



**JOINT MEETING  
PIMA COUNTY MERIT SYSTEM COMMISSION  
AND  
LAW ENFORCEMENT MERIT SYSTEM COUNCIL  
OPEN MEETING MINUTES OF MAY 25, 2022**

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Commission Members Present:

Mike Hellon, Chair  
David Freund, Vice Chair  
Sami Hamed; Member  
Paul Rubin, Member  
Joseph Shelley, Member

All persons in attendance were asked to state their names for the record.

Donna Aversa	Attorney for the Commission/Council
Ellen Brown	Deputy County Attorney for the Respondent
Dan Jurkowitz	Deputy County Attorney, Co-Counsel for Respondent
Laureen Pew	Paralegal, Pima County Attorney's Office
Jason Parrish	Department Representative
Javier Alatorre	Attorney for the Appellant
Nathaniel Ray	Appellant
Cathy Bohland	Human Resources Director, Observer
Anthony Perez	Human Resources, supporting the Commission/Council
Trina Bergen	Human Resources, Recording Secretary supporting the Commission/Council

The Open Meeting of the Pima County Merit System Commission/Council was called to order by Mr. Hellon, Chair, at 9:00 a.m. All five Commissioners/Council Member were present.

**A. Roll Call**

**B. Pledge of Allegiance**

**C. Approval of Minutes**

- A. 01-10-2020 Open Meeting Minutes, Cameron
- B. 09-21-2020 Open Meeting Minutes, Dent
- C. 09-14-2021 Open Meeting Minutes, Flaminio
- D. 09-15-2021 Open Meeting Minutes, Flaminio
- E. 09-16-2021 Open Meeting Minutes, Flaminio
- F. 10-19-2021 Open Meeting Minutes, Faas
- G. 11-29-2021 Open Meeting Minutes, Waters
- H. 12-01-2021 Open Meeting Minutes, Waters
- I. 12-03-2021 Open Meeting Minutes, Waters,
- J. 01-20-2022 Open Meeting Minutes. Annual Meeting
- K. 01-20-2022 Executive Session Minutes
- L. 05-10-2022 Open Meeting Minutes, Acedo, Delgado, Fletes, Flores, Laughlin, Mejia, Moreno, Ramos, Ruiz

*Discussion and Possible Action:*

**ACTION:** Mr. Freund moved that the Commission/Council accept and approve all inclusive minutes from the meetings as listed from A through L on the agenda. Mr. Rubin second the motion. Motion passed unanimously.

**D. Appeal Hearing(s) by Pima County Merit System Commission.**

*Discussion and Action:* Nathaniel Ray v. Pima County Sheriff's Department (PCSD)  
(Termination as set forth in Merit System Rule 11.5 B through D)

**The following is a general summary of the proceedings setting forth the witnesses and vote of the Commission in compliance with ARS Sec. 38-431.01. B. It is not comprehensive and is not a transcript.**

Mr. Hellon read an opening statement which included his commentary on the selection process of the new attorney for the Commission/Council.

The Rule of Privilege excluding witnesses was invoked.

**Opening Statement for Respondent/PCSD** - Ms. Brown.

The Board of Supervisors approved a policy to require COVID-19 vaccinations for employees who work with vulnerable populations and that employees who worked with vulnerable populations would be involuntarily terminated under Merit System Rule 11.5 c. if they failed to comply with the policy. Under the policy, Corrections Officers working at the jail are employees working with vulnerable populations and required to be vaccinated under the policy.

Mr. Ray was terminated from his position as a corrections officer at the jail because he did not get a COVID-19 vaccine therefore failed to meet the requirements for his position as a Correction Sergeant under the policy. He did not apply for an accommodation or seek any re-appointment accommodation. On November 18, 2021 and December 7, 2021, Mr. Ray was notified that his position required a COVID vaccination because he worked with vulnerable population and that if he did not get a COVID 19 vaccination, he would be involuntarily terminated. On December 14, 2021 Mr. Ray received his Notice of Intent to Terminate and on January 10, 2022 he was given his Notice of Involuntary Termination.

