

MINUTES OF THE SCHEDULED MEETING OF THE
PHOENIX EMPLOYMENT RELATIONS BOARD
CITY OF PHOENIX, STATE OF ARIZONA
Tuesday, November 21, 2023

Members Present:

Dennis Teel, Chairman
Phillip Hanley, Management Member
Joseph Diggs, Labor Member

Board Members Via WebEx:

NA

Others Present:

William R. Brown, PERB Legal Counsel
Kathy Schmidt, PERB Executive Director

Others Present:

David Johnson, Phoenix Fire Department
Jason Perkiser, Human Resources
Julie Taylor, Phoenix Fire Department
Mark Bizik, HR Department
Mike Duran, Phoenix Fire Department
Shannon Bell, Attorney, City of Phoenix
Tim Gammage, Phoenix Fire Department
Tim Jones, Phoenix Fire Department

Via WebEx:

Alisa A Blandford, City of Phoenix, Assistant Chief Counsel
Mario Paniagua, Deputy City Manager

1. **Call to Order: Chairman, Dennis Teel**, called the November 21, 2023, meeting to order with Phillip Hanley, Management Member and Joseph Diggs, Labor Member present.
2. **Roll Call – Quorum**
3. **Review and approval of the August 15, 2023, Regular Minutes.**

A **motion** was made that the minutes of the August 15, 2023, Regular Meeting be approved by **Joseph Diggs, Labor Member**. The **motion** was **seconded** by **Phillip Hanley, Management Member** and carried by a vote of **3-0**.

4. Consideration, decision, and action regarding the proper filling of Case CA-377, the Charged Parties' Motion to Dismiss and the Charging Parties' Response to the Charged Parties' Motion to Dismiss. The Board will take appropriate action, which may include dismissal of the Charge thereof in whole or part or take any action it deems appropriate.

Shannon Bell, City of Phoenix Attorney, first of all I know that all members have the motion as well as Mr. Johnson's response so I am going to briefly give you the background of facts. As you read in my motion in July of 2022 the Fire Department received a complaint regarding Mr. Johnson. That complaint was forward to the Office of Special Investigations which is the investigator that addresses Fire Department complaints. The investigator completed the investigation and informed that Mr. Johnson had violated a direct order. On January 6th of 2023 Mr. Johnson was issued a written reprimand for violating that direct order. Mr. Johnson will try to argue all of the facts surrounding that investigation as well as the complaint. The city submits that none of those are relevant to the case here. PERB is very specific with respect to what claims can be brought under the PERB Ordinance and City Code 2-220A. Regardless of how you read Mr. Johnson's response whether it be the written reprimand itself or the grievance process neither of those issues are proper subjects for consideration of this board. Let me start with that. The first argument that city has made is that his claim is untimely under PERB Rule 3.2 which requires that a claim be brought within six months of the act or occurrence. Initially in Mr. Johnson's PERB complaint it was about the actual written reprimand that was issued in January. He did not file his PERB complaint until August 15, 2022. Therefore, any concern with respect to his written reprimand would be untimely. In his response to the city's motion to dismiss he argues that it's not actually the written reprimand or the issuance of that he is complaining about but the grievance process and the end result. He states that end result occurred in July therefore the PERB complaint was timely. Let's talk about what types of actions PERB can actually hear under the Code. Under Section 2—220A there are six practices that are prohibited and if you violate can be brought to the PERB Board for consideration. The first is interference with employee rights under this Ordinance and that's important so I'm going to highlight that specific verbiage under this Ordinance which means under the Ordinance of Section 2-209 so Article 17 of the Phoenix City Code deals specifically with employer/employee relations and specifically with the PERB Board definitions and what issues the PERB may address. If you look at Phoenix City Code 2-220A it provides there are six practices that the City of Phoenix cannot violate and if they do would be considered a ULP. The first is interference with employee rights under this Ordinance

