



CITY OF SACRAMENTO

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DEPARTMENT OF PERSONNEL
PERSONNEL MANAGEMENT SERVICES DIVISION
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CITY MANAGER'S OFFICE
RECEIVED
JAN 9 1985

DONNA L. GILES
DIRECTOR OF PERSONNEL

January 9, 1985

FILED
JAN 29 1985
BY THE CITY CLERK
OFFICE OF THE CITY CLERK

City Council
Sacramento, California

Honorable Members in Session

SUBJECT: REQUEST BY LOUIS D. CALHOUN FOR COUNCIL REVIEW OF HIS EMPLOYMENT WITH THE CITY

SUMMARY

Mr. Calhoun was a non-career Recreation Program Coordinator who was terminated in October of 1983, due to his failure to score high enough on the Civil Service examination to be appointed to a career position. He appealed to the Civil Service Board and was denied, and he lost in subsequent litigation against the Board. The City Council does not have jurisdiction to act with respect to Mr. Calhoun, since his concerns deal with the Civil Service.

BACKGROUND

It is important to note that the City Council has no jurisdiction to consider Mr. Calhoun's case. The Civil Service Board is, by City Charter provisions, given exclusive jurisdiction over Civil Service examination and eligible lists (City Charter, section 84), and appeals of all kinds (City Charter, section 92). The Board also has authority to adopt, implement and interpret rules and regulations (City Charter, section 92), which it has done. The City Council has no review power over any of these actions.

Mr. Calhoun passed the Civil Service examination for "Recreation Program Coordinator". His score placed him in 14th place on the eligible list. He filed an appeal with the Civil Service Board, contesting his ranking. At the Board hearing he was ably represented by Steve Booth of Local 39. The Board denied the appeal.

Court action was filed for Mr. Calhoun by W. Daniel Boone of VanBourg, Allen, Weinberg and Roger, Attorneys for Local 39. After extensive briefing and oral argument, the Court rendered judgment against Mr. Calhoun. A copy of the Court's decision is attached. No appeal was taken.

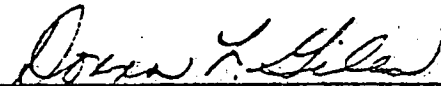
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Mr. Calhoun's case was one over which the Civil Service Board had exclusive jurisdiction. The Board's action was upheld. The City Council has no review authority.

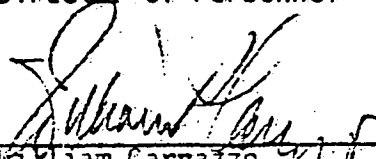
RECOMMENDATION

That the Council take no action.

Respectfully submitted,




Donna L. Giles
Director of Personnel



William Carnazzo
Deputy City Attorney

DLG/JW/kmca.

For City Council Information:



Walter J. Slife
City Manager

All Districts
1/15/85

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ENDORSED

AUG 27 1984

JOYCE RUSSELL SMITH, CLERK
By A. MONARREZ, Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

11	STATIONARY ENGINEERS, LOCAL 39)		
12	INTERNATIONAL UNION OF)	NO. 318963	DEPT. 15
13	OPERATING ENGINEERS, AFL-CIO)		
14	AND LOUIS D. CALHOUN,)		
15)		
16	Petitioners,)		
17)		
18	vs.)		
19)		
20	CITY OF SACRAMENTO; CIVIL SERVICE)	<u>TENTATIVE DECISION</u>	
21	BOARD OF THE CITY OF SACRAMENTO,)	(Rule 232)	
22)		
23	Respondents.)		
24)		

The above-entitled matter came on regularly for hearing on June 1, 1984, with the parties present. Petitioners were represented by attorney W. Daniel Boone of Van Bourg, Allen, Weinberg & Roger; and respondents were represented by William P. Carnazzo of the City Attorney's Office. The matter having been heard and submitted, the Court now makes it tentative decision as follows:

Petitioner Louis D. Calhoun at all relevant times was employed by the City as a temporary, non-career, limited term, employee in the position of Recreation Program Coordinator. A.

1 limited term employee is defined by Rule 6.3(b) (2) of the City of
 2 Sacramento Civil Service Board Rules and Regulations (hereinaft
 3 Rule(s)) as "A position stipulated to be of a certain duration,
 4 made necessary by seasoned workload, special projects, or other
 5 reason...and shall be limited to six (6) months."

