

MEMORANDUM OF LAW

DATE: March 15, 1993

TO: Lucy Grasmick, Risk Management Department

FROM: City Attorney

SUBJECT: Indemnification of Employees for Lost Tools

In December of 1992, a break-in occurred at the City's Chollas work site. A City vehicle, a VCR and the tools of City employee, Lorenzo Guzman, were stolen. Mr. Guzman has submitted a claim for reimbursement for the value of the tools. Risk Management has denied the claim based upon Administrative Regulation 35.70 which precludes reimbursement for "mysterious disappearance or theft." You have asked if the claim was appropriately denied.

The current Memorandum of Understanding ("MOU") between the City and AFSCME Local 127 ("Local 127"), Article 25(A)1(a) provides:

a. Employees in the following job classifications shall provide and maintain the outfitting of tools and tool boxes at their own expense:

Equipment Service Writer  
Equipment Mechanic  
Body and Fender Mechanic  
Carpenter  
Apprentice - Equipment Mechanic  
Apprentice - Body and Fender Mechanic  
Apprentice - Carpenter

The article further explains at subsection (B)2:  
"Employees losing tools or causing damage to tools through negligence or willful conduct will be required to replace them at the employee's expense and/or be disciplined under Civil Service Rule XI, Section 3."

From the facts as you have reported them, there is no indication of negligence or willful conduct on the part of Mr. Guzman. Rather, Mr. Guzman has complied with all department regulations regarding storage of his tools. The theft appears to

be one of many occurring at City work sites. Under this scenario, the MOU indicates Mr. Guzman's claim should be honored.

Additionally, while Administrative Regulation 35.70 purports to exclude reimbursement for losses due to theft, the Administrative Regulation is at odds with state legislation and case law. Labor Code section 2802 provides:

An employer shall indemnify his employee for all that the employee necessarily expends or loses in direct consequence of the discharge of his duties as such, or of his obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying such directions, believed them to be unlawful.

The court in *Machinists Automotive Trades Dist. Lodge v. Utility Trailers Sales Co.*, 141 Cal. App. 3d 80 (1983) interpreted this statute. The facts in the Machinists case are identical to the facts in Mr. Guzman's case. In Machinists, the employee left his tools in the employer's locked yard because the tools were too heavy to transport routinely. The employee's tools were subsequently stolen in a weekend burglary. In reaching its determination that the employee must be reimbursed for his loss, the court stated:

We hold that section 2802 applies where, as here, the custom of the trade requires the employee to supply his own tools for the performance of his duties, and while the employer does not require the employee to leave his tools on the employer's premises, the tools are too heavy to be transported routinely to and from the place of employment. Bowers' tools were left locked on the premises in the inner room provided by the Employer. The loss therefore was incurred in direct consequence of the discharge of the employee's duties, and was therefore incidental to his employment.

*Machinists Automotive Trades Dist. Lodge v. Utility Trailers Sales Co.*, 141 Cal. App. 3d 80, 86 (1983).

In the absence of a mysterious disappearance or a theft under questionable circumstances, the exclusion of AR 35.70 is

not applicable. Therefore, based upon the provisions of the MOU and the applicable state law, Mr. Guzman must be reimbursed for the loss he sustained by the theft of his tools.

If you have further questions, please feel free to contact me.

JOHN W. WITT, City Attorney

By

Sharon A. Marshall

Deputy City Attorney

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cc Larry Gardner

Jerry Johnson

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