

MINUTES OF CIVIL SERVICE BOARD  
CITY OF SACRAMENTO  
REGULAR MEETING NOVEMBER 18, 1975

HEARING TO APPEAL DISCIPLINARY ACTION  
(Continuation from 8/26, 8/27, 8/28 and 10/7/75)

Reed Gibson, Firefighter

President Wilfred Street called the conclusion of Reed Gibson's hearing to order at 12:30 p.m., in the Personnel Department Conference Room, 801 Ninth Street.

Present: Alba Kuchman, Wilfred Street, Ronald Wright  
Absent: Jimmie Yee

Deputy City Attorney Savage and Attorney Twohy presented their closing statements, after which the Board met in executive session. Upon reconvening the open meeting, Board President Street announced the three actions taken by the Board in executive session, as follows:

a. The decision of the Board, by two-to-one vote (Ayes: Street, Wright; Noes: Kuchman), was that Reed Gibson violated Fire Department Rules and Regulations 19-67.2 on hair regulations.

b. On the question of whether the rules are reasonable, it was the decision of the Board, by two-to-one vote (Ayes: Street; Noes: Kuchman, Wright), that the rules on hair regulations are unreasonable.

c. The motion to grant Reed Gibson's appeal was carried by two-to-one vote (Ayes: Kuchman, Wright; Noes: Street).

The Board requested Attorney Twohy to prepare the findings and conclusions on this matter in conjunction with the City Attorney's Office.

*attached*

The hearing was concluded at approximately 1:45 p.m.

The regular meeting commenced at approximately 2:00 p.m.

MINUTES OF SPECIAL MEETING, 10/14/75, AND REGULAR MEETING AND HEARING  
OF 10/29-30/75

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Approved as submitted.

REPORTS OF DIRECTOR OF PERSONNEL

a. For the information of the Board, Mr. Danielson submitted a copy of his letter to the City Council dated November 11, 1975, regarding "Agreement between County of Sacramento and City of Sacramento regarding Eligibility of City Employees for Preference Points on County Library Examination" which included a copy of the agreement and the resolution which would approve the Agreement. It was reported that this matter would be taken up by the City Council on November 20, 1975, and by the County Board of Supervisors on November 24, 1975. Mr. Danielson informed the Board that the Agreement would enable City employees to compete in County Library examinations on the same basis as if they were County Library employees.

b. Mr. Danielson informed the Board that, upon inquiry of Mayor Isenberg, the following information was obtained: The City Council has advertised and is recruiting to fill the vacancy on the Civil Service Board; that six applications had been received by the City Clerk; and that the closing date for filing applications is November 28, 1975.

ELIGIBLE REGISTERS ESTABLISHED

<u>Examination No.</u>	<u>Class Title</u>	<u>Effective Date</u>	<u>Expiration Date</u>
#1308-D	Accountant (continuous)	10-28-75	10-27-76
#1414	Police Records System Analyst	10-14-75	10-13-76
#1420	Custodian II (Prom)	10-30-75	10-29-76
#1422	Senior Copy Machine Opr.	10-23-75	10-22-76
#1423	Copy Machine Operator	10-23-75	10-22-76
#1424	Animal Control Officer	10-15-75	10-14-76

AMENDMENT OF EXAMINATION ANNOUNCEMENT #1433 KEY DATA OPERATOR I

The Personnel Selection Division staff requested permission to change the final filing date for the class of Key Data Operator I announcement No. 1433 from November 21, 1975, to "continuous filing". It was explained that City's recruitment was not successful inasmuch as recruitment was being held at the same time by the State of California to fill positions at the Franchise Tax Board and the Department of Motor Vehicles. Motion was made by Mrs. Kuchman, seconded by Mr. Wright and carried by unanimous vote to approve this request.

REQUEST FOR REINSTATEMENT AFTER RESIGNATION

Charlie Brown, former Refuse Collector

Communication was received from Charlie Brown dated November 14, 1975, requesting reinstatement to his former classification of Refuse Collector. After having worked in excess of 18 years, Mr. Brown had resigned on June 16, 1974 for health reasons.

The reinstatement request had the approval of the Refuse Collection Superintendent and the City Manager, and it was staff's recommendation to reinstate Mr. Brown.

It was moved by Mrs. Kuchman, seconded by Mr. Wright, and carried by unanimous vote to reinstate Mr. Brown.

REQUEST FOR LEAVE OF ABSENCE

Andrew Valenzuela, Maintenance Man I, Recreation & Parks Dept.

It was moved by Mr. Wright, seconded by Mrs. Kuchman, and carried by unanimous vote to approve the leave of absence request of Mr. Valenzuela from September 22, 1975, to and including January 1, 1976. The request had the approval of the department head and the City Manager.