which is 2-209. The second is domination of employee organizations i.e., our unions. The third is discrimination against employees for membership in employee organizations, unions or engaging in concerted activities. Again, I'm going to emphasize concerted. The fourth is retaliation against employees for invoking their rights under this Ordinance. Fifth, refusing to meet and confer and discussing with City Council negotiation issues in dispute. In Mr. Johnson's complaint he failed to identify any specific practice that the City of Phoenix engaged in that would be an unfair labor practice or in violation of this particular provision. In his response to the city's motion however he goes into a little bit more detail and provides that in a couple of lines it is paragraph 3, and it states that the complaint is of interference with employee rights and discrimination against Captain Johnson for invoking the grievance process. He goes on to state that City of Phoenix is alleging that Captain Johnson's matters exclusively governed by the grievance process however, Captain Johnson never received his rights as part of the reprimand. Receive a written complaint to respond to and defend against and the documents allegedly supporting the inconsistent positions taken by various personnel. None of that is a subject for consideration for this board. So, let's look at interference with employee rights. If you go to Phoenix City Code Section 2-214 it specifically provides what the public employee rights are as it relates to the PERB Ordinance. Specifically, it states public employees shall the right to form, join and participate in any employee organization of their own choosing or to refrain from forming, joining, or participating in same. There is no allegation from Mr. Johnson that the City of Phoenix precluded him from either joining the Fire Department Labor Organization or from refraining to join that union. The next sentence says public employees shall not hold any elective or appointed office in any employee organization until the probationary period following their initial employment in a permanent position in a classified service has been successfully completed. Again, no allegation with respect to any elective or appointed position. Section 2-214B, public employees shall have the right to be represented by an employee organization of their own choosing to meet and confer through and authorized employee organization with their public employer in the determination of wages, hours and working conditions and to be represented in the determination of grievances arising there under. This is not about wages, hours or working conditions. With respect to his representation for his grievance which he did file pursuant to AR 2.61 he was in fact represented by a union rep Mr. Tim Gammage, Jr. There is nothing he has alleged either in his complaint or in his response that falls within public employee rights under Section A or B. C this Ordinance does not prevent any public employee from presenting his or her own grievance in person or by legal counsel to the public employer and having such grievance adjusted without the intervention of the authorized employee

organization. He did have that choice and he chose to have a union rep represent him. Again, that was Mr. Tim Gammage, Jr. D, any authorized employee organization shall be eligible upon agreement with the public employer to have its periodic membership dues. There is no question with respect to Mr. Johnson's membership dues. You have E and F which basically talks about the public employer and confidential managerial and professional employees. With respect to his claim that the City of Phoenix interfered with his employee rights there isn't any. He has not alleged any employee rights under this Code that the City of Phoenix interfered with. He next states that the City of Phoenix discriminated against him so that is Phoenix City Code 2—220A3. Discrimination against employees for membership in employee organizations or for engaging in concerted activities. There was no discrimination against Mr. Johnson for his participation in his labor union. In fact, he had a labor union representative represent him during the grievance process. That is not part of his complaint or is it part of his response to my motion to dismiss. The next one is or for engaging in concerted activities. There is no definition unfortunately in the City Code for PERB, however, if you look at the Webster's Dictionary it means joint, together. Mr. Johnson has not alleged that he and another individual jointly engaged in any activities of under which they were discriminated. The reason that the grievance process and written reprimand are not found in the PERB Code is because they are governed by AR 2.61. The City of Phoenix has its own administrative regulation that governs these types of complaints and in fact if you look at Phoenix City Code 2—210 7 it provides that in the absence of a neutrally agreed upon procedure made a part of a finally approved memorandum of understanding the revised AR 2.61 shall be the controlling procedure for resolving a grievance dispute. It attached the MOU from Fire Union and nowhere in there does it provide that this complaint from Mr. Johnson i.e., review of the grievance process and/or issuance of a written reprimand qualifies or should be reviewed under the PERB Ordinance. In addition, the written reprimand itself specifically provides employee may appeal by filing a grievance as outlined in AR 2.61 within 15 days of the receipt of this written reprimand. Mr. Johnson took advantage of that and he did appeal his written reprimand through the grievance process. It also states in Phoenix Fire Department Management Procedures that 102.05 provides that all disciplinary action imposed are reviewed by the superiors as well as being subject to either the grievance process or civil service appeal. Nowhere in there does it say Code. In this particular instance his written reprimand is not subject to civil service because it is not a qualified disciplinary action as that term is defined under the personnel rules. Under the personnel rules a qualified disciplinary action is defined as a suspension, a demotion or termination which this is not. Because this is a written reprimand it would