**Opening Statement for Appellant** – Mr. Alatorre.

Pima County has no evidence to support Mr. Ray's involuntary termination. The vaccination policy was a political decision that went far beyond anything the Board of Supervisors could do and it does not cover due process. The County is saying employees have no recourse or no defense. This is unreasonable and evidence will prove termination was incorrect.

**Questions by Commissioners.**

Mr. Freund ask Ms. Brown if it was still her position that the Commission has no authority to do anything other than to uphold the termination because the Board of Supervisors policy at the time was to terminate unvaccinated employees who worked with vulnerable population.

Ms. Brown replied that at the time Mr. Ray was terminated the Board of Supervisor Policy was in effect, no court had invalidated the policy.

Mr. Alatorre read Rule 14.4.B that the Commission, if it determines there was not just cause for the action taken, the order could be revoked and modified. He stated the Commission has the power to direct appropriate remedial action.

Ms. Brown stated the Commission is not the venue to raise the issue of the validity of the Board of Supervisors policy. If there was something legally wrong with the policies and procedures, there are other avenues to seek redress. It is not here.

**PCSD Presents its case.**

The Respondent Exhibits:

Exhibit #	Exhibit Name
1.	Memorandum Pre-Action Meeting held December 21, 2021 with Capt. Scott Lowing and Nathaniel Ray, Bates Pima County 0001: Not Admitted
2.	Notice of Intent to Involuntarily Terminate and Pre-Action Meeting, dated December 14, 2022, Bates Pima County 0002-0003: Admitted
3.	Notice of Involuntary Termination, dated January 10, 2022, Bates Pima County 0018-0019: Admitted
4.	Email, From: Employment Rights Intake, To: Nathaniel Ray, Subject: Pima County Human Resources - Notice - Positions Working with Vulnerable Populations, Date: November 18, 2021, Bates Pima County 0160-0162: Admitted
5.	Email, From: Employment Rights Intake, To: Nathaniel Ray, Subject: Pima County Human Resources - Second Notice, Date: December 7, 2021, Bates Pima County 0163-0164: Admitted
6.	Memorandum, From: C.H. Huckelberry, County Administrator, Re: Vaccination Requirement for All New Employees, dated: August 31, 2021, Bates Pima County 0165: Not Admitted
7.	Memorandum, From: C.H. Huckelberry, County Administrator, Re: COVID-19 Vaccination Required for Employees who Work with Vulnerable Populations, dated: October 21, 2021, Bates Pima County 0166: Not Admitted
8.	Memorandum, From: Jan Leshner, Chief Deputy County Administrator, Re: Clarity Regarding COVID-19 Vaccination of Employees Who Work with Vulnerable Populations, dated: November 8, 2021, Bates Pima County 0167- 0168: Not Admitted
9.	FAQs - COVID-19 Vaccination Requirements for New Hires, Promotions, and Employees Working with Vulnerable Populations, drafted: November 4, 2021, Bates Pima County 0169-0173: Admitted
10.	Memorandum, Re: COVID-19 Vaccination of Employees Who Work with Vulnerable Populations, dated: November 2, 2021, Bates Pima County 0174-0178: Admitted
11.	FAQs - Accommodation Requests Related to COVID-19 Vaccination, dated: October 11, 2021, Bates Pima County 0179-0183: Admitted
12.	Board of Supervisors' Meeting Minutes for November 2, 2021, Bates Pima County 0515-0522: Admitted
13.	Board of Supervisors' Meeting Minutes for December 7, 2021, Bates Pima County 0523-0533: Admitted
14.	Hearing Memorandum – Responses to Chair's Questions: Admitted

15. Pima County Human Resources – Notice – Positions Working with Vulnerable Population – Un-redacted Exhibit 4: Admitted - sealed to maintain confidentiality of personal address.
16. Email, From Sheriff Nanos Re: Vaccine mandate: Admitted with objection

**Witness: Jason Parrish** testified under oath.

**Direct examination by Ms. Brown.**

Mr. Parrish provided a brief work history and his current job duties Deputy Director for Pima County Human Resources.

