

In the Matter of the Calculation of Final Compensation of:

**Bruce Malkenhorst, Sr., Respondent,
and
City of Vernon, Respondent**

OAH Case No. 2013080917

CalPERS Case No. 2012-0671

EXHIBIT GGG (5 PAGES)

**MINUTES OF A REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF VERNON HELD
AUGUST 1, 1978, AT TWO O'CLOCK P.M., IN
THE COUNCIL CHAMBER OF THE CITY HALL,
LOCATED AT 4305 SANTA FE AVENUE,
VERNON, CALIFORNIA**

COUNCIL PRESENT: Ybarra, Gonzales, McCormick, Malburg

COUNCIL ABSENT : Kaeser (seated at 4:00 o'clock p. m.)

The meeting was called to order by Mayor Malburg.

It was moved by Ybarra, seconded by Gonzales that the City Council go into recess until 2:20 o'clock, p. m., Motion carried.

The City Council at 2:20 o'clock p. m., reconvened session, all members of the council, except Kaeser, being present.

It was moved by Gonzales, seconded by Ybarra, that the minutes of the City Council meetings held July 18 and July 24, July 27, 1978, be approved as written and submitted. Motion carried.

Communication from Arthur E. Nelson, Jr., Director of Public Works/ Building advising that the work on the City Hall Landscaping under Contract No. 415 has been completed, recommending that the work be accepted and that authority be granted to pay the contractor, Enns and Gage of La Canada, California, the remaining ten percent of the contract amount, \$3,323.49, thirty-five days after acceptance, was presented.

Resolution No. 4591 - A Resolution of the City Council of the City of Vernon Accepting the Work for City Hall Landscaping in Accordance with Contract No. 415 of the City of Vernon, was presented.

It was moved by Ybarra, seconded by Gonzales, that Resolution No. 4591 be approved and adopted. Motion carried.

AYES : Ybarra, Gonzales, McCormick, Malburg
NOES : None
Absent : Kaeser

"Warrant Register No. 506" covering claims and demands presented during the period July 16 to 31, which includes Demands Nos. 8-1600 to 8-1686 (both inclusive) drawn on the United California Bank, totaling \$3,739,809.16 (Light and Power Warrants \$3,605,298.57) (Accounting Period June and August 1978) was examined and audited.

It was moved by McCormick, seconded by Ybarra that "Warrant Register No. 506" be approved and payment authorized for Demands Nos. 8-1600 to 8-1686 (both inclusive), with no exceptions. Motion carried.

Communication from Rita M. Luich, Secretary, Library Board of Trustees, advising that the term of Trustees Gonzales and Kaeser will expire June 30, 1978, requesting appointment to a new term, effective July 1, 1978, was presented.

Mayor Malburg appointed Hilarlo Gonzales and Keith K. Kaeser as members of the Board of Library Trustees, effective July 1, 1978, each for a three-year term.

It was moved by Ybarra, seconded by McCormick, that the appointment of Hilarlo Gonzales and Keith K. Kaeser as Members of the Board of Library Trustees, effective July 1, 1978, for a three-year term, be approved. Motion carried.

-2-

8/1/78

Claim for Damages and communication dated July 21, 1978, submitted by Carolyn J. Frank, Attorney for Claimant Mark Hall, 1714 W. 104th Street, Los Angeles, California, filed with City Clerk July 27, 1978 (date of loss May 17, 1978 - no amount specified - to be given when ascertained) was presented.

It was moved by Ybarra, seconded by McCormick, that the Claim for Damages and communication dated July 21, 1978, submitted by Carolyn J. Frank, Attorney for Claimant Mark Hall, be deferred until report is received from Carl Warren & Company, Insurance Adjusters. Motion carried.

Activity Log of the Police Department for the period July 16 - 31, 1978 was presented.

It was moved by Ybarra, seconded by Gonzales, that the Activity Log of the Police Department for the period July 16 - 31, 1978, be received and filed. Motion carried.

