Minutes
Tempe Merit System Board
October 29, 2025

Minutes of the Tempe Merit System Board meeting hosted virtually via MS Teams on October 29, 2025 at 1:00 p.m.

Boardmembers Present (via Teams):
Jim Foley
Lori Messer
Wendy Tobin

Boardmembers Absent:
None

City Staff Present (via Teams):
Sarah Jenkins, Administrative Supervisor
Rebecca Strisko, HR Director

Legal Counsel Present:
Lesli Sorensen, Attorney for the Merit System Board
Larry Henke, Appellant's Attorney
Scot Claus, City's Attorney

Chair Lori Messer called the meeting to order at 1:03 p.m.

1. **Motion to Adjourn to Executive Session, if necessary**
   Motion by Jim Foley to adjourn to Executive Session for the purpose of obtaining legal advice from the Board's Legal Counsel; second by Wendy Tobin. Motion passed on a voice vote 3-0.

   Ayes: Chair Messer; Boardmembers Foley and Tobin
   Nays: None
   Absent: None

   The Board adjourned to Executive Session at 1:55 p.m. The Board reconvened at 2:26 p.m.

   The Board adjourned to Executive Session at 2:46 p.m. The Board reconvened at 3:08 p.m.

2. **Oral Arguments on Appellant's Motion to Dismiss**
   - **The Board will hear arguments, deliberate, and take action on Appellant's Motion**

   Chair Messer said that at today's meeting the Board will hear arguments, deliberate and take action on the appellant's motion. Before the Board moves to hear the arguments Ms. Messer requested Board Legal Counsel, Lesli Sorensen, to provide an overview of the documents for the Board.

   Ms. Sorensen provided an overview of the motion to dismiss the scope of today's hearing, and the Board's responsibility. A motion to dismiss is a motion that's filed by one counsel to ask the board to dismiss the action before getting to the substance of a particular issue. Today it is not about discussing the discipline itself, whether it was correct or anything having to do with the merits of the actual appeal, which will be heard next month. Today, the board is to solely focus on the motion to dismiss that was filed by the appellant. The Board was provided with four sets of documents: the motion to dismiss, which includes some exhibits; the response from the City of Tempe that also has exhibits; a Reply by the appellant; and a Notice of Supplemental Authority.

The City noted that the reply is not a document that is contemplated by the Board's Guidelines. However, there is reference to a Reply in the appendix, and the Chair has determined that the Reply will be considered today as part of the argument. After the Reply was filed, the appellant filed a Notice of Supplemental Authority and that is one of the open issues today as to whether the board will consider that Notice of Supplemental Authority.

The Motion to Dismiss asks you whether, under Arizona law, specifically Arizona Revised Statutes (A.R.S.) § 38-1110 as well as the presentation of some factual exhibits and documents, the City of Tempe completed the investigation into Commander Johnson and in a timely manner under the statute. That ultimately is the conclusion the board will have to make today for the Motion to Dismiss: whether to deny or grant the motion. The Board is authorized at any time to go into Executive Session by vote to discuss things that are properly under the Statute here, most likely for legal advice.

Chair Messer said that the argument will be structured as follows:

- Appellant 5-minute opening
- Respondent 5-minute opening
- Questions from the Board (unlimited time)
- Respondent 3-minute closing
- Appellant 3-minute closing

Sarah Jenkins, Staff to the Board, will be tracking time for both sides. Mr. Henke, attorney for the appellant, will begin.

Larry Henke, counsel for the appellant, presented an opening statement to the Board

Scot Claus, counsel for the City of Tempe, presented an opening statement to the Board

Chair Messer and Boardmember Tobin asked Mr. Henke and Mr. Claus questions.

[The Board adjourned to Executive Session as noted.]

Mr. Henke presented a closing argument on behalf of the appellant.

Mr. Claus presented a closing argument on behalf of the city.

Chair Messer opened the discussion on the Notice of Supplemental Authority. Boardmember Foley said that there wasn't anything persuasive or even particularly relevant in the Notice, nor is there any provision in the Guidelines to accept such a document. Boardmember Tobin agrees with Boardmember Foley. Chair Messer asked if there was a motion on the Notice of Supplemental Authority.