Mr. Parrish described his duties related to the Board of Supervisors policy to require COVID 19 vaccine for certain employees working with vulnerable populations as well as for new-hires and promotions and Human Resources responsibility to confirm vaccination status.

Mr. Parrish described the process of identifying jobs and employees who worked with vulnerable population and further worked with PCSD Capt. Aimee Trueblood to ensure the PCSD employee information was correct and worked with the PCSD employees who filed for accommodation under the policy.

Mr. Ray did not request a medical or religious accommodation and did not seek reappointment to a position that did not work with vulnerable populations.

Mr. Ray was involuntarily terminated for not maintaining or getting the other requirements for his position, the requirement to have the COVID 19 vaccination.

**RECESS** - The Commission recessed for a break at 10:36 a.m. and reconvened at 10:46 a.m.

PCSD rests its case in chief.

**Cross-examination by Mr. Alatorre.**

Mr. Parrish was questioned about Mr. Ray's retirement fund contributions. Mr. Parrish stated that he had no knowledge of the issue.

Mr. Hellon suggested that Mr. Alatorre get some type of document or someone to testify to the issue.

Mr. Parrish explained the reappointment form for employees who applied for a medical or religious accommodation and that an employee could seek other jobs within the County on their own.

Mr. Parrish stated that the Sheriff adopted the Board of Supervisors' vaccination policy including, what constituted a vulnerable population and PCSD determined what positions work with vulnerable populations.

**Questions by the Commission.**

Mr. Parrish stated the Board of Supervisors voted to adopt the policy and the definition of vulnerable population was part of the policy.

Mr. Parrish stated that to the best of his knowledge everyone was treated equally regarding the policy. Religious accommodations had to be taken at face value and were not investigated. Exemptions that were denied were denied because the department couldn't accommodate the employee's request to telecommute or isolate them in an office.

Mr. Parrish stated he knew of one instance where an individual had a skill set with body worn cameras and was moved from his position of serving vulnerable population and reassigned to the body camera project because he had prior knowledge of body cameras.

**Redirect examination by Ms. Brown.**

Mr. Parrish stated that regarding Exhibit 5, and the Appointing Authorities were given the criteria of vulnerable population and the Appointing Authority determined which positions worked with vulnerable population. The departments provided Human Resources a list of all their employees and what their determination was for each.

**Mr. Alatorre moved that the Commission find the Appellant's dismissal was unjustified and argued his motion**

Ms. Brown argued against the motion.

Mr. Alatorre restated his motion and moved that the Commission find that the Appellee has not met its burden of showing that the action was justified.

**Roll call vote: The Commission denied Mr. Alatorre's motion unanimously, 5-0.**

RECESS. The Commission recessed for lunch at 12:02 p.m. and reconvened at 1:09 p.m.

**Witness: Appellant Ray** testified under oath.

**Direct examination by Mr. Alatorre.**

Mr. Ray described his employment history with PCSD. He did not get the COVID 19 vaccine because he doesn't believe the vaccine should be mandated. He did not ask for a medical or religious accommodation because he didn't fit the criteria. He did not know he could transfer to another position within the department or the County. As a result of his decision, he was involuntarily terminated.

Mr. Ray described his understanding of the County removing its portion of contributions to his retirement plan.

Mr. Ray knew the person transferred to the body camera project and stated that Sergeant Manny Hernandez, requested a medical accommodation and was transferred to the body camera project. Mr. Hernandez did not have any prior knowledge of body cameras.

Mr. Ray acknowledged that he knew of unvaccinated employees were being involuntarily terminated and new employees were required to be vaccinated prior to employment with the County and working in the jail.

RECESS: The Commission recessed for a break at 2:16 p.m. and reconvened at 2:20 p.m.

**WITNESS: Jason Parrish**, recalled

**Direct examination by Mr. Alatorre**

Mr. Parrish did not personally know if unvaccinated Deputies were being used to cover shifts at the jail.

