

CIVIL SERVICE BOARD MINUTES
CITY OF SACRAMENTO
REGULAR MEETING DECEMBER 21, 1971

The Civil Service Board met in regular session at 1:30 p.m. in the City Hall Council Chambers with President Marion Woods presiding.

Present: Members Alexander, Reynoso, Street, Woods, Yew.
Absent: None

The minutes of the meeting of December 7 were approved as presented to the Board.

REQUEST FOR HEARING TO APPEAL DISCIPLINARY ACTION

Robert C. Bryant, Firefighter

Request was made by Robert C. Bryant, Firefighter, for a hearing to appeal his suspension for ten scheduled shifts from December 11, 1971. This disciplinary action was taken by Fire Chief Wilson due to the fact that Mr. Bryant was in partnership in the firm of Bryant Brothers Motorcycles whose bid to furnish 29 motorcycles to the Police Department was unknowingly accepted by the City Council. Such outside activity is in violation of Section 177, Article XX, of the City Charter and Civil Service Rules 18.1 and 18.2 as explained in Chief Wilson's letter of December 9, 1971, to Mr. Bryant.

Motion was made by Mr. Yew and seconded by Mr. Street to grant Mr. Bryant's request for hearing before the Board, and the hearing date was set for Tuesday, January 25, 1972. The motion was carried by unanimous vote.

NEW EXAMINATION SCHEDULED

#1176 Shop Foreman (Promotional Only)

STATUS OF EMPLOYEE FOLLOWING POSITION REALLOCATION TO HIGHER CLASS

Janice Abe, Librarian I to Librarian II

The Civil Service Board considered the request presented by Carla Vasquez, Personnel Librarian, for the reallocation of the Librarian I position, currently held by Janice Abe, to Librarian II. Upon review of the duties and responsibilities performed by Janice Abe, it was recommended that the reallocation be approved.

After consideration, it was moved by Mr. Street and seconded by Mr. Alexander to grant approval of the reallocation of Janice Abe with permanent status, effective January 1, 1972. The motion was carried by unanimous vote.

PROPOSED AMENDMENT TO CLASSIFICATION PLAN

Building Inspector - Condemned Buildings

William Woska, Personnel Analyst, explained to the members of the Board that the new classification of "Building Inspector - Condemned Buildings" was

necessitated as the result of the adoption of the Dangerous Building Ordinance by the City Council. A study was then made as to the feasibility of such a classification. The report of the study made, together with the job specification, was presented to the Board with the recommendation that the new classification be adopted.

Mr. Guy Chapin, Building Inspector I, who has been performing the duties of inspecting condemned buildings for the past two years, and Mr. Otto Steinbrenner, Director of Building Inspections Division, were present to explain the duties and responsibilities of the position. They also reported that to effectively function in this position, knowledge of various codes and laws is require.

After a lengthy discussion, it was the consensus of the Board that the job specification for "Building Inspector - Condemned Buildings" should indicate more specific and definite requirements. Therefore, the Board requested that the minimum qualifications be revised and presented to the Board at its next meeting at which time the matter is to be considered.

INFORMATIONAL REPORT ON EMERGENCY EMPLOYMENT ACT

Due to lack of time, it was moved, seconded, and unanimously carried to postpone the informational report on the Emergency Employment Act until the next meeting of the Board.

PRESENTATION OF LETTER DATED NOVEMBER 24, 1971, BY MR. JOHN STEELY EXPRESSING CONCERN OVER CIVIL SERVICE RULE 11.12 PERTAINING TO USE OF SELECTIVE CERTIFICATION

President Woods acknowledged receipt by the Board of a copy of Mr. Steely's letter of November 24, 1971. By his letter, Mr. Steely expressed his objection to the City's filling vacancies within City service by the use of selective certification.

Mr. John Steely said he spoke for himself as a private citizen. He strongly opposed the rule on selective certification as being discriminatory whereby Caucasian applicants who placed higher than minorities on the eligible register would be bypassed in order to certify those minority applicants who placed below the Caucasians. Mr. Steely read the Oath of Office which the Board members took at the time of their appointment to the Civil Service Board. He stated that the sole function of the Board is to take all possible steps to test for job qualification and that no one be eliminated or bypassed for certification.

Mr. Steely stated that the Affirmative Action Policy adopted by the City Council cannot amend, modify or repeal any section of the City Charter, and he referred to City Charter Section 47. Reference was also made to the City of Berkeley's legal opinion.

Mr. Steely referred also to the Griggs versus Duke Power Case, stating that the City erroneously relied on this case as justification for the selective certification rule. Title 7 of the 1964 Civil Rights Act was also referred to by Mr. Steely as a basis to further defend his opposition of the selective certification rule.