6 Beginning August 1, 1983, respondents circulated a job
 7 announcement for two permanent full-time positions of Recreation
 8 Program Coordinator. The position was available to any City
 9 employee, temporary or permanent, who met the stated qualifica-
 10 tions and filed an application by the August 12, 1983, deadline.
 11 The exam for the position was thus an "open examination" as
 12 defined by Rule 4.6(a) and was not, at least as to Calhoun, a
 13 "promotional examination" as defined by Rule 4.6(b).

14 On August 29, 1983, petitioner Calhoun, having submitte
 15 an application for the position and having met the stated quali-
 16 fications, took the examination consisting entirely of an oral
 17 interview including discussion of a written problem. Pursuant to
 18 Rule 4.4, respondents notified petitioner Calhoun on September 7,
 19 1983, which he received on September 10, 1983, that he was suc-
 20 cessful in his examination and that his final score of 79.67
 21 placed him in Rank 14 on the eligible list for the position.

22 Thereafter, on September 21, 1983, petitioner notified
 23 respondents in writing that they wished to appeal the results of
 24 the oral exam, i.e., the "low test score", pursuant to Rule
 25 4.9(b). Rule 4.9(b) gives a job candidate who has been disquali-
 26 fied in any phase of the exam or selection process the right to
 27 appeal such disqualification within 30 days after the mailing
 28 the results based upon an improper procedure in the test adminis-

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1 tration. Petitioners contend that the interview was not fairly
2 conducted because Calhoun was not allowed to answer certain ques-
3 tions posed to him, that the interview panel was inattentive, and
4 that he did not get the proper opportunity during the interview.
5 As a consequence, petitioners contend that although ranked 14th
6 on the eligible list, Calhoun was effectively disqualified in the
7 selection process.

8 On October 4, 1983, respondent Civil Service Board met.
9 After much discussion between Board members and after considering
10 oral argument from petitioner Calhoun's union representative,
11 respondent Board determined that Calhoun had no right to appeal
12 his ranking under Rule 4.9 in that petitioner had not been dis-
13 qualified. Secondly, respondent Board, pursuant to its discre-
14 tionary powers under Rule 1.3 to review all actions of the
15 Personnel Director when acting as agent of the Board, denied
16 petitioner a hearing on the merits. Respondents, by their letter
17 of October 17, 1983, gave petitioner written notice of the
18 October 4 decision to deny Calhoun's request for an appeal
19 hearing.

20 Petitioners filed their petition for issuance of a
21 peremptory writ of mandate in March 1984 to compel respondents to
22 grant petitioner Calhoun an appeal hearing under Rule 4.9(b)
23 contending that Calhoun was disqualified within the meaning of
24 Rule 4.9 by being incapacitated or rendered ineligible for the
25 job position. Secondly, petitioners seem to contend that the
26 City Personnel Director did not take any action as to Mr. Calhoun
27 which would give respondent Board the right to review her actions
28 under Rule 1.3. Thirdly, petitioners contend that respondent

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1 Board did not decide that the Personnel Director had not abused
2 her discretion and that the Board did not exercise its discreti-
3 under Rule 1.3, and, as a result, abused its discretion. Each of
4 petitioners' contentions will be discussed below.

5 A writ of mandate will lie against a city or against a
6 public officer to compel the performance of an act which the law
7 specifically enjoins, as a duty resulting from an office, trust,
8 or station. Code of Civil Procedure section 1085; People Ex.
9 Rel. Younger v. County of El Dorado (1971) 5 Cal.3d 480, 490-491.

10 Two basic requirements are essential to the issuance of the writ:

11 (1) A clear, present and usually ministerial duty upon respon-
12 dent; and, (2) A clear, present and beneficial right in peti-
13 tioners to the performance of that duty. People Ex. Rel. Younger
14 v. County of El Dorado, supra, at p. 491. Mandamus is the prop-
15 remedy to compel a City Council or Civil Service Board to perform
16 its mandatory duties proscribed by the charter. LePage v. City
17 of Oakland (1970) 13 Cal.App.3d 689, 692.

18 In the instant case, petitioner Calhoun had the clear
19 beneficial right under Respondent Board Rule 4.9(b) to appeal to
20 the Board a disqualification in any phase of the Recreation
21 Program Coordinator selection process based upon an improper
22 procedure in test administration. Such right in petitioner
23 imposes a clear duty on respondents to at least hear petitioner's
24 appeal from disqualification on the merits if timely filed. The
25 main issue in this case, of course, is whether or not it can be
26 said that petitioner's passing, albeit low, exam score of 79.67
27 and 14th ranking on the eligible list constituted a disqualifi-
28 cation within the meaning of Rule 4.9. Resolving this issue
29 requires an interpretation of Rule 4.9.

