

MINUTES OF SPECIAL MEETING
CIVIL SERVICE BOARD
CITY OF SACRAMENTO
OCTOBER 13, 1986

The special meeting of the City of Sacramento Civil Service Board was called to order by President Catherine Harris in Conference Room 103, Department of Personnel, 801 - 9th Street, Sacramento, CA at 9:10 a.m.

MEMBERS PRESENT: Mr. Bill White
Mr. Jonathan Mayhew
Mr. Joseph Russell
Ms. Catherine Harris

MEMBER ABSENT: Ms. Dora Huntzing

RECOMMENDED DECISION OF ADMINISTRATIVE LAW JUDGE - HEZEKIAH EVANS

Mr. Sam Jackson, Deputy City Attorney, addressed the Board on this item. Mr. Jackson asked the Board to reconsider their previous decision and to adopt the recommended decision of the Administrative Law Judge.

Mr. Daniel Boone, Attorney at Law, representing Mr. Evans addressed the Board. Mr. Evans was present. Mr. Boone asked the Board to uphold their previous decision.

The Board asked questions of both attorneys and both attorneys responded. After considerable discussion by all parties, Ms. Harris asked Mr. Boone if he, on behalf of his client, had any objection to the Board going into Executive Session. Mr. Boone did not. Ms. Harris asked Mr. Jackson and he said he did object to the Board going into Executive Session.

Ms. Harris introduced Michael Siegel, Attorney at Law, representing the Board.

A motion was made for the Board to go into Executive Session.

Motion: Mr. Mayhew
Second: Mr. White

The motion was approved by unanimous roll call vote.

The Board went into Executive Session at 10:00 a.m.

The Board reconvened at 12:10 p.m.

Ms. Harris read the following amended decision:

AMENDED DECISION

This matter came on for hearing before Keith A. Levy, Administrative Law Judge of the Office of Administrative Hearings, on April 3, May 6, and June 6, 1985 in Sacramento, California. Samuel Jackson, Deputy City Attorney, represented the complainant. Appellant was represented by W. Daniel Boone, Attorney at Law. Evidence was received, the hearing was held open for additional information until June 21, 1985, and the matter was submitted. The Administrative Law Judge made his proposed decision on July 23, 1985.

This matter first came before the Civil Service Board on August 6, 1985, at which time a continuance was granted to September 3, 1985, at the request of appellant. On that date, the Board heard oral argument from both counsel, and by vote directed the Secretary to prepare and serve each Board member and counsel with a copy of the transcript of proceedings before the Administrative Law Judge. On September 17, 1985, the Board by unanimous vote rejected the decision of the Administrative Law Judge, so that it could consider the transcripts and determine the matter itself at the next meeting on this case.

On January 7, 1986, at a special meeting of the Board, each Board member having previously read and considered the transcript and mastered the record, and further oral argument having been heard from both counsel, the Board rendered its decision.

FINDINGS OF FACT

I

On August 23, 1984, appellant was sent a "Preliminary Notice of Intent to Discipline", signed by Reginald Young, Deputy Director of Public Works-Waste Removal. A termination letter was sent to the appellant on September 21, 1984, signed by Reginald Young.

II

Appellant appealed his termination by letter dated October 1, 1984 from Garland S. Rosauero, Business Representative of the Stationary Engineer's Local 39.

III

Appellant is a security guard in the Waste Removal Division, City of Sacramento. Appellant works the 4:00 p.m. to midnight shift as a night watchman at the 28th and A Street Waste Removal Division dispatch yard. Gasoline dispensing and consumption at this site is monitored by an IBM computer terminal located on 24th Street. The 28th and A Street yard is one of three automated sites with a micro-processor that relays information to the IBM main computer which contains an inventory of all City equipment. In July, 1984, the computer print-outs revealed some unusual patterns of fuel dispensing between 6:00 p.m. and midnight. Numerous transactions of small quantities of fuel were dispensed during this time period. Supervisory personnel at the 28th and A Street yard were informed of the gasoline dispensing irregularities and told to closely monitor the situation. On July 26, 1984, a three-member crime prevention unit from the Sacramento Police Department was dispatched to conduct a surveillance of the 28th and A Street yard.

IV

The appellant's job required him to walk through and around the perimeter of the 28th and A Street Waste Removal Division dispatch yard checking to make sure that all gates were closed and locked and to observe any unusual occurrences. The appellant was not authorized to use any vehicles in the yard or authorized to use or have in his possession any computer cards for dispensing automobile fuel. The evidence established that appellant drove City truck number 3597 on July 26, 1984, and that on that date he had in his possession and used City computer card number 3597 to fill two five-gallon cans of automobile fuel from the City pumps.

V

One of the cans belonged to the City and was filled for Bob Uyehara, the mechanic on duty at the time. This full can was returned to Mr. Uyehara.

VI

There was extensive contradictory and conflicting testimony and evidence presented on the question of the second five-gallon can. As one example, City presented evidence in the form of a crime report that appellant admitted taking City gasoline for his own use. That same report indicated that a full can of gasoline was in appellant's truck. However, evidence from a City witness proved that there was not a full can of gasoline in appellant's truck.

VII

Further, City had the means to provide direct evidence to rebut appellant's testimony regarding the City vehicle's running out of fuel. It could quite easily have checked the vehicle's fuel level. For whatever reason, City did not offer that evidence, which may have conflicted with - or corroborated - appellant's position.

VIII

Appellant testified that he did not steal the gasoline and that statements he made to the police were either misunderstood or misinterpreted. In light of the conflict between the crime report and statements by police officers, as well as direct evidence which the City had available but did not present, we find that City's evidence of appellant's alleged admission and other circumstantial evidence of appellant's guilt are not more credible than appellant's assertions that he did not steal City property. No direct evidence as to what happened to the second can of gas, other than appellant's testimony, was offered. Since circumstantially, any number of possible explanations exist for what happened to it, we are not convinced that it was used for other than legitimate City purposes. The City has simply not proved by a preponderance of the evidence that appellant took the second can of gas for his personal use. Therefore, based on the record as a whole, we find it more probable than not that the second can of gas was used for proper City purposes.

IX

There was no credible evidence presented in support of the charge of insubordination.

DETERMINATION OF ISSUES

The Board, having rejected the decision of the Administrative Law Judge, and having made its own findings of fact, determine the issues as follows:

1. Mr. Evans did not steal City gasoline.
2. Mr. Evans is not guilty of insubordination.
3. Mr. Evans used a City vehicle with is not part of his job.
4. Mr. Evans used a City gasoline card to dispense gasoline, which is not part of his job.

ORDER

The appeal of Hezekiah Evans from his termination as a security guard with the Waste Removal Division, City of Sacramento, is granted in part and denied in part. Appellant is reinstated to his position as a security guard with the Waste Removal Division, City of Sacramento, effective September 22, 1984.

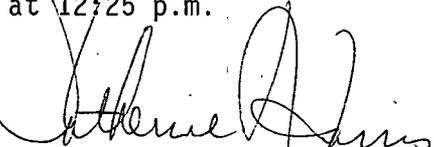
For his violation of Rule 12.2(g), appellant is suspended without pay or benefits for thirty (30) days effective September 22, 1984. After the thirty (30) day suspension period, appellant is entitled to full back pay and benefits.

A motion was made to adopt the amended decision of the Civil Service Board in the matter of Hezekiah Evans.

Motion: Mr. Mayhew
Second: Mr. White

The motion was approved by unanimous roll call vote.

There was no further business, President Harris declared the meeting adjourned at 12:25 p.m.



Catherine Harris
President



Donna L. Giles
Secretary