



Meeting Minutes Tempe Merit System Board March 28, 2022

Minutes of the Tempe Merit System Board Meeting, held on Monday, March 28, 2022 at 8:00 a.m. in the Human Resources Conference Room located at 20 E. 6th Street Tempe, AZ 85281

Board Members Present:

Lori Messer
Bill Munch
Jim Foley

Board Members Absent:

Johnny Tse

Others Present:

Dustin Matthews, Appellant
Kathryn Baillie, Appellant's Legal Counsel
Cindy Bachman, Court Reporter

City Staff Present:

Rebecca Strisko, Human Resources Director; Board Secretary
Sarah Jenkins, Management Assistant II; Staff to the Board
Sara Thompson, HR Technician II
David Park, Assistant City Attorney

Witnesses Present:

Alexis Allen, Court Administrator
Billy Vickers, Jr., UAEA President
Maritza Deadrick, former City of Tempe employee
Marcos Romero, Sr. Management Assistant
Jennifer Curtiss, Deputy Court Administrator

Acting Chair Bill Munch called the meeting to order at 8:01 a.m. and roll call was taken.

1. Consideration of Meeting Minutes

Motion by Boardmember Messer to approve the February 22, 2022 Board Meeting Minutes and the February 28, 2022 Executive Session Meeting Minutes, second by Mr. Munch. Motion passed unanimously on a voice vote 3-0.

Ayes: Acting Chair Munch, Boardmembers Foley and Messer

Nays: None

Absent: Chair Tse

2. Discuss and Approve Revisions to the City of Tempe Personnel Rules

Board Secretary Rebecca Strisko said that proposed change was included in the Board packet. The proposed change would allow the City Manager to appoint qualified Deputy Directors (or equivalent) and above positions into director level and above positions without a formal recruitment and selection process. The incumbents of these positions are at will and not afforded the protections of the Merit System Board. Those employees who would be eligible for such appointments would have already been vetted in positions at the senior management level. The City Manager is proposing this change to allow for flexibility at the senior management level.

Boardmember Messer is concerned about changing the process from a competitive process to appointments and asked what is prompting the change. Ms. Strisko said that one of the issues is that, at this time, there are several vacancies at the Director and Deputy City Manager level; the City Manager also wants to create an Assistant City Manager position. The City Manager's viewpoint is that if there are already qualified employees in Director positions that could be promoted to Deputy City Manager and their work is exemplary, there is no need to go through with a recruitment process for show. The City Manager has also committed to notifying the Six-Sided Partnership prior to making an appointment and creating an avenue for their feedback. This type of appointment process is not uncommon in other municipalities. Ms. Messer is uncomfortable with this revision.

There was no further discussion.

Motion by Boardmember Foley to approve the revisions to the City of Tempe Personnel Rules, second by Mr. Munch. Motion passed on a voice vote 2-1.

Ayes: Acting Chair Munch and Boardmember Foley

Nays: Boardmember Messer

Absent: Chair Tse

3. Motion to Adjourn to Executive Session, if necessary, pursuant to A.R.S. §38-431.03(A)(1), 38-431.03 (A) (2), 38-431.03 (A) (3)

See Item 4.

4. Hearing on the Appeal of Dustin Matthews including Discussion and Consideration of Personnel Matters

Acting Chair Munch stated that this hearing will involve a discussion of personnel matters and as Mr. Matthews has requested a private hearing, he will now entertain a motion to move to Executive Session.

Motion by Jim Foley to adjourn to Executive Session, second by Ms. Messer. Motion passed unanimously on a voice vote 3-0.

Ayes: Acting Chair Munch, Boardmembers Foley and Messer

Nays: None

Absent: Chair Tse

The Board adjourned to Executive Session at 8:17 a.m. The meeting reconvened at 5:02 p.m.

Acting Chair Munch said the Merit System Board met to hear testimony regarding the disciplinary appeal by Dustin Matthews. Mr. Matthews was terminated effective December 27, 2021 with his supervisor and Department sustaining the violations of the City Personnel Rules and Judicial Code of Conduct.

Regarding the Appellant's discipline, the Board considered the evidence in totality, including, but not limited to the seven (7) alleged Personnel Rule violations and three (3) Judicial Code of Conduct Rules.

The Merit System Board **did not find that sufficient evidence was presented to sustain the following Personnel Rule violation:**

1. 406.c.1 which states, the employee exhibited a lack of sufficient competency or efficiency to perform assigned duties and responsibilities.

The Merit System Board **sustained allegations that Mr. Matthews violated the following Personnel Rules:**

1. 405.A – Limited personal use of the computer or phone systems and/or equipment such as desktop computers and cell phones may be permitted with supervisory approval during authorized work breaks, or before or after work hours.
2. 406.c.3 which states, the employee has been unacceptably inefficient by loafing, visiting, lounging, sleeping, or otherwise engaging in non-work-related activities during scheduled work hours or has interfered with another employee's efforts to meet work standards.
3. 406.c.8 which states the employee violated city and/or department policies and guidelines regarding access to and use of the city's technology infrastructure.
4. 406.c.14 which states an employee has been dishonest by deceiving, lying, omitting, misleading, misrepresenting or falsifying any statements, facts, documents or reports in the course of performing their job duties and/or during a City investigation or official inquiry.
5. 406.c.21 which states the employee made unauthorized use and/or removal of city property.
6. 406.c.36 which states the employee failed to adhere to Tempe Police Department Policies & Procedures, Tempe Fire Medical Rescue Department Policies and Procedures, Arizona Code of Conduct for Judicial Employees, Arizona Judicial Code of Conduct or any other applicable city department written policy or guideline.

The Merit System Board **did not find that sufficient evidence was presented to sustain the following Judicial Code of Conduct Rules:**

1. Rule 1.2 which states a judicial employee shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.
2. Rule 2.5 which states a judicial employee shall perform court duties competently, diligently, and promptly.

The Merit System Board **sustained allegations that Mr. Matthews violated the following Judicial Code of Conduct Rules:**

1. Rule 1.1 which states a judicial employee shall not use public funds, property or resources wastefully or for any private purpose not authorized by judicial administrative authorities.

Given the sustained charges as well as consideration of his past disciplinary record, the Board unanimously recommended that the Presiding Judge uphold the disciplinary termination of Mr. Matthews.

The recommendation may be appealed by either party by submission in writing to the Secretary of the Board by 5:00 p.m. on Friday April 1, 2022. The Presiding Judge's decision will be final.

Staff have drafted a letter for my signature to Judge Kane, stating the Board's recommendation. Copies of the letter will be forwarded to the Appellant, Appellant's legal representative, the City department representative, City Attorney, and members of the Board.

5. Future Agenda Items

There are no future agenda items.

Adjournment

Motion by Mr. Munch to adjourn; seconded by Boardmember Foley; second by Ms. Messer. The motion passed unanimously on voice vote 3-0.

Ayes: Acting Chair Munch, Boardmembers Foley and Messer

Nays: None

Absent: Chair Tse

The meeting adjourned at 5:07 p.m.



Rebecca Strisko, Merit System Board Secretary