Communication from the City Clerk-Director of Finance, transmitting copies of the minutes of the Finance Committee meetings held July 10, 17 and 24, 1978, was presented.

It was moved by Ybarra, seconded by Gonzales, that the minutes of the Finance Committee meetings held July 10, 17 and 24, 1978, be approved and adopted as submitted. Motion carried.

Ordinance No. 883 - An Ordinance of the City Council of the City of Vernon Repealing Article II, Sections 2.6 Through 2.9 of the Code of the City of Vernon and Adding New Article II, Section 2.6 Through 2.9 of the Code of the City of Vernon Establishing the Office of City Administrator and Repealing All Ordinances and Parts of Ordinances in Conflict Therewith, was presented.

It was moved by Gonzales, seconded by Ybarra, that in accordance with Government Code Section 36934, the reading of Ordinance No. 883 in full be waived; and that Ordinance No. 883 receive a second and final reading by title. (Copy to each member of the City Council) Motion carried.

AYES : Gonzales, Ybarra, McCormick, Malburg
NOES : None
Absent : Kaeser

Public Hearing to consider forfeiture of Union Pacific Railroad franchises for crossings that require repair or maintenance, as listed in communication from Arthur E. Nelson, Jr., Director of Public Works/Building, dated March 13, 1978.

At 2:30 o'clock, p. m., the City Clerk announced that this was the time and place for the above-mentioned hearing.

At this time, no representative from the Union Pacific Railroad was present, after an inquiry by the Mayor. The Mayor requested the Director of Public Works to proceed with his presentation. Arthur E. Nelson, Jr., gave a brief history of the correspondence germane to this issue between the railroad and the Public Works Department.

Mr. Nelson advised that he had contacted Mr. F. D. Wengert's office, and understood from the second in command in the Division Engineer's Office that a representative would attend the hearing. At this time, Victor Vaits, Civil Engineer from the Public Works Department, proceeded to show photographs on a projector and screen of the crossings in question.

172

-3-

8/1/78

At approximately 2:36 o'clock, p. m., two gentlemen entered the council chamber. Mayor Malburg asked if there was anyone present on behalf of the Union Pacific Railroad, and if so, to state their name and capacity. Mr. Leland Banks announced that he was the Road Master for the Union Pacific, and Mr. Richard Gonzalez announced that he was from the Engineering Department of the U. P. R. R.

Mayor Malburg asked if there were any comments either representative wished to make at this time. Mr. Gonzalez replied that Mr. Banks requested Mr. Vaits to accompany him (Mr. Banks) into the field to inspect the crossings listed to ascertain what action could be taken, and having received a negative response, did not follow up on the matter for the time being.

Mr. Nelson replied that the Public Works Department furnished the railroad with the grades for the crossings where they had need for them. Mr. Banks answered that he wanted suggestions from Mr. Vaits, but that the railroad did the patch work that was necessary, in some cases. Mr. Nelson stated the city wanted a good workmanlike job that would not immediately deteriorate.

Further discussion concerned the extent and amount of work required to repair said crossings, railroad representatives claiming that patch work, repaving and repair would be sufficient in the absence of a statement from Mr. Vaits that the crossings should be re-worked in their entirety, if necessary.

Mr. Nelson reported that the conditions complained of have existed for more than a year and after several attempts to get the railroad to rectify the situation, no response was forthcoming from the U. P. R. R.

Mayor Malburg expressed concern for the safety and welfare of the public from the evidence that was adduced, and asked the City Attorney if he had any comment to make.

David Brearley, City Attorney, indicated that the spur track crossings provided to the railroad under authority of the City of Vernon Code, specifically Section 19.4, section c, requires that the grantee (Railroad) shall repair, pave or repave that portion of the street occupied by the spur track, including the area within two feet outside each rail thereof, under the instruction and to the satisfaction of the City Engineer; that the railroad was responsible for keeping the crossing in good condition at all times. Further, Mr. Brearley stated, from what he concluded, after viewing the slides shown, there being no proof to the contrary, that the railroad did not adhere to the conditions specified in Section 19.4(c) and that the City Council had the remedy of forfeiting the franchise granted, if any of the conditions are violated under the terms of the franchise.