Mr. Parrish stated that as an elected official and the Sheriff has discretion when it comes to implementing policy.

**Questions by Commission.**

Mr. Parrish stated that agreed and that based on documentation, Sheriff Nanos has the authority adopt policies that coincide with Board of Supervisors policies.

Mr. Parrish stated the medical and religious accommodations come under civil rights. The Equal Opportunity Commission has publicized guidance on how to implement an accommodation process for religious beliefs and/or medical condition. Based on this information and in conjunction with legal counsel, Human Resources determined what accommodation would be afforded.

**Respondent rested its case.**

RECESS. The Commission recessed for a break at 2:57 p.m. and reconvened at 3:07 p.m.

**Closing Arguments Respondent/PCSD - by Ms. Brown**

This is not a discipline issue. This was a termination pursuant to Merit System Rule 11.4.C set forth by the policy of the Board of Supervisors. If an employee worked with vulnerable population and didn't get a COVID 19 vaccination by December 31, 2021, the employees would be involuntarily terminated.

The Merit Commission does need to review the case to ensure the Board of Supervisors policies were followed. Mr. Ray was notified that he needed to get his COVID 19 vaccination. He was advised there were accommodations he could request and he was also advised that if he had any questions that he should call Human Resources.

There are other avenues for an employee to seek relief for terminations they deem inappropriate pursuant to Board of Supervisors policy. That other avenue is with the courts. It's not the Commissions job to review a Board policy to determine whether or not it's legal or appropriate. That's what the department was doing, they were following the Board policy. PCSD asks the Commission to uphold the termination.

**Closing Arguments Appellant/Mr. Ray – by Mr. Alatorre**

The Board of Supervisors policy has nothing to do with these proceedings. What has to do with these proceedings is the Pima County Sheriff's Department adoption of a vaccine mandate for its employees and its implication and it's unreasonable and unlawful application of that policy to Mr. Ray.

The Sheriff did not have to adopt that policy. He did not have to demand that his employees get vaccinated. In fact, he decided only Correction Officers were to do so and not his other employees. He made a decision and he actually adopted the policy.

Due process applies here. Procedural and substance due process requires Appellant gets a fair hearing. Appellant has given the Commission the opportunity to review the reasonableness of the Sheriff's actions. The goals and function of the County Employee Merit System are designed to protect employees. Purpose of civil service commission is to provide for the security of the faithful employee by giving him permanence in employment and to free such employee from the fear of political and personal prejudicial reprisal. That is from the Court of Appeals.

**Rebuttal Closing Argument Respondent/PCSD – Ms. Brown**

The bottom line is Mr. Ray did not meet the qualifications for his employment.

The Board of Supervisors policy was, if you aren't qualified then you are terminated. Hypothetically, Board of Supervisors could have done a lot of different things but they didn't. This is what we are dealing with today. The Commission needs to look at termination because someone is not qualified for the position.

**EXECUTIVE SESSION:** Mr. Freund made a motion to go into Executive Session for the purpose of legal consultation with Donna Aversa, Counsel to the Commission. Mr. Rubin seconded the motion. Motion passed 4 – 1, with Mr. Hellon abstaining.

The Commission went into Executive Session at 3:37 p.m. and reconvened at 4:06 p.m.

### **Deliberation by the Commission**

The Commission deliberated with each Commissioner explaining the reasoning for his decision.

**Mr. Hellon** thought the action imposed has harmed the Appellant and that is something the Commission needs to take into account. He agreed the Sheriff has discretion. He adopted the Board's policy and he didn't have to adopt the Board's policy.

The Commission has a duty to determine whether the action was reasonable under the totality of the circumstances as presented today. Special note of Exhibit 3, which specifically says the Appellant has a right to appeal and the Respondent now trying to tell us no, you have to simply say whatever the Board said and applied and move on.

One of the key questions is who had the stronger duty. Did Mr. Ray have a duty to exhaust all opportunities available to find some other accommodation that would preserve his employment or did the County have a larger duty to make available to Mr. Ray in clear communication to all of the options he had and they failed in that duty.