Mr. Steely concluded that, by Oath of Office taken by the Board members and by provisions of Section 47 of the City Charter, the Board must not discriminate against any individual.

Mr. Charles Puckett also appeared before the Board and presented a copy of his letter addressed to the Sacramento County Civil Service Commission, dated December 6, 1971, which expressed objection to the selective certification rule as being "unconstitutional, illegal, and discriminates between races."

Both letters were placed on file. No further action was taken on this matter.

CIVIL SERVICE BOARD'S ACCOMPLISHMENTS DURING 1971 REVIEWED BY PRESIDENT WOODS

President Woods expressed his appreciation to the members of the Board, to the staff of the City Manager's office, the Personnel Office, and to the legal counsel for the support given him during 1971. He stated that the Board, from January 1, 1971, to date, made great progress as the result of its actions; that the City government, in 1971, hired minority persons in the Police Department and in the Fire Department; and that the selective certification rule was adopted by the Board making Sacramento the first city in the United States to do so, although the State of Washington has this rule.

Mr. Woods went on to state that, when progress such as this is made, challenge to this progress will be encountered. He stated that the Board is proud and ready to stand behind the changes which have been implemented during the year.

HEARING TO APPEAL COMPULSORY LEAVE OF ABSENCE

Daniel G. Ware, Patrolman

Member Frank Reynoso excused himself from participating in this hearing due to a possible conflict of interest. Board members present for Mr. Ware's hearing were members Alexander, Street, Woods and Yew.

By letter dated July 15, 1971, Inspector Bibica reported his opinion of Officer Ware's physical condition to Dr. Leroy Brown, City's Chief Physician. Officer Ware was then examined by Dr. Brown whose letter report of August 13 indicated that Officer Ware weighted 330 pounds, that he had diabetes and hypertension. Chief Kinney, on August 30, placed Officer Ware on sick leave and later use of his holidays and vacation days with pay. Officer Ware was again examined by Dr. Brown for weight on September 15 and September 22. On November 1, 1971, Dr. Brown reported to Police Chief Kinney that Officer Ware, at 326½ pounds, was not physically fit to perform the duties of a Patrolman. Thereupon, communication was sent to Officer Ware on November 2 from Police Chief Kinney placing Officer Ware on involuntary leave of absence without pay from November 4, 1971, until such time as Mr. Ware is medically passed by the City Physician as being physically fit to perform Patrolman duties.

Request was made by Attorneys James Long and John Virga in behalf of Daniel Ware for a hearing to appeal the compulsory leave of absence. The hearing was granted and scheduled for this Board meeting.

Although it was not possible for Dr. Brown to be present at the onset of the hearing due to an emergency, it was stipulated by Messrs. John Virga and James Long, attorneys for the appellant, and Mr. Liebert, Labor Relations Counsel, to hear Mr. Ware's case at this time and to use the tape recording at a continued hearing for the City's presentation.

The Chairman informed the members present that the hearing will proceed and would be recorded on tape.

Mr. Liebert explained that, procedurally, this matter would be first subject to the City's grievance policy. However, because it was stipulated by both the City's and the appellant's counsels at the meeting of December 7 that the grievance procedure be bypassed and for this matter to be brought directly before the Board, the hearing was set for this Board meeting. It was noted that Daniel Ware's appeal of compulsory leave of absence is the first hearing of an appeal resulting from a grievance to come before the Board.

Testimony was heard at length from Dr. Allen Hassan pertaining to his medical examination of Daniel Ware conducted on or about October 18, 1971, copy of which was placed on file. Dr. Hassan testified that Officer Ware is overweight (330 lbs.), that he has adult onset of diabetes, and that he has hypertension. Dr. Benjamin Cutshall, an internist specializing in diabetes, had been consulted by Dr. Hassan in his medical examination of Officer Ware. In conclusion, Dr. Hassan expressed his belief, as well as that of Dr. Cutshall's, that Officer Ware is able to function adequately as a Patrolman. Their recommendation is, however, for Officer Ware to lose weight and to continue to receive medical supervision for control of diabetes and hypertension.

(Due to another meeting scheduled to be held in the Council Chambers, the hearing was recessed at 4:00 p.m. and reconvened in the Personnel Department Conference Room from 4:15 p.m.)

Arthur Ayres, Patrolman since July 1968, and Lloyd Davis, Traffic Patrolman and Officer Ware's partner for approximately two and one-half years, testified in behalf of Officer Ware. They reported cases of arrests which required physical force on the part of Officer Ware as well as instances which occurred where Officer Ware's size was advantageous. They both stated that they thought Officer Ware is capable of performing his duties as Patrolman.

Other witnesses present in behalf of Officer Ware were: John Lowe, Tom Reed and Fred Marquez who answered questions which were directed to them. Harry Hogan attended but did not testify.