fall under the grievance process or AR 2.61 and that is a process through which Mr. Johnson did appeal his written reprimand. Mr. Johnson is not happy with either the fact that he got a written reprimand, or the grievance process itself. That is not this board's decision to determine whether the grievance process was followed, whether the grievance decision was appropriate or whether the issuance of a written reprimand was appropriate. Number 1 Mr. Johnson's complaint if we look at the issuance of the written reprimand which is really the crux of what he is complaining about is untimely. Number 2 if you look at either the written reprimand or if we were to assume that the act that is relevant here is the outcome of the grievance process and it is timely and it does not fall under the PERB Rules or PCC 2.220A and finally he did participate in the appropriate appeal procedure which is AR 2.61 that was denied. This board does not fit as a reviewing authority for either a written reprimand or a disciplinary issue or for grievance decisions and or processes. For those reasons the City of Phoenix Fire Department respectfully requests that you dismiss Mr. Johnson's complaint. Thank you.

Dennis Teel, Chairman, Any questions.

Phillip Hanley, Management Member, I do not.

David Johnson, Phoenix Fire Department, This PERB complaint isn't about the discipline, it isn't about the (inaudible). During an (inaudible) investigation disciplinary grievance process. Failure to (inaudible) violated MOU 20-21 through 20-23 which was the MOU that was in action when this occurred. There is an interference with employee rights and unfair employee relations practice per Phoenix City Code 2-220. The MOU signed between the City of Phoenix and the unified members was violated in three different areas during this process in addition AR 2.61 which Ms. Bell did mention does govern the grievances was not followed either. In Unit 5 MOU 20-21 and 20-23 Section 1-4 there was a violation in E3I, E7, and E4B. Under AR 2.61 III Section B number 3 was violated. As far as just a summary of the events I was given a direct order by Deputy Chief Mike Molitor on February 18, 2022. Deputy Chief Molitor was reading a document and during the reading Chief Molitor stated "by the way don't talk to any strategic partners about call 959". This direct order was never written down, was not documented, or identified as a direct order. I remained in the position for another 2 ½ weeks speaking to prehospital coordinators both on duty and off duty as I had done for the previous 3 ½ years. On July 14, 2022, I was notified about an NOI had been initiated on July 19, 2022. I was interviewed by OSI (Office of Special Investigations) during the course of the investigation, discipline and grievance the three MOU's that I mentioned, and the AR violation would

be committed where evidence was destroyed, information withheld, misleading information given hence interfering with Mr. Johnson's rights. On July 20, 2022, one day after my interview with OSI labor union rep requested a copy of OSI interview notes. This is per the provision under the MOU. On July 26th deputy chief Mike Molitor stated he could not fulfill the request "any notes that the investigator may have had in the room are used for the interview the destroyed. There are no notes to provide to Mr. Johnson". This destruction of evidence before the investigation was completed notice of finding or discipline determined is a direct violation of MOU E3I, E7 and AR 2.61. E3I states the member/employee will be provided a copy of the interview notes. That is under Section 1-4 by the way. Section 1-4E7 when it comes to the discipline when you were handed a written reprimand or a suspension it states a member/employee who receives a written reprimand or suspension may request a copy of the information upon which the written reprimand or suspension was based pertaining to what specifically cited the discipline. Again, this could not be fulfilled because making a request on day after the interview could not a copy of the investigators notes. Under AR 2.61 III, responsibilities section B departmental management must III supply the employee with the necessary information to process the grievance properly. Without having this information how could my grievance be properly. On that same July 20th there was a second request made in that same email. Local 493 requests an inquiry was its supervisor initiated or the result of a citizen complaint or employee. Deputy Chief Mike Molitor responded in an email on July 26th the complaint was initiated from an outside source to the Fire Department. Since the MOU says the member will be advised if the inquiries supervisor initiated of a citizen complaint, employee, coworker on July 26th a second email was submitted by local union rep Tim Gammage Jr. to Deputy Chief Mike Molitor and asked if it was a supervisor, employee or citizen complaint that initiated the query. He stated "I can tell you it was not internally initiated by a supervisor or employee/coworker as stated in the MOU. Its source was outside the Fire Department that is what I can clarify you". This was violated because after receiving a copy OSI's investigative summary report which was probably somewhere probably in March of 2023, eight months later the documents provided information that Deputy Chief Mike Molitor made untrue statements about who initiated the inquiry. OSI investigator William Clark's summary investigative report it states, "On July 8, 2022, I was directed by Chief Molitor to conduct an administrative investigation into the above allegation". Deputy Chief Mike Molitor made untrue statements, misleading statements about the identity of the person who initiated the inquiry, further in a conversation that on July 6, 2022, between Deputy Chief Ray Ochoa, Division Chief Frank Bayless and Liz Littell that was documented by Deputy Chief Ray Ochoa. This document stated that Liz

