CITY OF SACRAMENTO

11

CITY MANAGER'S OFFICE
RECEIVED
MAR 24 1981

JAMES P. JACKSON
CITY ATTORNEY

THEODORE H. KOBEY, JR.
ASSISTANT CITY ATTORNEY

LELIAND J. SAVAGE
DAVID BENJAMIN
SAM JACKSON
WILLIAM P. CARNAZZO
SABINA ANN GILBERT
STEPHEN B. NOCITA
DEPUTY CITY ATTORNEYS

DEPARTMENT OF LAW
812 TENTH ST.
SUITE 201
SACRAMENTO, CALIF. 95814
TELEPHONE (916) 449-5346

March 12, 1981

City Council
City Hall
Sacramento, California 95814

APPROVED
BY THE CITY COUNCIL
MAR 31 1981
OFFICE OF THE
CITY CLERK

RE: Claim of Eugene Piert

Honorable Members in Session:

SUMMARY

The damage claim of Eugene Piert should be denied.

BACKGROUND INFORMATION

Mr. Piert was laid off effective July 22, 1980. He later filed a grievance on that layoff (Attachment A). The grievance was answered by the Employee Relations Department (Attachment B). Thereafter the disputes set forth in Attachments A and B were settled (Attachment C--Letter from Local 39 dated January 14, 1981).

In the present claim Piert contends he was in reality terminated for disciplinary reasons. Civil Service Board Rule 12.6 requires that an appeal from a disciplinary action be taken within 10 days from the notice of disciplinary action.

ANALYSIS AND RECOMMENDATION

Mr. Piert's claim should be denied for the following reasons:

(1) His grievance and the reply thereto (Attachments A & D) both refer to the "discipline" allegation. The disputes set out in these documents were settled in full; such an agreement is an accord and payment is satisfaction of the accord. Thus, Mr. Piert's present claim has been satisfied.

(2) Mr. Piert failed to exhaust administrative remedies inasmuch as no appeal was filed from the the alleged disciplinary procedure.

(3) Mr. Piert's unemployment resulted from a layoff, and not from a disciplinary action.

For the above reasons the claim of Eugene Piert should be denied.

JAMES P. JACKSON
City Attorney

By _____
WILLIAM P. CARNAZZO
Deputy City Attorney

WPC:KMF

RECOMMENDATION APPROVED:

_____
CITY MANAGER

RE PROVISIONS IN MEMORANDA OF UNDERSTANDING EMPLOYEE RELATIONS

space is needed. See reverse side for instructions.

NAME	DATE
EUGENE A. PIERT	August 13, 1980
CLASSIFICATION	DEPARTMENT OR DIVISION
WATCHMAN	PARKS DEPARTMENT
GRIEVANT TO PERSONALLY INDICATE REPRESENTATIVE, IF ANY.	SIGNATURE OF REP. (Chief Officer if employee org.) Tarciano Rosario

FACTS CONSTITUTING GRIEVANCE

(SEE ATTACHED)

AMENDMENT TO THE GRIEVANCE FILED AUGUST 6, 1980

ON BEHALF OF EUGENE PIERT

ACTION REQUESTED

(SEE ATTACHED)

	SIGNATURE

FIRST LEVEL REVIEW

SUPERVISOR'S DECISION:	DATE RECEIVED

SUPERVISOR'S SIGNATURE	TITLE	DATE

GRIEVANT'S COMMENTS

THIS DECISION IS

☐ ACCEPTABLE ☐ NOT ACCEPTABLE BECAUSE:

	GRIEVANT'S SIGNATURE	DATE

SECOND LEVEL REVIEW

DECISION:	DATE RECEIVED

SUPERVISOR'S SIGNATURE	TITLE	DATE

GRIEVANT'S COMMENTS

THIS DECISION IS

☐ ACCEPTABLE ☐ NOT ACCEPTABLE BECAUSE:

	GRIEVANT'S SIGNATURE	DATE

THIRD LEVEL REVIEW

DECISION:	DATE RECEIVED

SIGNATURE	TITLE	DATE

GRIEVANT'S COMMENTS

THIS DECISION IS

☐ ACCEPTABLE ☐ NOT ACCEPTABLE BECAUSE:

	GRIEVANT'S SIGNATURE	DATE
	Eugene A. Piert	8-13-80

EMPLOYEE GRIEVANCE FORM—ATTACHMENT EMPLOYEE RELATIONS INSTRUCTIONS: Please print or type.

