



CITY OF SACRAMENTO

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

CITY MANAGER'S OFFICE
RECEIVED
MAR 6 1980

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SAM JACKSON
WILLIAM P. CARNAZZO
SABINA ANN GILBERT
STEPHEN B. NOCITA
DEPUTY CITY ATTORNEYS

March 5, 1980

Honorable City Council
Council Chamber
City Hall
Sacramento, California 95814

APPROVED MTN. RL
BY THE CITY COUNCIL

MAR 11 1980

DISPOSITION

OFFICE OF THE
CITY CLERK

RE: HEARING FOR ELBERT JOHNSON ON BACK PAY

Members in Session:

SUMMARY

The State Office of Administrative Hearings, to which the Elbert Johnson matter was referred, has indicated that it cannot make a decision on the ultimate issue involved: whether the City Council should award back pay and benefits to Officer Johnson. The City Council must now determine whether it would like a recommended decision on the ultimate issue and, if so, who should conduct the hearing.

BACKGROUND

Officer Johnson was dismissed from his duties as a Sacramento police officer in 1962. He was reinstated after a hearing by the Civil Service Board in 1969. Since 1970, he has made numerous requests to the City for back pay and benefits for the period between his dismissal and his reinstatement. In September, 1979, the City Council voted to grant Officer Johnson a hearing. Although some Council members expressed interest in having particular issues decided by the hearing officer, the Council as a body

1/ For the purpose of understanding later developments (discussed below), it is important to note that Officer Johnson's request is based on moral, not legal, grounds. Over the past 11 years, Officer Johnson has brought three lawsuits against the City and lost all of them on the ground, among others, that the statute of limitations had run on his claim. I think all parties now agree that the City has no legal obligation to award back pay and benefits to Officer Johnson.

did not specify the precise issues to be decided. At that time, staff indicated that the State Office of Administrative Hearings (OAH), the same office which conducts hearings for the Civil Service Board and the Retirement Hearing Commission, would conduct the hearing on the Johnson matter. The decision of the hearing officer would, of course, be a recommended decision only, with the final decision to be made by the City Council.

Based upon the discussion among Council members, the City Manager suggested to David Simmons, Officer Johnson's attorney, eight issues for the hearing officer to decide. (See Mr. Slipe's letter dated November 6, 1979, and attached hereto.) The eighth issue posed by the Manager was the ultimate one:

If a court were to declare that the City could legally give back pay or benefits to Officer Johnson, then, in your opinion, shall back pay or benefits be paid to Elbert Johnson?

In his reply dated November 13, 1979 (also attached hereto), Mr. Simmons stated that he had no objection to the eight questions, but would not agree

. . . to allow the hearing officer to get off the hook so to speak by allowing the hearing officer to make a finding that he cannot make a decision. It has to be yes or no, win or lose.

Hearing dates of March 5, 6 and 7 were then scheduled with OAH. On March 3, Mr. Simmons, Dan Bonebrake and I talked with Charles Bobby, the administrative law judge assigned to the case. After discussing the background of the case and the eight issues presented, Judge Bobby indicated that question eight called for a political or moral judgment, not a legal judgment, and as such it was beyond his jurisdiction (and that of OAH) to decide. He was, however, willing and able to decide the other seven issues presented. After the meeting, Mr. Simmons, Mr. Bonebrake and I discussed the matter further and Mr. Simmons, consistent with the position taken in his letter to Mr. Slipe, stated that he would not go ahead with the hearing unless he could get a decision on the ultimate issue. We therefore agreed to cancel the hearing dates and share the cancellation charge, if any, on a 50/50 basis.

As it appears that this office will represent the City Council in any hearing which may be held, we would like the Council's guidance on the following questions:

1. Does the City Council in fact want a recommended decision on the ultimate issue, namely, assuming it is legal to do so, should the City Council award back pay and benefits to Officer Johnson?

2. If not, the remaining seven issues could be decided by a hearing officer (including OAH) or by the Council itself.

3. If, however, the Council does want a recommended decision on the ultimate issue, who would the Council like to hear the matter? Possible hearing officers might be:

- a. The full City Council; or,
- b. a committee of the Council, or an individual Council member; or
- c. an individual third party appointed by the Council; or
- d. a panel of third parties appointed by the Council; or
- e. the Civil Service Board.

4. Are there any others specific issues, in place of or in addition to the eight issues presented in Mr. Slipe's letter, which the Council would like to have decided?

FINANCIAL IMPACT

Officer Johnson is seeking approximately \$90,000 in back pay, including interest. It is likely that a similar amount may be claimed by Officer George Allen, who was dismissed at the same time and under the same circumstances as Officer Johnson, and reinstated at approximately the same time.

RECOMMENDATION

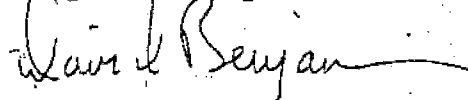
It is, perhaps, anomalous for this office to offer a recommendation, as we have consistently advised that there is no legal obligation to award back pay under the present circumstances, and that any such award would probably be an unlawful expenditure of public funds. Nevertheless, we do have a recommendation and it is based on the following considerations. The ultimate issue in this case is, as Judge Bobby noted, a political and moral issue. Only the City Council can make the final decision. If a third party is asked to render a recommended decision on the issue, he

March 5, 1980

(she or they) will have no basis on which to make the decision other than his personal political and moral judgment. There is, of course, no way to predict whether a person's judgment in such areas will be good or bad, sound or not sound. The result, therefore, regardless of what the decision is, could be a source of confusion rather than illumination. Therefore, we recommend that the question of whether the City should pay Officer Johnson's claim should not be submitted to a third party, even for an advisory opinion, but should be heard and decided by the City Council.