Littell "feels it is appropriate to leave it to the Fire Department" and she did not file a complaint. Deputy Chief Ray Ochoa then stated, "I let Miss Littell know that I would immediately follow up with Deputy Chief Mike Molitor to provide information about the encounter". These documents of evidence show the inquiry was not initiated as an outside source as Deputy Chief Mike Molitor stated but was internally initiated by Deputy Chief Molitor himself. This a direct violation of the MOU for Unit 5 members and it interferes with employee rights. Throughout the encounter the direct order has expanded and changed. On February 18, 2022, Chief Molitor stated, "do not speak to any strategic partners about your removal from car 959". That has never occurred, there is no evidence it has occurred, and it has always been my stance throughout this process. Chief Ochoa in his conversation somehow changed the direct order saying the Fire Department mentioned not contacting all prehospital coordinators. That was done on July 6, 2022. That is an unreasonable request because I was left in the position for another 2 ½ weeks everyday I talked to prehospital coordinators. Being expected not to talk to them was not clarified because he described it was strategic partners. The document he had been reading up until that time stated the direct order had only talked about external partners, strategic partners and external partners and never mentioned anything about prehospital coordinators. In the notice of findings Chief Jerome Caldwell stated the direct order was contacted an external partner, prehospital staff member. Again, that was not the direct order. Finally, in the written reprimand Chief Molitor who gave out the initial direct order stated, "spoke to a prehospital coordinator, you were informed at the meeting on February 18, 2022, that the strategic partners submitted concerns about your behavior and wanted to remain anonymous for fear of retaliation". This is an untrue statement also. The only document from that February 18, 2022, meeting is the removal document which Chief Molitor read word for word didn't summarize. There is no documentation of anything and it was interesting that only did retaliation start becoming a term in the communication between me and management after the Department of Labor launch an investigation into retaliation on my behalf which they later which they did substantiate. Retaliation has never been mentioned in any other way, never documented, and if it was of any serious concerns obviously it should have been investigated. While going through the grievance process many errors and failures to follow things were made which hindered my employee rights. Step one I had a meeting with Julie Taylor and Assistant Chief Mark Gonzales. During that meeting Local 493 rep asked for a copy of complaint form #000 which according to MP102.05 B all complaints which is in bold lettering in the MP should be documented on this complaint form. When asked about this Julie Taylor the Human Resources Supervisor for the Fire Department made the following "I've