Motion by Jim Foley to strike the Notice of Supplemental Authority and Exhibit and the Board will disregard it and argument about its contents; Second by Wendy Tobin. Motion passed on a voice vote 3-0.

Ayes: Chair Messer; Boardmembers Foley and Tobin
Nays: None
Absent: None

Chair Messer opened the discussion on the Motion to Dismiss. Boardmember Foley said that the intent of this statute is to provide a safety net, if you will, for law enforcement officers, to keep them from being subjected to endless investigations or investigations that go dead or are shelved for, possibly, years at a time until some other supervisor or manager comes along and decides to reactivate it. The appellant seems to argue that this 180-day time limit is somehow absolute or immutable. The statute itself makes it clear that it's not the case.

There are provisions that require the agency to act in good faith, extensions and provisions for basically stopping the running timeline due to incapacitation or other inabilities. It is Boardmember Foley's opinion that it isn't nearly as absolute as would be argued by the appellant. Whether or not a 180-day limit was met, and it seems clear that the process began with a notice of investigation and ended with providing a Part I, list of charges. It seems that once those two things have happened, any uncertainty that the employee might have as to whether something was going to happen to them is pretty much dissolved. If that happened within the 180-day timeframe, that is all that is necessary to dismiss this motion.

Boardmember Tobin echoed Boardmember Foley's statement and added that it's clear what the statute states and the timeline of events for this case.

Chair Messer agrees with Boardmember Foley, as well. The second sentence of the in the statute uses the word "or" {notice of discipline or notice of findings} and that was key. Also, good faith by the employer. The date of February 21, which marked roughly 157 days from the Notice of Investigation to the serving of the Part I. Further in the statute, it states that even though 180-days have passed but the Notice of Findings was issued, the employer has the right to continue the investigation beyond those 180 days, if it's necessary to obtain a review of evidence which was seen throughout. Additionally, the Part II had not been received by the city, which is also a factor. The statute also speaks to FMLA in section D.2.and the appellant was out on FMLA leave for 97 days.

Motion by Jim Foley to deny the Motion to Dismiss; Second by Wendy Tobin. Motion passed on a voice vote 3-0.
Ayes: Chair Messer; Boardmembers Foley and Tobin
Nays: None
Absent: None

[The Board adjourned to Executive Session as noted.]

Upon resuming the public session, Chair Messer read the Board's ruling into the record as follows:

A.R.S. § 38-1110(A) requires "an employer [to] make a good faith effort to complete any investigation of employee misconduct within one within180 calendar days after the employer receives notice of the allegation by a person authorized by the employer to initiate an investigation of the misconduct." A.R.S. 38-1110(A). A.R.S. § 38-1110(A) further provides that "[t]he investigation is considered complete on the date the employee is served with the notice of discipline or the notice of findings." A.R.S. § 38-1110(A) (emphasis added).

The City received notice of the allegation by a person authorized by the employer to initiate an investigation of misconduct on September 12, 2024, when Chief McCoy initiated an investigation into Commander Johnson and others (City's Exhibit 4 at 2). 180 days from September 12, 2024 was March 11, 2025.

Commander Johnson was served with Part 1 notice of findings on February 21, 2025 (City's Exhibit 4 at 3) Therefore, that is the date the investigation was complete.

The City completed the investigation within 180 days as required by A.R.S. § 38-1110(A).

Because we find the City completed the investigation within 180 days, the Board declines to address the other arguments. Appellant's motion to dismiss discipline is denied.

Motion by Wendy Tobin to adopt the Board's ruling on the Motion to Dismiss; Second by Jim Foley. Motion passed on a voice vote 3-0.
Ayes: Chair Messer; Boardmembers Foley and Tobin
Nays: None
Absent: None

Public Appearances
There were no public appearances.

Adjournment
Motion to adjourn by Jim Foley. Second by Wendy Tobin. Motion passed on a voice vote 3-0.
Ayes: Chair Munch; Boardmembers Foley & Messer
Nays: None
Absent: None

The meeting adjourned at 3:11 p.m.

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Rebecca Strisko, Merit System Board Secretary