REQUEST FOR LEAVE OF ABSENCE EXTENSION

Brenda Arroyo, Library Assistant I

Mrs. Arroyo, currently on approved maternity leave of absence from June 1, 1975, through December 31, 1975, requested an extension of five months. The extension had the approval of the department head and the City Manager.

It was moved by Mrs. Kuchman, seconded by Mr. Wright, and carried by unanimous vote to approve the additional time from January 1 through May 31, 1976.

LEGAL OPINION REQUESTED BY THE CIVIL SERVICE BOARD RE ITS AUTHORITY CONCERNING THE REASSIGNMENT OF ROBERT MCGEE AND RICHARD VASQUEZ FROM REFUSE COLLECTOR (TRUCK DRIVER) TO REFUSE COLLECTOR.

(Continuation from 10/29/75)

The Board continued this matter to its meeting of December 2, 1975, at the request of Phillip Cunningham, Business Representative, Sacramento City Employees Association/Local 39.

EXAMINATION ANNOUNCED

#1440 Information Clerk


It was moved by Mr. Wright, seconded by Mrs. Kuchman, and carried

11/18/75

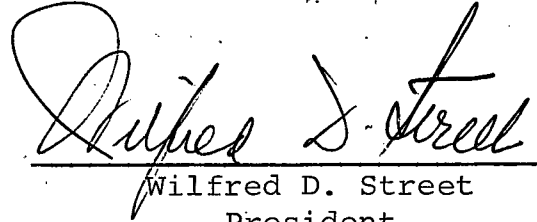
by unanimous vote to approve the above announcement.

The regular meeting was adjourned at approximately 2:20 p.m., to be followed by the Robert D. Brill hearing.

Mr. Street excused himself following the regular meeting.



William F. Danielson  
Secretary



Wilfred D. Street  
President

CIVIL SERVICE BOARD

OF THE CITY OF SACRAMENTO, CALIFORNIA

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4 MATTER OF THE REPRIMAND AND )  
5 SUSPENSION FROM DUTY OF )  
6 REED GIBSON, FIREFIGHTER, )  
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8 Appellant. )  
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FINDINGS AND CONCLUSIONS

The above entitled matter came forward regularly for hearing on August 26, 1975 before a duly constituted hearing panel of the Civil Service Board of the City of Sacramento. Panel members, constituting a quorum of the membership of said Board, were Wilfred Street, Chairman; Alba Kuchman; and Ronald Wright.

Appellant Reed Gibson was present and was represented by RICHARD J. TWOHY of the law firm of TWOHY and BROWN: The Fire Chief of the City of Sacramento, William R. Powell, was present and was represented by LELIAND J. SAVAGE, Deputy City Attorney.

Hearing went forward at 1:30 p.m. on August 26; the panel convened at 1:30 p.m. on August 27 for continued hearing; on August 28 at 9:30 a.m.; and again at 3:15 p.m. on October 7, 1975, during all of which sessions consuming some 14 hours, the Board received documentary, demonstrative, and other physical evidence together with oral testimony. At 12:30 p.m. on November 18, 1975, the panel convened for reception of final arguments at the request of the City Attorney. All of these proceedings were tape recorded; the aforementioned quorum of the Board's membership was present throughout.

During the course of hearing, the panel received oral testimony from 9 witnesses: the Appellant Reed Gibson; the Fire Chief, William R. Powell; Deputy Fire Chief Robert I. Schultz; Fire Captain Ed Irwin; Battalion Chief Harold Redgate; and Firefighters Stanley Ferris; Michael McCarthy; Ken Hogan, and Darryl Boulton. In addition to this personal oral testimony, an offer of proof

1 was received of the testimony of William Lindsay, a Cal-OSHA official, that the  
2 safety dangers from longer hair on the sides and back of the head can be elim-  
3 inated by use of designated, currently available hairnets. An offer of cross-  
4 examination of this was stipulated by both counsel.

5 The Board also received from both parties various photographs taken  
6 of Appellant shortly before, at, and after the time of his suspension on June  
7 18, 1975, demonstrating his physical appearance at those times; a line-drawing  
8 illustration from the Sacramento Department of Fire (Appellee); a helmet with  
9 its safety specifications attached, issued to and worn by Appellant; his duty  
10 overcoat; one gas mask of the type made available to and used by Appellant (use  
11 of which was demonstrated at hearing by the Appellant); numerous documents from  
12 both parties purporting to illuminate the recent history and propriety of their  
13 respective positions; and additional oral and physical evidence relating to the  
14 issues of safety, equal application of rules, constitutional dimensions of  
15 Appellee's authority and of the subject rules, the conduct of both parties  
16 with reference to Appellee's disciplinary actions, and the reasonableness of  
17 said rules.