Mr. Liebert stated that the issue before the Board is whether or not it was reasonable to direct Officer Ware to reduce his weight to 300 pounds. He stated that a commitment had been made to Officer Ware that he would be returned to duty when his weight was down to 300 pounds. However, due to Dr. Brown's inability to be present, the City, at this time, could not present its case. Therefore, it was agreed to continue the hearing on December 28 at 1:30 p.m. if necessary.

Attorneys Long and Virga requested that, since the hearing had been set for this Board meeting and a decision could not be reached due to the absence of the

City's Chief Physician and a continuance was being requested by the City, Officer Ware be placed on the City's payroll temporarily for one week until December 28 at which time this matter would be continued.

At 5:45 p.m. contact was made with Dr. Brown who then appeared before the Board at about 6:15 p.m. to testify in the City's behalf. Dr. Brown reported that he had initially examined Daniel Ware on July 20, 1971, as the result of Inspector Bibica's letter of July 15, which was read by Dr. Brown and placed on file. At that time, Officer Ware's weight was 330 pounds, his blood pressure was 160/128, and sugar was found in his urine. Thereupon, a glucose tolerance test was scheduled and obtained as of July 22, 1971. The results showed blood sugar was 244% mg., which is above normal by 124% mg.; and 4-plus urine sugar. Dr. Brown had then instructed Officer Ware to receive treatment through his private doctor at Kaiser Foundation Health Plan for diabetes and for control of his blood pressure. He was also instructed to be placed on a weight-reducing program. Officer Ware's weight history was then reviewed.

Dr. Brown was in agreement with Dr. Hassan's medical report except for Dr. Hassan's belief that Officer Ware was physically fit to perform the duties of a Patrolman. Dr. Brown stated that, because of Officer Ware's problems of overweight, diabetes, and hypertension, even though he may be able to perform the duties of a Patrolman, he would be placing his life in jeopardy if he continued as a Patrolman in his present condition.

Police Chief Kinney's testimony was then heard. Chief Kinney pointed out occasions whereby Patrolmen are required to perform under more-than-average stress and to exert physical strength. He stated that medical standards are under the guidance of Dr. Brown. Upon further questioning of Chief Kinney, it was brought out that at this time there is no set weight standard, other than the height and weight scale used at the time of appointment, which is to be observed by a Patrolman after appointment.

Chief Kinney considered Oak Park to be one of the areas where officers who can relate with people in that area are assigned, and that Officer Ware had been assigned to this particular area for a considerable length of time. Chief Kinney stressed the fact that Officer Ware was given the opportunity to reduce his weight but that he had only lost $3\frac{1}{2}$ pounds in a period of about two and one-half months. No effort had been made by the Police Department to transfer Officer Ware to another division which would require less physical stress.

John Bibica, Inspector of Field Operations Bureau, was then extensively questioned by Attorneys of the appellant regarding circumstances leading to his July 15 letter to Police Chief Kinney concerned with Officer Ware's ability to physically function properly as a Patrolman.

Mr. Virga reported many cases where officers had been seriously injured or had surgery whereby they were unable to perform their duties, but that they had been placed on duty and continued to receive pay in other divisions within the Police Department.

Officer Ware expressed his desire to lose weight. He stated he is under the care of Dr. Hassan and a doctor at the Kaiser Foundation. However, he felt that he was capable of performing the duties of a police officer; that he knew of no set standards for police officers to adhere to after appointment; and that he felt that he was singled out, out of many who are overweight in the Police Department, and used as a test case.

All witnesses who testified were cross-examined and were also questioned by the members of the Board regarding all aspects of their testimonies.

The attorneys and Board members were asked if there were any further questions, and there being none, closing statements were presented by Labor Relations Counsel John Liebert, representing the City, and by Attorney John Virga, representing Daniel Ware.

The hearing was concluded at 8:55 p.m., after which the Board went into executive session.

All parties concerned reconvened at 9:30 p.m. to hear the Board's decision, which is as follows:

"It has been moved by Mr. Street and seconded by Mr. Alexander that the following motion be adopted. The motion reads as follows:

"It was moved that the Civil Service Board orders that Officer Ware be reinstated to duty immediately with back pay to November 4, 1971. It further orders that all vacation, holiday and sick-leave benefits used be reinstated from August 30, 1971. The unanimous decision of the Board is that:

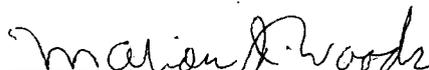
- "(1) Officer Ware should not have been forced into taking his sick leave, holiday, and vacation benefits.
- "(2) Officer Ware should have been put on a weight-reducing program while on duty.

"In addition, the Board recommends that the City should, as soon as possible, institute a regular health program for all employees."

The meeting was adjourned at 9:45 p.m.



William F. Danielson
Secretary



Marion J. Woods
President