NAME	DATE
EUGENE A. PIERT	AUGUST 13, 1980
CLASSIFICATION	DEPARTMENT OR DIVISION
WATCHMAN	PARKS DEPARTMENT

IN ACCORD WITH ARTICLE XXI OF THE CURRENT MEMORANDUM OF UNDERSTANDING STATIONARY ENGINEERS, LOCAL 39, HEREBY FILES THIS GRIEVANCE ON BEHALF OF EUGENE A. PIERT.

LOCAL 39, ALLEGES THAT THE CITY OF SACRAMENTO IS IN VIOLATION OF ARTICLE XXXIV-LAYOFF SPECIFICALLY SECTION C, ITEM I, NON-CAREER EMPLOYEES.

SECTION C, ITEM I STATES: (a) WHEN A LAYOFF IS TO OCCUR WITHIN A JOB CLASSIFICATION WITHIN A DEPARTMENT, ALL NON-CAREER EMPLOYEES IN THE REGRESSION LADDER IN WHICH THAT JOB CLASSIFICATION IS FOUND SHALL BE LAID OFF FIRST, EXCEPT IN THE REFUSE COLLECTION AND OFF-STREET PARKING FUNCTIONS, WHICH SHALL BE COVERED BY A LETTER OF UNDERSTANDING BETWEEN THE PARTIES DATED JUNE 23, 1978. NON-CAREER EMPLOYEES SHALL BE LAID OFF IN THE ORDER PROVIDED BY ESTABLISHED DEPARTMENT PROCEDURES IF SUCH PROCEDURES HAVE NOT BEEN ESTABLISHED ON THE EFFECTIVE DATE OF THIS MEMORANDUM OR UNDERSTANDING, NON-CAREER EMPLOYEES SHALL BE LAID OFF IN SUCH ORDER AS THE DEPARTMENT HEAD SHALL PROVIDE. IN NO EVENT SHALL A CAREER EMPLOYEE SUFFER A LAYOFF UNTIL ALL NON-CAREER EMPLOYEES IN THE AFFECTED REGRESSION LADDER IN THE DEPARTMENT HAVE BEEN LAID OFF. (b) NOTWITHSTANDING SECTION c, 1) (a) ABOVE CETA EMPLOYEES SHALL BE TREATED IN THE MANNER PROVIDED BY THE FEDERAL REGULATIONS IN THAT, WITHIN EACH DEPARTMENT, CETA EMPLOYEES CANNOT WORK IN A JOB IF ANY CAREER EMPLOYEE IN THAT SAME OR SUBSTANTIALLY EQUIVALENT JOB IS LAID OFF OR DOWNGRADED. IT IS THE UNION'S CONTENTION THAT THE PARKS DEPARTMENT IS WORKING A EMPLOYEE CLASSIFIED AS A WATCHMAN AT THE CITY ZOO WHO HAS LESS CLASSIFICATION SENORITY THAN MR. PIERT AND IS ALSO A NON-CAREER EMPLOYEE. IT IS ALSO THE UNIONS CONTENTION THAT MR. PIERT WAS LAID OFF FOR PUNITIVE REASIONS.

ACTON REQUESTED:

LOCAL 39, HEREBY REQUEST THAT THE PARKS DEPARTMENT RETURN MR. PIERT TO A FULL TIME POSITION WITH FULL BACK PAY IMMEDIATELY.

CITY OF SACRAMENTO

DEPARTMENT OF EMPLOYEE RELATIONS
801 NINTH STREET, ROOM 105
SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 449-5424

STEVE LAKICH
DIRECTOR OF EMPLOYEE RELATIONS

August 27, 1980

Mr. Garland Rosauro
Business Representative
Stationary Engineers' Local 39
2715 Riverside Blvd.
Sacramento, CA 95818

Dear Mr. Rosauro:

This letter is in response to the grievance filed by Eugene Piert, Watchman, originally dated August 6, 1980. Mr. Piert alleges that his layoff from his permanent position of Watchman violated Article XXXIV, Section C (1) (a) of the 1979-81 Memorandum of Understanding between the City of Sacramento and the Stationary Engineers' Local 39, in that a non-career Watchman within his department continued working beyond his layoff date of July 22, 1980. It is also alleged that Mr. Piert was laid off for punitive reasons, although none are stated nor is any contract provision alleged violated. The requested remedy is that Mr. Piert be returned to his full-time position of Watchman with full back pay.