18 Following presentation of final argument, on November 18, 1975, the  
19 Board convened in executive session for approximately 90 minutes and granted  
20 Appellant Reed Gibson's appeal, adopting the following findings and conclusions:

21 1. On May 23, 1975, Reed Gibson, in a meeting with Deputy Fire Chief  
22 Robert I. Schultz, sought redress of a grievance involving duty transfers and  
23 "detailing" of him to various fire stations throughout the city. Deputy Chief  
24 Schultz was requested by Appellant Gibson to investigate the basis for this  
25 grievance, but did not do so. In that meeting, Deputy Chief Schultz ordered  
26 Appellant, whose vacation was to begin that afternoon, to be in compliance with  
27 Appellee's hair and grooming regulations upon his return from vacation on June  
28 16, 1975.

1           2. On the evening of June 15, 1975, before returning to work from  
2 vacation, Appellant obtained a haircut.

3           3. At approximately 8:05 a.m. on June 16, 1975, at the beginning of his  
4 first shift on return to work, Appellant was presented with two documents:  
5 (1) a disciplinary reprimand charging him with violation of Fire Department  
6 Rules and Regulations §19-67.2(A) (2) and §19-67.3; (2) A written order  
7 requiring compliance with these rules, and warning that he would be suspended  
8 from employment if he did not comply.

9           4. On the evening of June 16, 1975, Appellant obtained a second haircut.

10          5. On June 17, 1975, Appellant was warned verbally that his physical  
11 appearance was still not in compliance with the aforementioned rules. On that  
12 evening, he obtained a third haircut.

13          6. On June 18, 1975, Appellant was suspended without pay from his employ-  
14 ment with the Department of Fire, effective at 1500 hours on that date. At that  
15 time he was personally served with written notice of said suspension, which  
16 notice further advised that if he remained out of compliance with the hair and  
17 appearance rules 30 days following the suspension, his employment with the  
18 Fire Department would at that point be terminated.

19          7. On June 20, 1975, Reed Gibson appealed from these disciplinary actions  
20 to this Board by letter filed that date. A copy of said letter and of each of  
21 the afore-described documents noticing the Department's disciplinary actions  
22 are attached hereto, their contents incorporated herein by reference.

23          8. This Board, finding said appeal to be timely, took jurisdiction and  
24 heard the matter as described hereinabove.

25           THE BOARD FINDS AND CONCLUDES THAT:

26           (a) The Appellant, a member of the Sacramento Department of Fire for some  
27 ten years preceding this action, and knowledge of the aforementioned rules, and  
28 understood adequately their import and meaning.

1 (b) The Appellant did violate said rules.

2 (c) The Department of Fire can and should promulgate rules assuring  
3 safety among all its members. These rules, however, are unreasonable in that  
4 they do not bear a sufficient nexus to a legitimate state interest of the  
5 Appellee, namely safety, for the reason that other and less restrictive means  
6 are available to Appellee in fully meeting its safety requirements.

7 (d) We conclude, therefore, that these rules are not enforceable against  
8 any person in Appellant's circumstance; and his appeal, therefore is granted.

9 (e) Additionally, these rules are unreasonable in that this Appellant's  
10 experience has demonstrated that the rules lend themselves to different inter-  
11 pretations among his superiors; that they are susceptible to unequal enforce-  
12 ment throughout the Department. Although we are convinced that this Appellant  
13 knew what the rules meant and he should be charged with that knowledge, we  
14 are also convinced that there was not unanimity among the supervisory personnel  
15 as to their meaning. This in fact led to an enforcement pattern of unequal  
16 application among the Department's members.

17 Irrespective of any other ground, therefore, we find that such rules  
18 are inherently unreasonable unless they pose a single standard, singly under-  
19 stood and singly applied to all. These rules, as written, do not.

20 (f) Having based our grant of this appeal on the unreasonableness and  
21 the consequent unenforceability of these rules, we decline to render findings  
22 on any of the numerous other grounds which this Appellant has urged upon us.

23 The Department of Fire is directed to reinstate the Appellant Reed  
24 Gibson to his full status as if discipline has not been imposed, removing from  
25 his file any derogatory material relating to the current offenses with which  
26 he was charged, and arranging payment to him for the employment shifts lost  
27 between 1500 hours, June 18, 1975 (the time and date of Mr. Gibson's suspension)

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and July 5, 1975 (the date Mr. Gibson returned to work under Court order).

DATED: February 3, 1976

CIVIL SERVICE BOARD

*Richard J. Street*  
PRESIDENT

*Alba Kuchman*  
MEMBER

*Ronald H. Wright*  
MEMBER