Mr. Hellon said there was unrefuted testimony that unvaccinated Deputies were working in the jail. That is a serious deficiency part of the Sheriff and did not apply the requirements of the policy equally and fairly across the board. The Sheriff had discretion and limited communications to the non-vaccinated Correction Officers who did not file an authorized accommodation which constitutes impermissible, unequal treatment. Mr. Hellon did not find there was just cause for the termination.

**Mr. Freund** restated similar issues that Mr. Hellon conveyed.

Mr. Freund stated it is clear that Mr. Ray didn't comply with the mandate from the Sheriff, that Correction Officers had to be vaccinated for COVID 19. It's been asserted that is where the Commission should stop and that is a problem. Because 14.4.B doesn't stop with that first sentence, near the end of the paragraph it reads "whether or not all of the charges were proven, the action imposed was, in the sole discretion of the Commission, too severe, then the order shall be revoked or modified."

This is an unusual situation, normally the Commission hears discipline cases and makes a determination of the facts. Did the Appellant do it? If yes, then there is just cause for some kind of discipline.

It's been said because it's been a termination and that's what is in the policy, there is no options. We can't consider anything else and that negates that whole part of the Merit System Rule. I'm leaning toward the position that we have in our discretion the power or authority to do something. The question is what to do.

The fairness issues that Mr. Hellon and Mr. Alatorre brought up about the fact that probably out of absolute necessity the Sheriff brought in unvaccinated Deputies to keep inmates from running away with the jail. Still that is unfair to let somebody who is unvaccinated come in and do the job that somebody else was fired for not being vaccinated.

The question is the policy on its face had some reasonable nexus to public safety. It may not have been a great effective policy and maybe it would have had little effect. Having Correction Officers vaccinated which theoretically helps stop the spread of COVID among the Correction Officers and the inmate population which had no choice to be there.

He added, the policy itself could be looked at as reasonable if you want to take out the fairness part of how it was actually implemented. The question is, if you accept the goal of this policy was to not have unvaccinated Correction Officers possibly getting themselves or infecting the inmates. What do you do? Where do you put a Correction Officer in your dept.? We have 19 appeals and more Correction Officers were let go or quit. How can you reasonably accommodate those folks in another job? Maybe there are other positions in the County that they could have gotten to and will leave that for somebody else to talk about.

Mr. Rubin stated the Commission has some options and didn't think it as simple as the County has said in that the Sheriff did have some discretion or he implemented the policy. He decided to implement the policy. It's not as simple as what the Board of Supervisors did.

Looking at Exhibit 16 where the Sheriff made it quite clear that if you did not get vaccinated or did not ask for an accommodation and in his letter he doesn't talk about the possible accommodations. It was unknown if he had an expanded list of accommodations. It was quite clear that employees had to be vaccinated. If they did not get vaccinated or did not get an accommodation, they would be terminated.

The question came up about unvaccinated Deputies working in the jail. We don't really know if these Deputies were vaccinated or unvaccinated. I assume the Sheriff knew exactly who is vaccinated because that was a requirement. Perhaps he didn't allow them if they weren't vaccinated. He didn't know. We didn't have any testimony. He couldn't assume there were unvaccinated deputies working in the jail.

He agreed the Commission has the ability to look at this. The Sheriff is pretty clear and he would uphold the termination.

**Mr. Hamed** stated whatever is decided, this is precedence setting. Mr. Ray this is the first case the Commission heard under this policy. The Commission is setting a precedence no matter what is decided. He was certain that whatever is decided it will be appealed from one side or the other. No question whether it is the County or Mr. Ray will appeal this decision.

The Sheriff put his signature on this by adopting the Board of Supervisors policy. Therefore, Sheriff Nanos owns this as well. He owns a lot, especially when it comes to his department. I see where he wants to keep the public health and safety intact. He wants to keep his Correction Officer safe and healthy. He wants to keep the inmate in the custody of his jail safe and healthy as well.