1 Generally, the same rules of construction and interpretation
2 tation which apply to statutes govern the interpretation of rules
3 and regulations of administrative agencies. The cardinal rule of
4 construction is that the court should ascertain the intent of the
5 promulgating body so as to effectuate the intended purpose of the
6 statute or regulation. This rule has been extended to construction
7 of administrative regulations. California State Restaurant
8 Assn. v. Whitlow (1976) 58 Cal.App.3d 340, 344-345. Respondent
9 Civil Service Board adopted its own rules and regulations,
10 including Rule 4.9. See Rule 1.1. Thus, respondent Board's
11 intent is the most significant factor in interpretation of its
12 own rules and regulations. This Court also relies on the following
13 principle of construction: "Contemporaneous administrative
14 construction of a statute by an administrative agency charged
15 with its enforcement and interpretation is entitled to great
16 weight unless it is clearly erroneous or unauthorized." Rivera
17 v. City of Fresno (1971) 6 Cal.3d 132, 140. A majority of
18 respondent Board members have consistently interpreted the word
19 "disqualification" in Rule 4.9 not to include those job candi-
20 dates, such as petitioner Calhoun, who in fact passed the exam,
21 but are dissatisfied with his or her test scores or position
22 ranking on the eligible list. Respondent Board has never given
23 appeal rights to such dissatisfied applicants under Rule 4.9. As
24 will be shown below, such Board interpretation of "disqualifica-
25 tion" is reasonable and not clearly erroneous or unauthorized.

26 The express purpose of respondent Board's rules and
27 regulations is set forth in Rule 1.2 which indicates that the
28 rules shall be a general guide, and interpreted broadly based

1 upon a reasonable approach to specific problems and situations.
 2 The rules are to be considered a total set of working regula-
 3 tions, rather than each section, sub-section, sentence or phrase
 4 being interpreted in insolation and out of context. Board Rule
 5 1.2(a) indicates that it is expected "that the City will employ
 6 the best qualified persons reasonably available, with preference
 7 to citizens of the City, qualifications being equal...."
 8 (Emphasis added.) The word "best" modifying qualified persons
 9 obviously contemplates that not all qualified job candidates will
 10 be hired, but only the "best" of those qualified. Such language
 11 reasonably contemplates some ranking of all qualified individuals
 12 to locate the "best" for the job. Rule 1.2(a) is consistent with
 13 Section 84 of the City Charter which requires that employees be
 14 chosen from the top three candidates on the eligibility list.

15 Petitioner was notified pursuant to Rule 4.4 that he was
 16 successful in his exam and that his score of 79.67 placed him
 17 14th on the eligible list. Rule 4.6(a) gave the Personnel
 18 Director the power to set the minimum qualifying ratings for the
 19 oral interview test. All candidates failing to achieve the mini-
 20 mum qualifying rating as set by the Personnel Director would be
 21 disqualified. It is clear to this Court that petitioner Calhoun
 22 was not disqualified under Rule 4.6(a) by failing to achieve a
 23 minimum qualifying score. To the contrary, he received a passing
 24 score. Further, it is clear that petitioner was not disqualified
 25 for any reason listed in Rule 4.3. Being on the eligible list
 26 made him eligible to be certified by the Personnel Director for a
 27 Recreation Program Coordinator position vacancy for one year.
 28 ranking of 14th is not only consistent with the specific rules

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1 regarding qualification, but also consistent with the general
 2 purpose of Rule 1.2(a) and Section 84 of the City Charter dis-
 3 cussed hereinabove. Petitioner Calhoun was "qualified", although
 4 not one of the best qualified by being ranked in the top three.
 5 As such, respondents had no duty under Rule 4.9 to grant an
 6 appeal, and petitioner, by being qualified to fill the position
 7 had no right to appeal his dissatisfaction of his score or
 8 ranking under Rule 4.9.

9 To conclude that petitioner was disqualified although
 10 found qualified and placed on the eligible list would lead to
 11 absurd results not only in this case but generally. If Calhoun
 12 was "disqualified", then it could be said that all candidates
 13 below the rank of three, by not being the best qualified, were
 14 disqualified. In such a case, the purpose for the relevant Board
 15 rules would be negated, and the Board could be forced to grant
 16 appeal hearings to all but two candidates who were not chosen for
 17 a position. The City could never hire anyone until all appeals
 18 had been heard and decided for fear of abusing their discretion
 19 by underranking the candidate ranked 4th, 14th, 40th, or 400th.
 20 The function of this Court is to interpret the Board rules so as
 21 to make them workable, to declare the law, not to rewrite it to
 22 add an effect beyond that gathered from the plain and direct
 23 import of the terms used. See 58 Cal.Jur.3d (1980) Statutes,
 24 section 86, pp.436-437.