never used complaint form #000 when we deal with complaints that come in". "I have not read this MP and didn't even know we had a complaint form when Captain Johnson started asking about the complaint form number what was he actually talking about"? "I haven't used the complaint form #000 in four years". Assistant Chief Mark Gonzales even stated, "I haven't been made privy to all the information because Julie Taylor hadn't sent him all the information". How is an employee supposed to go through the grievance process and discuss these things with management when they are not prepared. At step 2.5 Assistant Chief Scott Walker was asked by Jason Perkiser, Phoenix Assistant HR Director of Labor Relations, "does the Phoenix Fire Department have any evidence of the direct order"? Assistant Chief Scott Walker stated that the Phoenix department had no evidence that Captain Johnson had spoke of his removal from car 959". Step 3 of the grievance process the Phoenix Fire Department did not present any evidence to substantiate that Captain Johnson had violated this direct order. The grievance committee lacking this evidence changed the grievance from "you violated a direct order which Captain Johnson was grieving to, you violated the spirit of the directive. When Judy Boros, Phoenix Assistant HR Director Employee Relations who was on the grievance committee was asked where the policies and procedures does it mention violating the spirit of a directive? Judy Boros responded, "it's a turn of phrase not a policy". When going through the grievance process the grievance committee submitted their decision for the grievance 10674 on July 19, 2023. This completed the disciplinary process for me. On August 15, 2023, Captain Johnson filed a PERB complaint to bring it to the PERB's attention within six months. There is a violation of the MOU not adhering to AR 2.661 direct interference of employee's rights. Chief Molitor fits the description under Phoenix City Code 2-210. Supervisory employee means any employee having authority in interest of public employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees or the responsibility to direct them in all major aspects or to adjust their grievances. This does fit, again, we are talking about the failure to follow policies and procedures, the violation of the MOU and the failure to follow AR 2.61. In closing given some of the delays in the grievance process that took longer than six months it seems unreasonable that you would expect somebody to file a PERB complaint while they are going through the grievance process. The grievance process as I stated did not finish until July 19, 2023, and was promptly filed within a month on August 15, 2023. Why would it be unreasonable filing PERB complaints as they are still going through grievance process. It does fall under Phoenix City Code 2-220, it is a violation of employee's rights and did hinder grievance and information was destroyed and withheld that also hindered his processes. AR 2.61 which does govern the grievance

processes was not followed as information was not able to be turned over to Captain Johnson when requested. That is all I have.

Dennis Teel, PERB Chairman, any questions?

Phillip Hanley, Management Member, well Captain Johnson, I would like you to expand a little bit more on exactly why you feel this fall under the PERB Ordinance.

David Johnson, Phoenix Fire Department, again the violations of the MOU and AR are the biggest reasons in my opinion. The ones I've cited so not having that information per the MOU it states that we are supposed to get a copy of the notes. Those notes are important because when it comes to filing a grievance of why you don't think you agree with the discipline it is very important to have those notes and see where they are basing their reason why they disciplined you and the reason for the discipline they gave. I mean without that information they can kinda just make up whatever they are doing. When look through and doing the public records request which we did do there was no similar discipline for violating a verbal direct order anywhere in the City of Phoenix per public records request of the Phoenix Fire Department. The violations of E3I that information that was destroyed it is confusing to me and if there is a reasonable explanation it is in the MOU why notes would be destroyed one day after an interview occurred. Also, E7 when you get that discipline if it does become a written reprimand or suspension, it states you are allowed to see the information that it was based on. Destroying notes obviously does that. The E4B Chief Molitor misleading and giving incorrect statement saying it was not internally initiated when OSI investigator William Clark stated an administrative investigation was ordered by Chief Molitor. It didn't come from the outside as Chief Molitor lead everybody to believe. It came from Chief Molitor for whatever reason he saw fit. Also, that lack of information violated AR 2.61 where you need to supply all of the information to have a proper grievance. With the notes being destroyed I don't have all the information I'm supposed to have.

Phil Hanley, Management Member, OK thank you.

Joseph Diggs, Labor Member, I have a question. At the grievance procedure because you went over dates. Where you represented by the union at that time?

David Johnson, Phoenix Fire Department, I was.

Joseph Diggs, Labor Member, that is Mr. Gammage.

David Johnson, Phoenix Fire Department, yes Jr.

Joseph Diggs, Labor Member, so that happened, refresh my memory on the dates. I'm going to tell. There is a serious concern about timeliness of your filing. If what you say is fact, I'm not disputing you at all. Some of these are very, very old in statute. Give me dates, being interviewed, evidence withheld stuff like that.

