job description as enumerated in page three of the handout that Mr. Magazzeni provided (attached), which appears to be strictly a Cold Case Homicide Detective and has limited duties as described in the contract; second by Todd Bailey. Motion passed unanimously on a voice vote 4-0.

ITEM I – Public Appearances

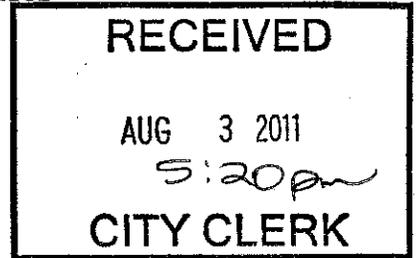
None.

ITEM V – Future Agenda Item

- Local Board Procedures
- Retirement Statement/Affidavit

Motion by Jim Foley to adjourn; second by Jeff McHenry. Motion passed on a voice vote 4 - 0. The meeting adjourned at 4:04 p.m.

Brigitta M. Kuiper, Local Board Secretary



Re-hire statement

PSRS Member: No. 0199

Retiree: Thomas Robert Magazzeni
City of Tempe Police Officer
Hired October 3rd 1985 – Retired May 31st 2011
(25+ years of service)

Tempe PD Assignment History:

- Patrol Division
Patrol Officer- 1985-1988 and 1990
- Special Investigations Bureau
Select Enforcement Bureau Officer- 1988-1990
(plains clothes)
- Patrol Division
Patrol Officer- 1990-1991
- Criminal Investigations Bureau
Property Detective- 1991-1993
Robbery Detective- 1993-1994
Homicide Detective- 1994-January 2004
- Personnel Services Bureau
Background Investigator- 2004 to 5/31/11 (retirement)

Police assignment summary:

On October 3rd 1985, I was hired by the City of Tempe Police Department as a police officer recruit. After graduating from the ALEA Police Academy in Phoenix in January 1986, I was assigned to the Patrol Division as a Patrol Officer. My duties were as follows:

- A uniformed (high visibility) first responder to any criminal or traffic incidents by either observation or dispatch.
- Render first aid
- Conduct initial criminal investigations
- Enforce criminal and traffic laws.
 - o Due to these duties, I was subject to testify in criminal court.

From 1988 to 1990, I was assigned (after testing) to the Special Investigations Bureau (SIB) for approx. 2 years as a plain clothes police officer. While a SIB Officer, my duties were as follows:

- Conduct surveillances, facilitate arrests and serve search warrants for Criminal Investigation Bureau (CIB) detectives and (SIB) narcotic detectives.

- Enforce vice type laws
 - o Due to those duties, I was subject to testify in criminal court.

In 1990, I returned to the Patrol Division where I was assigned as a Patrol Officer for approx. one year until I tested and was selected to the Criminal Investigations Bureau as a Property Detective. As a Property Detective, my duties were as follows:

- Investigate pending and in-custody property crime type cases (Thefts, Burglaries, fraud and embezzlements).
- Take enforcement action, ex: facilitate arrests
- Prepare cases for criminal trial
 - o Due to those duties, I was subject to testify in criminal court.

In approx. 1993, I requested to become a Robbery Detective in CIB and was selected. As a Robbery Detective, my duties were as follows:

- Investigating pending and in-custody robberies and violent type crimes
- Assist the homicide unit with death and homicide type investigations.
- Take enforcement action, ex: facilitate arrests
- Prepare cases for criminal trial.
 - o Due to those duties, I was subject to testify in criminal court.

In approx. 1994, I tested and was selected to become a homicide detective. My duties were as follows:

- Investigate pending and in-custody crimes involving violence, including missing persons, kidnapping, child abuse, aggravated assaults, all type of death investigations, officer involved shootings and homicides.
- Take enforcement action, ex: facilitate arrests
- Attend and conduct Investigative type training.
- Prepare cases for criminal trial
 - o Due to those duties, I was subject to testify in criminal court.

- It should be noted that while a detective in CIB, I participated in mandatory "standby" rotation. (Subject to "Call outs" during off duty times to investigate just occurred type serious/violent crimes).