By turning around and creating an exception by having deputies come in here to help keep the jail from running amok. Shouldn't they be vaccinated if they are going walk in and do the job like Mr. Ray? Shouldn't they have that vaccine? He should want to keep ALL his employees happy, including his Deputies who go out there and assume risks as well.



Mr. Hamed stated he was torn on this, the public health and safety aspect but also on the question of your decision, your choice and I'm also torn on the hair splitting that is going on with the Sheriff's Department. He would have loved to hear from Sheriff Nanos because he makes the policy decisions and that is his choice. He was elected by the people. When elected by the people you are subject to the scrutiny, accountability and the questioning of the public. Including this Commission. He should have been brought in here to answer those questions. We had the right as a body to question him on that. We have the discretion as Mr. Hellon and Mr. Freund had talked about it as well, that it is afforded to the Commission as well under the State statute.

Mr. Shelley agreed with the Commissioners comments. Mr. Rubin said we don't know for sure whether or not unvaccinated Deputies were working in the jail because testimony was given on the County side that Deputies were working in December. More likely they are still working there because they are even more shorthanded. We don't know if they are vaccinated or not. That would be something the Commission should know.

The idea is to find out some of the other truths that are out there. The Sheriff has the right to run his Department, to adopt policies and procedures for the best welfare for his employees, the inmates and for the public. If they are true, it is very disturbing. What is good for the goose is good for the gander. If you are going to hold one person accountable, you have to hold them all accountable.

He agreed with Mr. Hellon that Human Resources might have fell a little short. What Human Resources had to do to help out the Sheriff's Department was to come up with alternative areas that could be worked. Whether it was inside the Department or outside their Department. Mr. Shelley wasn't sure it was handled that well inside the Sheriff's Department or if they even asked for help or wanted help. I wish that would have happened and we probably wouldn't be here today. That would have answered a lot of questions for us.

He also felt Mr. Ray should have some responsibility in this, he should have taken more steps, dug deeper. He started that path but didn't go far enough and he should have contacted Human Resources. That would've been a great idea to reach out to their Employee Rights group.

Mr. Shelley was also torn.

Mr. Hellon stated he and Mr. Rubin were on opposite sides of the core question.

Mr. Rubin stated the Sheriff's decision should be upheld and he believed it should be modified. Discussion ensued.

The discussion included Mr. Ray losing his pension because he was terminated. Mr. Rubin is well versed in retirement funds. He stated a company cannot take away someone's pension when the employee is terminated. It is a Federal law. He understood Mr. Ray wanted a payout and that is a different situation. If he doesn't get a payout, he would not lose his pension. If he waits until he is retirement age, he has his pension. When a person takes a payout before reaching retirement age, the company (County) can take back their portion of the contribution.

**MOTION:** Mr. Rubin made a motion to uphold the termination. Mr. Hellon asked if there was a second and Mr. Hamed second the motion for discussion purposes.

Mr. Hellon opposed the motion because he thought it was excessive, not enough was done to assist a long-time employee who did nothing wrong and find alternative accommodation.

**Mr. Freund** thought the County could have done a better job of informing employees they could apply for other positions.

**VOTE: Mr. Rubin motion to uphold termination failed 4-1 with Mr. Rubin voting yes.**

**MOTION:** Mr. Hellon made a motion that the Commission determine that Appellant knew or should have known that his failure to get vaccinated would result in termination but in our judgment, termination is not justified under the circumstances and that we order the Appellant to be reinstated without back pay or benefits, effective as of such time as he gets vaccinated or that the vaccine mandate ceases.

**VOTE:** Mr. Hellon's motion passed by a roll call vote of 5-0. Motion passed unanimously.

**Adjourn.** Mr. Freund made a motion to adjourn. Mr. Hamed seconded. Motion passed unanimously.

The Commission adjourned at 5:26 p.m.

The minutes were prepared by the Recording Secretary. Minutes approved on August 25, 2022

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/s/ Mike Hellon, Chair