25 Further, there is no indication as to the total number
 26 of applicants placed on the eligible list, or that petitioner was
 27 last in rank, or even near the bottom. Calhoun did not request
 28 nor receive any veteran's preference credit. Assuming that the

1 exam was "open", and not promotional, then, pursuant to Rule
 2 4.8(c) and Section 85 of the City Charter, some of the 13 persons
 3 ranked above Calhoun could properly have received the advantage
 4 of the veteran's preference credit of 10 points. The facts in
 5 the instant case just do not warrant a conclusion that petitioner
 6 Calhoun was disqualified within the meaning of Rule 4.9.

7 If petitioners are still to prevail, it must be on the
 8 basis that respondent Board either failed to exercise its discre-
 9 tion or abused its discretion under Board Rule 1.3. A writ of
 10 mandate is proper to compel the exercise of discretion by a gov-
 11 ernmental officer. See Los Angeles County Employees Assn., Local
 12 660 v. Los Angeles County (1973) 33 Cal.App.3d 1, 8. A writ of
 13 mandate is also proper when the action taken by an administrative
 14 board is so palpably unreasonable and arbitrary as to indicate
 15 that it abused its discretion as a matter of law. Sanders v. Los
 16 Angeles (1970) 3 Cal.3d 252, 261.

17 Under Rule 1.3, the actions and decisions of the
 18 Personnel Director taken as designated agent of the Board may be
 19 timely appealed to the Board for its review. Petitioners first
 20 contend in their Supplemental Points and Authorities that the
 21 Personnel Director did not take any action which would give the
 22 Board the right to review her actions under Rule 1.3. If peti-
 23 tioners are correct, then the Board would have had no actions by
 24 the Personnel Director to review; thus, the Board had no duty to
 25 exercise its discretion in any manner. If, on the other hand,
 26 petitioners are incorrect and that the Personnel Director in fact
 27 took some action with respect to petitioner Calhoun and his ex-
 28 tual placement in 14th position on the eligible list, or in the

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1 recommendation to the Board that Calhoun was not disqualified or
2 should not be given a hearing, then Rule 1.3 comes into question.

3 Pages 3, 4, and 5 of the transcript of the October 4,
4 1983 Board meeting shows a discussion of Board discretion to
5 grant an appeal hearing under Rule 1.3 based upon an abuse of
6 discretion by the Personnel Director. The Board in voting to
7 deny petitioners' hearing request did not make specific findings
8 as to the reasons for denial. However, it does not follow that
9 the Board failed to exercise its discretion under Rule 1.3. It
10 can be reasonably inferred that the denial of a hearing was based
11 on both the inapplicability of Rule 4.9 and a discretionary
12 denial under Rule 1.3. Before the Board's vote, the Board lis-
13 tened to a review of the specific factual circumstances under
14 which it had exercised its discretion under Rule 1.3 in past
15 cases when Rule 4.9 was deemed to have been not applicable.
16 Board Member Jonathan E. Mayhew, Chairperson, was one of the two
17 Board members to vote in favor of granting petitioner a hearing.
18 Mr. Mayhew states in his declaration, dated April 30, 1984, that
19 the Board did exercise its discretion in denying the appeal
20 because there was no automatic appeal under Rule 4.9 for disqual-
21 ification. Petitioners cannot require that respondent Board vote
22 to grant Calhoun a hearing, but only that they vote whether or
23 not to grant a hearing.

24 This Court concludes that respondent Board did exercise
25 its discretion and that under all the facts and circumstances, it
26 did not abuse its discretion.

27 Based upon the foregoing discussion, it is the decision
28 of this Court that judgment be entered in favor of respondents

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1 and against petitioners and that the peremptory writ of mandate
2 applied for herein be denied, and that respondents are entitled
3 to recover their costs of suit.

4 Further, it is ordered, adjudged and decreed that the
5 alternative writ of mandate granted herein on March 29, 1984, and
6 filed on April 6, 1984, be discharged.

7 This tentative decision shall become the statement of
8 decision, unless within ten (10) days after service any party
9 specifies controverted issues or makes proposals not covered in
10 the tentative decision.

11 DATED: AUG 27 1984



BENJAMIN A. DIAZ

JUDGE OF THE SUPERIOR COURT

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