

**Minutes of a Special Session of a Special Meeting and Possible Executive Session of the
Personnel Board of the Town of Clarkdale
Held on Wednesday, April 3, 2013**

A Special Meeting of the Personnel Board of the Town of Clarkdale was held on Wednesday, April 3, 2013, at 9:00 a.m. in the Town of Clarkdale Men's Lounge, 19 N. Ninth Street, Clarkdale, Arizona.

CALL TO ORDER - Meeting was called to order at 9:00 AM by Jim Elmer.

Members Present:

Jim Elmer
David Gordon
Alan Vigneron

Others in attendance:

Don Zavala, Counsel for Personnel Board
Thomas Griffin, Counsel for Robert Church
Officer Robert Church
Robert Kozak, Counsel for Police Chief Randy Taylor
Chief Randy Taylor
Janet Perry, Human Resources Director
Mary Ellen Dunn, Deputy Town Clerk

CONSIDERATION OF APPROVAL OF MINUTES OF THE PERSONNEL BOARD

The Personnel Board may vote to approve minutes of the following meetings:

Special Meeting held February 20, 2013;
Special Meeting held February 28, 2013;
Special Meeting held March 12, 2013.

Alan Vigneron moved to approve the minutes of Special Meeting held February 20, 2013, Special Meeting held February 28, 2013, and Special Meeting held March 12, 2013. David Gordon seconded the motion and the motion carried unanimously.

Officer Church confirmed his request for this proceeding to be in a public hearing format.

It was previously decided by the Board that the hearing/appeal would take place in two parts with the first morning session to address the appeal of the two-day suspension disciplinary action and the second session beginning thereafter and addressing the issue of the probationary disciplinary action.

The Personnel Board met pursuant to A.R.S. §38-431.03(A)(1) to conduct the appeal hearing of the two-day suspension disciplinary action by Police Officer Robert Church.

IT WAS ORDERED invoking the rule excluding witnesses without objection.

Counsel for Officer Church made opening statement.

Counsel for Chief Taylor made opening statement.

Officer Robert Church was sworn and testified.

IT WAS ORDERED pursuant to the stipulation of the parties that all exhibits in binders for all sides were admitted into evidence. (Exhibits 1 – 15 for Officer Church; and 1 - 12 for Town of Clarkdale).

Officer Nester was sworn and testified.

Board reconvened after a ten minute recess.

Sgt. Troy Smith was sworn and testified.

Former Interim Public Safety Director John Wintersteen was sworn and testified.

Chief Randy Taylor was sworn and testified.

Board reconvened after a ten minute recess.

Counsel for Officer Church gave closing statement.

Counsel for Chief Taylor gave closing statement.

David Gordon moved to enter into Executive Session. Alan Vigneron seconded the motion. The motion carried and the Board adjourned to Executive Session.

Public session reconvened at 1:31 p.m. and deliberation began after roll call.

Counsel for the Personnel Board Zavala asked Counsel for Robert Church if there was any issue in this case regarding whether 38-1101 was properly followed and Counsel stated that said there was no issue in that regard.

David Gordon presented the following material findings: There was an early evaluation on August 30, 2011 where Officer Church received good performance reviews, there was some discussion about officer safety in that evaluation; there was an initial complaint in November 26, 2011 regarding Officer Church's interaction with the public that resulted in an interview in November 28th in which he was given a directive to make sure that he recorded all of his conversations; December 12, 2011 Sgt. Smith issued a memo requiring all members of the department to record traffic stops which was signed by all the officers and were transmitted by email and in office binder; on October 1, 2012 there was a second complaint regarding Officer Church regarding his interactions with other agencies and another on October 23, 2012 with regard to his interactions with dispatch and then another citizen complaint on December 4, 2012 which resulted in a follow-up meeting between Sgt. Smith and Officer Church and he was again advised that all of those contacts should have been recorded; it was during that interview that it was determined that Officer Church had not been recording stops as ordered and that led to the discipline that ultimately followed; there were two issues raised (1) was there a basis to excuse Officer Church's following that order (officer safety); Gordon reviewed testimony from other officers; 2) there was the issue of the equipment and the equipment failure; there were three ways to comply with order; the officers use varying types of recording devices; there was a January 22, 2013 memo that indicated that all the employees were using a recording device. Gordon stated his belief that the requirements for 38-1101 have been met with regard to notice; believes that there was adequate testimony to describe the history and concerns that led to the discipline by Chief Taylor; there was reasonable cause for the Chief to issue discipline; there was just cause pursuant to 38-1104(A); the discipline was consistent with the department's policies and practices; the discipline did not rise to the level of being abusive.