In January 2004, I tested and was selected to the Personnel Services Bureau as a background investigator. My duties were as follows and were considered civilian/administrative in nature:

- Conduct thorough background investigations for civilian, sworn and volunteer positions
- Facilitate officer recruitment processes including preparation, delivery and follow up of testing processes/applicants
- Documenting applicant status and progress through testing
- Assist with recruitment of qualified and diverse applicants
- Assist on limited basis with Internal Affairs Investigations as needed

- Maintain security of confidential personnel records to include applications, testing materials, background investigations and medical reports.
- Further information on the Tempe Police Department Background Investigator duties is available upon request.
- It should be noted that due to my duties in PSB being administrative in nature, I was not subject to “stand by” or “call outs”. I also was not subject to testify in criminal court.

On May 31st 2011, I retired from the Tempe Police Department while assigned to the Personnel Services Bureau as a background investigator.

Re-hire statement:

On July 15th 2011, I was contacted by Tempe Police Criminal Investigations Lt. Mike Collins with a draft of a contract for re-employment with the Tempe Police Department as a temporary, one year contracted, Cold Case Homicide Detective in the Criminal Investigation Bureau, possibly starting on August 15^h 2011. My duties in the contract were described as follows:

- Take enforcement action (arrests) as needed or required
 - Conduct investigations involving major incidents including homicide, Officer involved shootings, death investigations and missing persons.
 - Assist field officers in death investigations
 - Maintain liaison with other agencies and organizations involving in death investigations.
 - Act as a resource with respect to death/homicide investigations
 - Develop and assist with the furtherance of a comprehensive training program for investigators assigned to the bureau
 - Provide guidance on investigative practices in one on one and in classroom settings, this includes providing mentorship to members during active and on-going investigations.
 - Maintain tracking and/or logging systems of statistical information as required by supervisor (cold case logs, homicide logs).
 - Attend and provide testimony in court and related proceedings.
 - Successfully complete training to maintain Arizona POST certification and other departmental mandated training.
 - Successfully complete training to maintain compliance with Tempe Police Department Training requirements.
 - Other Law Enforcement related duties as assigned by immediate supervisor or designee.
- A copy of the contract draft is available upon request.
 - Due to this contracted Cold Case Homicide position being with out regular standby and call out duties, I would not be issued a work

take-home vehicle. This is unlike all the other Tempe Police Homicide Detective positions.

During the last year of employment at the Tempe Police Department, I was only assigned to the Personnel Services Bureau. During that time, I conducted the following duties:

- Conducted over 20 background investigations on Tempe Police Department applicants
- Assisted other law enforcement agencies with background related information.
- Recruited potential police applicants
- Assisted in reviewing/analyzing over 800 police applications for testing.
- Assisted in the testing of over 200 police officer applicants, which included the written test, oral board interviews and pre-background investigation interviews.
- Prepare psychological and medical testing's for police officer applicants
- Prepare newly hired police officer recruit files for AZPOST audit
- Assisted in internal Affairs investigations.
- Conducted Background Investigation training.

It should be noted that during my last year of employment in PSB I had also been given temporary duties which involved assisting the Criminal Investigation Bureau.

In 2010, my PSB background investigation work load decreased due to the department's hiring needs temporarily subsiding. During that same time violent crimes investigations increased in CIB, so I temporarily assisted CIB with investigations involving homicide, report no.'s 84-4969 (victim [REDACTED]), 98-138471(victim [REDACTED]) and 79-004774(victim [REDACTED]) and organizing of the CIB major case file system. During this time, my priority were my PSB duties, then when time permitted, assisting CIB. In September 2010, I also assisted CIB temporarily with a high profile homicide investigation, IR# 10-083428 (Victim [REDACTED]) until the arrest of the homicide suspect in December 2010.

It should be noted that during my temporary assistance of CIB, I never made any physical arrests and was acting as a resource, due to my prior homicide investigative experience.

As of this date, August 1st 2011, I have not signed or committed to this re-hire offer.