David Johnson, Phoenix Fire Department, evidence was withheld that started in July of 2022. We were disciplined on January 6, 2023. The public records request was made after that because obviously we weren't sure what was going to happen. After that I believe I don't remember exactly but sometime in March of 2023 received the public records. There is an eight month span right there from when I got information on who initiated the inquiry. I was going through the grievance process at that time also. Grievance process was filed shortly after the discipline on January 6, I believe it was filed on January 13, 2023. Grieving that discipline my understanding the way it is written. The discipline does not take effect until the grievance is completed. That grievance did not complete until July 19, 2023. I filed on August 15th so about a month later.

Joseph Diggs, Labor Member, I understand your logic. The reason I'm asking about when your grievance procedure started and you were represented by the unit at that time. I guess my question is if the timeframe that all of these things were being withheld you stated in your cites being violations (**recording blank from 39:24 to approximately 39:55**). Why I'm asking this and that happened well outside the timeframe. Your argument that you had to wait until the discipline occurred would actually track you back to your grievance appeal process and not necessarily entertained before the PERB. I want you to clarify unless I'm missing something. The basis of the argument is that the City denied you all of these rights and the process has been negotiated between the employee organization and the City. The employee organization was well aware of what was going on because they were representing you at the time. So, they were aware of all these facts that were laid out for them and they chose not to file them in time. There is nothing as far as what we can do because all we can do is determine whether or not the city laid it out perfectly, very clearly. There are limitations of what we can do that is what I'm trying to find out what that is because the question is whether we send this to hearing and for us to set it to hearing it would have to be a material violation or close to a violation and it would have to be timely. From what I'm hearing the union was well aware of all these violations that you cited long before this was ever filed.

David Johnson, Phoenix Fire Department, the violation on withholding information yes that one yes. I'm looking at a couple different ones. I understand what you are saying. I cannot answer for union representation why he did bring to one of his higher ups to ask what was going on when that was brought up. I don't know is the short answer I really don't. The second one with who initiated the inquiry obviously, I look at one being in March of 2023 which isn't that long in my opinion, I understand there are rules and stuff but in March of 23 it is not that long ago. Based on my grievance I file that probably was within five months of me seeing that information. I filed in August and I found that information out in March after a public records request. **(Recording blank from 42:25 to approximately 42:39).**

Joseph Diggs, Labor Member, you believe there is a violation of your employee rights if it is an anonymous complaint a stone-cold complaint or the Chief just decided. They didn't just wake up one morning and look at a bowl of Wheaties and say we are going to investigate Captain Johnson over this specific incident that happened, there is no way that they would know to even launch an investigation unless the information came to them from somewhere, so unless the argument is this never happened what is the relevance of how the information came to them. Once it came to them they have the responsibility to management to investigate.

David Johnson, Phoenix Fire Department, I agree and yes they do. Again, they should follow the policies and procedures. I can't answer why he made untrue statements, why he didn't just say hey, **(Recording blank from approximately 43:37 to 43:50)** All I can say is it didn't come from and interna supervisor opened the investigation. The only reason he was involved in the investigation he was the supervisor of OSI and OSI reports to Deputy Chief Molitor. He is directly involved. Maybe he didn't want to be taken out of the loop due to conflict of interest I have no idea. Why would you just not say I opened the investigation why make an untrue statement that it came from an outside source, **(Recording blank from 44:29 to 44:53)**

Phil Hanley, Management Member, as I read the documents that were provided to us in advance of today's meeting you acknowledged that you met with **(Recording blank from 45:08 to 45:32)** appears from what I'm hearing this is not properly before the PERB Committee. I don't know what the significance is **(Recording blank from 45:50 to 45:02)** that the complaint is without foundation are you?

David Johnson, Phoenix Fire Department, I'm not trying to get into that, I'm trying to the process of what wasn't done or followed. I'm not trying to get into the details of the investigation and what evidence they have I submitted that up and down with tons of evidence even the grievance committee said you know what you didn't maybe violate the direct order but you violated the spirit of the directive and that isn't even in City policy. The failures that I did mention E3I, E7, E4B and even AR 2.61 which is supposed to govern the grievance process was not followed by withholding information. If I don't get those notes how am I able to properly myself.