Alan Vigneron stated his agreement with Gordon's summary. Stated belief that an appropriate order was issued; that Officer Church chose to not comply with order; Officer Church apparently did not bring the safety issue to his superiors adequately and therefore the discipline was appropriate.

Jim Elmer stated his agreement. The Chief chose appropriate action in a proper manner; everything was done in good faith; the discipline was progressive enough starting with conversation and moved on; was done in a just manner and was justified; the escalation caused by Officer Church most likely caused it to go to the next level and the outcome was warranted.

Alan Vigneron moved to uphold the action made by Police Chief Taylor and instruct Counsel to prepare a form of order. David Gordon seconded the motion and the motion carried unanimously.

Second hearing began at 1:44 p.m.

The Personnel Board met pursuant to A.R.S. §38-431.03(A)(1) to conduct the appeal hearing of the probation disciplinary action by Police Officer Robert Church.

Counsel for Officer Church gave an opening statement.

Counsel for Chief Taylor gave an opening statement.

Officer Robert Church was sworn and testified.

IT WAS ORDERED pursuant to the stipulation of the parties that all further exhibits (Exhibits 1- 6 for the Town of Clarkdale and Exhibits 1 – 22 for Officer Church) as well as all of the exhibits admitted during the first hearing (Exhibits 1 – 12 for the Town of Clarkdale and Exhibits 1 – 15 for Officer Church) were admitted into evidence for the second session.

Sgt. Troy Smith was sworn and testified.

Police Chief Randy Taylor was sworn and testified.

Board session reconvened after a ten minute break.

Counsel for Officer Church gave closing statement.

Counsel for Chief Taylor gave closing statement.

Alan Vigneron moved to adjourn to Executive Session. David Gordon seconded the motion. The motion was approved unanimously and the Board adjourned to Executive Session.

Public session reconvened at 3:30 p.m. and deliberation began after roll call.

David Gordon presented findings: It is clear from testimony on 12/19/12 there was a welfare check in which Officers Church and Ekholm as well as a Jerome Police Officer went to a residence where there was paraphernalia present; it is not disputed that the paraphernalia was not seized which precipitated an investigation which began on 12/21/12; that investigation included the interviews of all officers involved, review of Spillman reports that were created following 12/19 incident and culminated in a report with Sgt. Smith's recommendation that Officer Church be placed on probationary status. Gordon stated his primary concern was whether notice required under 38-1101-A and further stated his opinion was that notice was required and was not given. His reasoning for such requirement was that it would have been foreseeable and reasonable to believe that the discipline could have been demotion, termination, or suspension. Gordon stated he previously asked Sgt. Smith if he was aware that Officer Church was to be served with a notice of a pre-disciplinary hearing on the prior disciplinary issue. With regard to 38-1101-D and the two subsections, Gordon stated it was his belief that this was more than a normal course of instruction, it resembled more of an investigation based on review of Spillman reports and officer interviews; based on these findings Gordon stated it was his recommendation to the Board to reverse the police chief's disciplinary action.

Alan Vigneron expressed his disagreement with Gordon's assessment. Vigneron stated his belief that the statute was reasonably met and the discipline was reasonable based on the testimony of Officer Church and the Chief of Police and stated he wished to uphold the discipline.

Jim Elmer expressed his belief that if the employee being questioned escalates the process with a poor attitude this causes a need for discipline. Elmer further expressed concerned about putting Officer Church on probationary status. Elmer stated he didn't believe it was the intent of the Town to put the employee on shaky ground and asked what does the probation really mean? Would it mean a loss of pay or time? If it would not result in either of these and wouldn't mean a loss of status then Elmer stated he was in favor of upholding the Chief's decision.

Alan Vigneron moved to uphold the discipline as directed by the Chief of the Town of Clarkdale. There was no second.

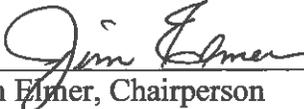
Jim Elmer moved to uphold the Chief's actions with the following modifications: 1) that it does not create the loss of Officer Church's due process, and 2) Officer Church should be given a reasonable guideline as to what it entails to be back on probation. Alan Vigneron seconded. Motion is carried with David Gordon dissenting.

Counsel for Personnel Board Zavala stated he would prepare a form of order but stated the Board should recognize that the Town has the right to agree or disagree to the terms. The time frame is ten (10) days for the Town's consideration.

Thomas Griffin stated that if the Town approves the agreement as stated, they would not appeal.

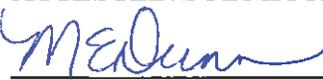
ADJOURNMENT - David Gordon moved to adjourn and Alan Vigneron seconded. The session was adjourned at 3:48 p.m.

APPROVED:



Jim Elmer, Chairperson

ATTESTED/SUBMITTED:



Mary Ellen Dunn, Deputy Town Clerk