This grievance is being answered initially at the third step pursuant to Article XXXIV, Section G (4) which states all grievances relating to Article XXXIV, Layoff, shall be submitted directly to the third step. Although this grievance was incorrectly submitted to the first step on August 6, 1980, it was later modified and received at the third step on August 18, 1980.

The Sacramento City Council approved the City budget for fiscal year 1980-81 on June 24, 1980. This budget deleted several existing positions including one (1) permanent Watchman position in the Department of Community Services. Pursuant to Article XXXIV, the City determined that Mr. Piert possessed the least classification seniority of the Watchmen in Community Services. Mr. Piert was given a layoff letter on July 9, 1980, advising him of his layoff effective July 22, 1980. This letter met the required fourteen (14) days notice.

On July 18, 1980, Employee Relations notified the Community Services Department that the relief Watchman working at the Sacramento Zoo was covered by the Memorandum of Understanding with Local 39, and would also have to be laid off pursuant to Article XXXIV, Section C (1) (a) if the layoff of Mr. Piert was to be implemented. The Department had been unaware of this requirement, but once informed gave the relief Watchman a layoff notice effective August 10, 1980. During the period

"B"

from July 23, 1980 through August 10, 1980, Mr. Piert would have worked thirteen (13) days had he worked his normal schedule. The City hereby offers Mr. Piert the pay he would have received for those thirteen (13) days as the resolution to this grievance.

In response to the allegation that Mr. Piert was laid off for unspecified punitive reasons, the City contends that such issue is not grievable under the contract. Further, the City has the right to determine the number of employees and to layoff employees for "lack of work, lack of funds, abolishment of position, or for other reasons not reflecting discredit on an employee." The layoff procedure as stated in Article XXXIV provides the method for determining which specific employees will be affected by a layoff. In this instance one (1) permanent Watchman position in the Department of Community Services was abolished for reasons of operational efficiency. The resulting layoff procedure provided that Mr. Piert was the employee to be affected and laid off. Proper notice was given to Mr. Piert, and no violation of the Memorandum of Understanding occurred by his layoff, except for the previously mentioned Section C (1) (a) violation for which a remedy has already been offered.

It is hoped this letter will satisfactorily resolve this grievance.

Very truly yours,

Daniel Bonbrake

Daniel Bonbrake
Senior Employee Relations Representative

DB/hw

cc: Erling Linggi

Stationary Engineers, Local 39
INTERNATIONAL UNION OF OPERATING ENGINEERS AFL-CIO

ART VIAT
BUSINESS MANAGER-SECRETARY
14

January 14, 1981

Mr. Daniel Bonebrake
Senior Employee Relations Representative
801 Ninth Street, Room 105
Sacramento, California 95814

Dear Mr. Bonebrake:

This letter is to inform you that Mr. Eugene Piert will accept the thirteen (13) days pay the city offered as a resolution for the grievance I filed on his behalf August 6, 1980. Upon Mr. Piert receiving the thirteen (13) days pay, consider this matter resolved.

Sincerely,

Garland S. Rosauro

Garland S. Rosauro
Business Representative

"C"

CITY OF SACRAMENTO

OFFICE OF THE CITY CLERK
915 I STREET SACRAMENTO, CALIFORNIA 95814
CITY HALL ROOM 203 TELEPHONE (916) 449-5426

LORRAINE MAGANA
CITY CLERK

April 1, 1981

Mr. Eugene Piert
9412 Marcola Court
Sacramento, CA 95826

Dear Mr. Piert:

You are hereby notified that your application for leave to present a late claim was denied by the Sacramento City Council on March 31, 1981.

The application was reviewed and duly considered. The reasons given for the failure to file a claim within the time period provided by the California Government Code were determined to be insufficient, and did not meet the requirements of the Code for relief from the claim filing requirements.

Accordingly, I must inform you that your application is rejected.