Phil Hanley, Management Member, isn't that a potential if in fact that's correct a protentional of violation of the grievance process.

David Johnson, Phoenix Fire Department, correct.

Phil Hanley, Management Member, how does that flip over to the PERB Ordinance?

David Johnson, Phoenix Fire Department, again interference with employee rights is where I was going under Phoenix City Code 2-220. By withholding that information, destroying that information, misleading comments and statements that were obviously given by Deputy Chief Molitor how are you supposed to get a fair and just and honest grievance process and that is where I thought the violation of the contract MOU that's where I thought that interfering with employee right and unfair employee relations practice that's where I thought that to. That is where I thought PERB had jurisdiction over.

Phil Hanley, Management Member, thank you.

Joseph Diggs, Labor Member, I really don't have any other questions other than I think it is clear. Unfortunately, Captain Johnson I don't think this necessarily falls under PERB.

David Johnson, Phoenix Fire Department, understand.

Joseph Diggs, Labor Member, based on the things you are citing these are all things left for the union to file as a violation of the dependents of their contract. They are the ones that would file those in that case if these things that you are alleging are true between the city and the Fire Department have a different meaning. In terms of the City's first and foremost argument like whether the Chief said it was initiated outside if they get a complaint even if it is random, they have a requirement and

responsibility of duty to act upon it and it does not matter where it was generated from they have to investigate it and try to find out the information. Especially allegations against first responders all the time. Stuff goes missing in a fire. They have to investigate. Even that could be nothing that would come before us because that isn't a violation. The only thing that would sit before us if they took the extraordinary actions against you based on any of the six items allowed by the city that are in the Ordinance which covers what we do. I feel your frustration and respect you trying to find a place where you can feel heard and acknowledged for your side of it. Looking at it doesn't fit in with what we actually do. There is a timeliness issue. The minute they told you we aren't giving that, that is when you start filing and start filing properly within your grievance to get this adjudicated you owe me this information. Not that you are supposed to know that but your Union Rep made a decision we don't know that but that would have been more of a timeframe to file after all the process after everything else and in this forum just isn't the right place.

David Johnson, Phoenix Fire Department, gotcha

Dennis Teel, PERB Chairman, just one clarification, you mentioned and tell me if I'm wrong that on the timeliness issue you said the Ordinance says it is after the grievance process. Isn't it six months from the occurrence or knowledge of the occurrence?

David Johnson, Phoenix Fire Department, that's what it says. My understanding is when it is grieved the discipline doesn't take effect until the grievance process is over. If I misunderstood that it is my mistake but that is my understanding so apologize.

Dennis Teel, PERB Chairman, is that correct. Did you have any conversation with the union to file prior to the grievance.

David Johnson, Phoenix Fire Department, specifically the things that were mentioned my union rep was aware of them but they never brought anything up occasionally due to the lack of knowledge of the PERB process from my standpoint nothing that was probably significant enough. Obviously, if I would have known about the six-month thing a year and a half ago I would have handled things a little bit different.

Dennis Teel, PERB Chairman, I have no further questions. Do we have a motion on this issue?

Joseph Diggs, Labor Member, made a **motion** to dismiss the charge in the matter of CA-377. The **motion** was **seconded** by **Phillip Hanley, Management Member**, and carried by vote of 3-0.

Dennis Teel, PERB Chairman, we have a motion to dismiss this charge. All those in favor say aye. Carried by a vote of **3-0**.

5. **Report on Pending Cases**
Kathy Schmidt, Executive Director gave update on pending cases.
- 6 **Kathy Schmidt, Executive Director** announced that the next meeting of the Board would be Tuesday, December 9th, at 9:30 AM.
7. **Public Comment**
NA
8. **Phillip Hanley, Management Member** made a **motion** that the meeting be adjourned. The **motion** was **seconded** by **Joseph Diggs, Labor Member**, and carried by a unanimous vote of **3-0**.

Submitted by:



Kathy Schmidt, Executive Director

Approved by:



Dennis Teel, Chairman