Very truly yours,

JAMES P. JACKSON
City Attorney



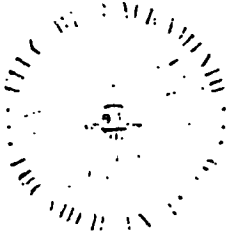
DAVID BENJAMIN
Deputy City Attorney

RECOMMENDATION APPROVED:


City Manager

DB:mb

attachments



CITY OF SACRAMENTO
CALIFORNIA

OFFICE OF THE
CITY MANAGER

November 6, 1979

CITY HALL
915 I STREET - 95814
1916, 449-5704

David Simmons, Attorney at Law
117 J Street
Sacramento, CA 95814

Dear Dave:

In the matter of Police Officer Elbert Johnson's request for back pay and benefits arising from his dismissal on June 21, 1962, we have prepared a list of questions to be posed to the hearing officer. Would you please review them and let me know if you concur or have proposed revisions.

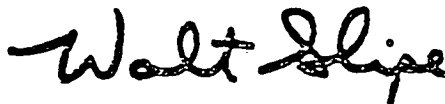
I believe it is essential that the hearing focus on the issue of back pay and benefits and not be a retrial of what may or may not have transpired seventeen years ago. In fact, we are proposing that it be agreed by the parties that the circumstances of the dismissal will not be reopened but will be limited to a prepared statement of stipulated facts. If the Hearing Officer believes that he cannot make a decision based upon the evidence presented, then he will so indicate, but it is requested that the Hearing Officer make a decision on the questions to the extent possible.

1. Did Officer Johnson or his attorney request back pay or benefits at any time prior to his reinstatement in 1969? If so, what was requested by Officer Johnson or his attorney in the way of back pay or benefits?
2. Did Officer Johnson or his attorney at any time prior to his reinstatement in 1969 waive or say he was not requesting back pay or benefits from the City?
3. Was Officer Johnson or his attorney aware of the fact that Civil Service Board rule no. _____ prohibited payment of back pay to anyone reinstated under that rule? If so, when did he or his attorney become aware of such fact?
4. Was coercion used by either the City staff or the Civil Service Board to convince Officer Johnson or his attorney to refrain from requesting back pay prior to or at the time of Officer Johnson's reinstatement in 1969?
5. What amount is Officer Johnson requesting in back pay or benefits at this time?

6. What is the total amount of back pay and benefits which were lost by Officer Johnson because of his dismissal from 1962 to 1969 as a City police officer? How much did Officer Johnson earn from other sources during the period from 1962 to 1969?
7. What is the total amount of such back pay and benefits for the officer if annual interest at 7% compounded is added to the above figures?
8. If a court were to declare that the City could legally give back pay or benefits to Officer Johnson, then, in your opinion, should back pay or benefits be paid to Elbert Johnson? If so, how much?

I am sure we are all anxious to resolve this matter.

Sincerely,



Walter J. Slipes
City Manager

cc: Mayor
Councilmembers
Director of Personnel
✓ Director of Employee Relations
City Attorney

David P. Simmons
Lawyer

OLD TOWN SACRAMENTO • 117 J STREET, SUITE 203
SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 444-9710

November 13, 1979

Walter J. Slipe
City Manager
City of Sacramento
915 I Street
Sacramento, CA 95814

RE: Elbert Johnson

Dear Walt.

I am in receipt of your letter dated November 6, 1979,
regarding the above-referenced matter.

I agree that the hearing should focus on the issue of back
pay and benefits only and am willing to submit the factual
background by way of a prepared statement of facts.

I will not agree to allow the hearing officer to get off
the hook so to speak by allowing the hearing officer to
make a finding that he cannot make a decision. It has to be
yes or no, win or lose.

I have no objection to the eight questions you propose,
assuming that "benefits" includes such matters as seniority,
rights, vacation accumulation, etc.

Please advise as to the earliest possible hearing date.

Very truly yours,

DAVID P. SIMMONS

DPS/mf

cc: Mayor Phil Isenberg
Councilmembers
Director of Personnel
Director of Employee Relations
City Attorney



CITY OF SACRAMENTO

OFFICE OF THE CITY CLERK

915 I STREET

CITY HALL ROOM 203

SACRAMENTO, CALIFORNIA 95814

TELEPHONE (916) 449-5426

LORRAINE MAGANA
CITY CLERK

MEMORANDUM

TO: JAMES JACKSON, CITY ATTORNEY

FROM: JACI PAPPAS, ACTING CITY CLERK

SUBJECT: REFERRAL OF ITEM NO. 45, AGENDA OF MARCH 11, 1980

DATE: MARCH 12, 1980

In the matter of Elbert Johnson's request for back pay, Council motion was as follows:

Items 1 - 7: Referred to independent professional hearing officer or arbiter for advisory report back to Council.

Item 8: To be decided by Council at time advisory report is received.

Staff to report back re: choice of hearing officer or arbiter and when advisory report due to Council.

cc: Director of Personnel
Director of Employee Relations