Very truly yours,

Annie J. Mason
Deputy City Clerk

AJM:sj
cc: City Attorney
Finance Administration (2)

11

WARNING

If you wish to file a court action on this matter, you must first petition the appropriate court for an order relieving you from the provisions of Government Code Section 945.5. Such a petition must be filed with the court within six (6) months of the date your application for leave to present a late claim was denied.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

CITY OF SACRAMENTO

OFFICE OF THE CITY CLERK
915 I STREET SACRAMENTO, CALIFORNIA 95814
CITY HALL ROOM 203 TELEPHONE (916) 449-5426

LORRAINE MAGANA
CITY CLERK

April 3, 1981

Mr. Eugene Piert
9412 Marcola Court
Sacramento, CA 95826

Dear Mr. Piert:

Please disregard the letter which was sent to you under date of April 1, 1981, by Deputy City Clerk Anne J. Mason, as it was inappropriately referred to as a late claim.

Notice is hereby given that the claim described below, which was submitted by you, was rejected by the City Council on March 31, 1981. The City Employee Relations Division investigated the claim and with the advice of the City Attorney's Office determined that the claim should be denied.

The claim was submitted on your behalf for alleged damages in conjunction with your termination from City employment on July 22, 1980.

Please note the "Warning" set forth below. This "Warning" is required by State law to be included as part of this notice.

Sincerely,

Anne Mason
for

Lorraine Magana
City Clerk

LM:sj

cc: Finance Administration (2)

11

WARNING

Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See Government Code Section 945.6.

You may seek the advice of any attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

CITY OF SACRAMENTO

Mike

JAMES P. JACKSON
CITY ATTORNEY

THEODORE H. KOBEY, JR.
ASSISTANT CITY ATTORNEY

LELIAND J. SAVAGE
DAVID BENJAMIN
SAM JACKSON
WILLIAM P. CARNAZZO
SABINA ANN GILBERT
STEPHEN B. NOCITA
DEPUTY CITY ATTORNEYS

DEPARTMENT OF LAW
812 TENTH ST.
SUITE 201
SACRAMENTO, CALIF. 95814
TELEPHONE (916) 449-5346

March 5, 1981

MEMORANDUM

TO: DAN BONEBRAKE, Personnel Department

FROM: WILLIAM P. CARNAZZO, Deputy City Attorney

RE: EUGENE PIERT

Attached please find a copy of the claim filed by Piert against the City. We have 45 days within which to act upon the claim.

Normally, claims against the City are given to the adjustors to investigate and make recommendations. This is a case where the facts are all known, and the investigation is complete.

Please write up a chronological summary on the matter, delineating the facts of the case, the procedures undertaken by Piert, and the nature of the ultimate disposition. Please attach copies of the grievance documents and the settlement agreement.

Should you have any questions, please call.

William P. Carnazzo
WILLIAM P. CARNAZZO
Deputy City Attorney

WPC:kn

Attachment

Cc's: Steve Lakich, Director of Employee Relations
Lorraine Magana, City Clerk

CLAIM AGAINST THE CITY OF SACRAMENTO

You are hereby notified that (1) EUGENE PIERT whose Post Office address is (2) 9412 Marcola Court, Sacramento, CA 95826 claims damages from the City of Sacramento in the amount, computed as of the date of the presentation of this claim, of (3) $25,000.00. This claim is based upon (4)

( ) Personal injury; ( ) Property damage or loss; (X) Other, specify Wrongful Termination of Employment, which occurred on or about (5) Aug. / 27 / 1980, in the vicinity of (6) Sacramento, California under the following circumstances: (7) Wrongfully terminated from my job as watchman because of alleged theft of money under my control

The name of the City employee or employees causing the claimant's injury or loss under the circumstances described is (8) Daniel Bonbrake and others unknown to me.

or is unknown to the claimant.

The injuries to the claimant, (if any), as far as known at the date of presentation of the claim consists of (9) Monetary damages for loss of earnings from date of termiantion to the present time.

The amount of damages claimed as of the date of this claim is computed as follows:

Damages incurred to date (Itemized):

(10) $1,000.00 x 5 months $ 5,000.00

$

Estimate propsective damages as far as known:

(11) $ 20,000.00

$

(12) TOTAL AMOUNT CLAIMED as of presentation date of claim $ 25,000.00

All notices and communications with regard to this claim should be sent to claimant at (13) Cooke & Boggus Law Corporation, 2131 Capitol Avenue, Suite 200, Sacramento, California 95816