Mr. Gonzalez stated that he spoke with the U. P. law department, and not being a lawyer, was not going to repeat second hand what the real estate or law department response to him was, but that taking out the tracks within the City of Vernon would certainly entail a hardship to the services and benefits to Vernon industry. Mr. Nelson commented that he appreciated that spur tracks serve industry, but complaints from the motoring public must be answered and action taken to obviate hazardous conditions.

Further discussion centered on permits required to rehabilitate crossings, U. P.'s priority projects, budget limitations, coordination between the City and U. P. R. R., extent and limitation of the work to be done, reaching an understanding on scheduling the time of and description of the restoration of crossings involved and willingness to improve the condition of the crossings.

Mayor Malburg requested the City Attorney's opinion how to effect a satisfactory resolution of the issue without getting involved in dilatory procedures.

173

-4-

8/1/78

The City Attorney's suggestion was that the Director of Public Works and the representatives from the U. P. confer within the next two weeks on a time schedule, establishing work priority, description of work to be done, in a written agreement acceptable to both parties, to hold a decision in abeyance at this time, and present any agreement reached for recommendation, approval and action of the City Council to the next regularly scheduled meeting August 15, 1978, at 2:30 p. m.

It was moved by Ybarra, seconded by Gonzales, that this hearing be continued at the next regularly scheduled meeting of the City Council, August 15, 1978, at 2:30 o'clock, p. m., Motion carried.

Communication from Jensen Industries, 1946 East 46th Street, Vernon, California, requesting the council to waive the payment of an additional plan check fee, was presented. Mr. H. Ainsley, President of Jensen Industries, appeared as the petitioner for said request.

It was moved by McCormick, seconded by Gonzales, that the council waive payment of an additional plan check fee for Jensen Industries. Motion carried.

At this time, 3:42 o'clock p. m., it was moved by Ybarra, seconded by Gonzales, that the City Council go into executive session under Attorney/Client privilege. Motion carried.

All persons, with the exception of the City Clerk and the City Attorney were excluded from the executive session.

Mayor Malburg ordered that all communications to and from the executive session were deemed private.

At 4:00 o'clock, p. m., Councilman Kaeser was seated on the council.

At this time, 4:07 o'clock, p. m., it was moved by Gonzales, seconded by Ybarra, that the City Council go out of executive session and resume regular session. Motion carried.

It was moved by Gonzales, seconded by Ybarra, that the City Council authorize and instruct the M. E. R. R. to send the proposed letter dated August 1, 1978 to the Fire Fighters' Association, identifying the following seventeen firemen had been selected by lottery to be laid off effective August 31 and October 31, 1978:

1. Willard Gibson
2. Samuel Gierhan
3. Barry Fretwell
4. Ronald Crowder
5. James Wolcott
6. Michael Farrier
7. Gerald Lohrke
8. Joe Stout
9. Melvin Wiles
10. David Perkins
11. Donald Curran
12. Jack Hardy
13. Lloyd Hudson
14. Lewis Matteson
15. Ronald Hedlund
16. John Marx
17. Daniel D. Simon

174

-5-

8/1/78

In accordance with discussion concerning re-organization of the Department of Health and Environmental Control, it was moved by Gonzales, seconded by Kaeser, that Arthur E. Nelson, Jr., in addition to his duties as Director of Public Works/Building, be appointed Health Officer of the City of Vernon, effective August 1, 1978. Motion carried.

There being no further business to come before the meeting, it was moved by Kaeser, seconded by Ybarra, that the meeting be adjourned until two o'clock, p. m., August 15, 1978, in the Council Chamber of the City Hall, located at 4305 Santa Fe Avenue, Vernon, California.


LEONIS C. MALBURG - Mayor

ATTEST:


BRUCE V. MALKENHORST, City Clerk -
Director of Finance

175

COV-MALSR 00010665

GGG-5