DATED: (14) March 2, , 1981

(15) SIGNED: A. Eugene Piert

Claimant, ~~xxx~~ EUGENE PIERT

~~xxxxxxxxxxxxxxxxxxxxxxxxxxxx~~

CLAIM AGAINST THE CITY OF SACRAMENTO

RECEIVED
CITY CLERK'S OFFICE
CITY OF SACRAMENTO
MAR 4 12 49 PM '81

You are hereby notified that (1) EUGENE PIERT, whose Post Office address is (2) 9412 Marcola Court, Sacramento, CA 95826 claims damages from the City of Sacramento in the amount, computed as of the date of the presentation of this claim, of (3) $25,000.00. This claim is based upon (4)

( ) Personal injury; ( ) Property damage or loss; (X) Other, specify Wrongful Termination of Employment, which occurred on or about (5) Aug. / 27 / 1980, in the vicinity of (6) Sacramento, California under the following circumstances: (7) Wrongfully terminated from my job as watchman because of alleged theft of money under my control

The name of the City employee or employees causing the claimant's injury or loss under the circumstances described is (8) Daniel Bonbrake and others unknown to me.

or is unknown to the claimant.

The injuries to the claimant, (if any), as far as known at the date of presentation of the claim consists of (9) Monetary damages for loss of earnings from date of termiantion to the present time.

The amount of damages claimed as of the date of this claim is computed as follows:

Damages incurred to date (Itemized):

(10) $1,000.00 x 5 months $ 5,000.00

$

Estimate propsective damages as far as known:

(11) $ 20,000.00

$

(12) TOTAL AMOUNT CLAIMED as of presentation date of claim $ 25,000.00

All notices and communications with regard to this claim should be sent to claimant at (13) Cooke & Boggus Law Corporation, 2131 Capitol Avenue, Suite 200, Sacramento, California 95816

DATED: (14) March 2, 1981

(15) SIGNED: A. Eugene A Piert

Claimant, ~~xxx~~ EUGENE PIERT
~~xxxxxxxxxxxxxxxxxxxxxxxxxxxx~~

RANDOLPH COOKE, ESQ.
LAW CORPORATION

2131 CAPITOL AVENUE, SUITE 200
916/441-2889 SACRAMENTO, CALIFORNIA 95816

March 3, 1981

City Clerk's Office
Room 308
City Hall
915 Eye Street
Sacramento, CA 95814

Re: Piert vs City of Sacramento

Gentleperson:

Enclosed please find original and five copies of Claim of Mr. Eugene Piert. Kindly acknowledge receipt of the claim in question by returning one copy of said Claim to the undersigned in the enclosed self-addressed, stamped envelope.

Thanking you for your cooperation in this matter.

Kindest regards,

COOKE & BOGGUS LAW CORPORATION

By: Francis O. Boggus
FRANCIS O. BOGGUS

FOB:jch

Encls: Claim for Damages (6)
Self-addressed, stamped envelope

3381

CLAIM AGAINST THE CITY OF SACRAMENTO

You are hereby notified that (1) EUGENE PIERT whose Post Office address is (2) 9412 Marcola Court, Sacramento, CA 95826 claims damages from the City of Sacramento in the amount, computed as of the date of the presentation of this claim, of (3) $25,000.00. This claim is based upon (4)

( ) Personal injury; ( ) Property damage or loss; (X) Other, specify Wrongful Termination of Employment, which occurred on or about (5) Aug. / 27 / 1980, in the vicinity of (6) Sacramento, California under the following circumstances: (7) Wrongfully terminated from my job as watchman because of alleged theft of money under my control

The name of the City employee or employees causing the claimant's injury or loss under the circumstances described is (8) Daniel Bonbrake and others unknown to me.

or is unknown to the claimant.

The injuries to the claimant, (if any), as far as known at the date of presentation of the claim consists of (9) Monetary damages for loss of earnings from date of termiantion to the present time.

The amount of damages claimed as of the date of this claim is computed as follows:

Damages incurred to date (Itemized):

(10) $1,000.00 x 5 months $ 5,000.00

$

Estimate propsective damages as far as known:

(11) $ 20,000.00

$

(12) TOTAL AMOUNT CLAIMED as of presentation date of claim $ 25,000.00

All notices and communications with regard to this claim should be sent to claimant at (13) Cooke & Boggus Law Corporation, 2131 Capitol Avenue, Suite 200, Sacramento, California 95816

DATED: (14) March 2, , 1981

(15) SIGNED: D. Eugene A Piert

Claimant, ~~xxx~~ EUGENE PIERT

~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~