

XV. Battalion Chief Pay Raise Requests

On May 11, 2015, Battalion Chief David Allen emailed Sisson to request a meeting about his compensation and that of the compensation of the other battalion chiefs “following the recent ratification of the Collective Bargaining Agreement with the Local 707 [labor union].” Sisson responded on the same day, noting that the battalion chiefs were contracted individually and their pay was not dependent on the collective bargaining agreement with the union. Sisson suggested that the matter be discussed with Schmitt, and then Schmitt or Glover “request a meeting with City Hall staff to discuss.” Sisson concluded with a statement that typically there is a significant change in the duties of a position that triggers the pay adjustment. (Exhibit XV-1: May 11, 2015, email from Sisson to Allen, Schmitt, and Glover)

Glover solicited statements from the battalion chiefs as to justification for their requested increase in pay. (Glover 48: 1-20) Glover received write-ups from Allen, Jester, and Peake in June 2015. (See Exhibit XV-2- Jester letter and XV-3- Peake letter) Glover stated that it was not until late July that he received write-ups from the other two battalion chiefs. Jester’s write-up did not distinguish between old or new duties since his last pay increase, but neither Glover nor Schmitt read the statements in that much detail. (Glover 291:10-291:21)

14 Did you get together with Chief Schmitt and
15 kind of refine that to find out what was new and what was
16 old with Chief Jester or did you not go to that extreme?
17 **A No, I didn't go to that extreme. We know**
18 **what's new. I'm sure that HR probably doesn't know**
19 **what's new. Yeah, that probably could have been done,**
20 **but, no, we did not go to that extreme. It was more of a**
21 **case of the issue of wage compression.**

(Glover 291:14-21)

Instead of requesting a meeting to discuss the pay increases, as Sisson's email asked them to do, Glover instead had Personnel Action forms drafted for the raises. Glover provided the following wording for each: "Salary increase of 5% proposed due to a significant increased range of Battalion Chief responsibilities, additional duties, and to ensure internal equity in pay with comparison to top paid Fire Captains." (Exhibit XV-4: July 29, 2015, email from Glover to Cotton) In addition, Glover had a Personnel Action form drafted for James Hobbs making a "correction based on the Base Salary for Battalion Chief position" retroactive to April 2014. The background is that Hobbs was not making the same pay as the other battalion chiefs, an issue apparently undetected by Hobbs, Schmitt, or Glover until recently. Glover signed and dated the Personnel Action forms July 29, 2015, and had them sent to HR. (composite Exhibit XV-5: Personnel Action forms for battalion chiefs) Glover did not send the battalion chief write-ups with the Personnel Action forms or request a meeting. (Glover 289:15-21)

Sisson did nothing with the Personnel Action forms sent by Schmitt and Glover. According to Sisson, he had communicated in his previous email that requesting a meeting, not executing a Personnel Action form, was the suggested method for discussing a pay increase for a contracted employee.

On August 20, 2015, Allen emailed Glover to tell him that his payroll was not increased. Glover responded, "No surprise. I will let Chief Schmitt know." (Exhibit XV-6: August 20, 2015, email from Glover to Allen and from Allen to Glover)

On August 26, 2015, Glover asked Sisson about the Personnel Action forms just before the Mayor's Recognition Program began. Sisson said he had received them, and described that he thought Glover's sending the Personnel Action forms was a "joke." Glover took offense at Sisson's reaction, and wrote Sisson an email on August 28, 2015, strongly criticizing Sisson:

Your proclivity to act as self-appointed superior is extremely inappropriate and unacceptable. As a friendly reminder and contrary to what you might believe, no one in the fire department staff works for you. Furthermore, I do not believe that you have the latitude nor authority from

an HR perspective to make decisions of this magnitude unilaterally. As I have discussed with you previously, I expect a higher level of professionalism from the city's Human Resources Department when it comes to personnel issues. I especially expect it from the top when it concerns employee's livelihoods. I am not certain if it's the case with other departments in the city, but your pattern of subjectivity towards the fire department is apparent and very objectionable.

Moving forward, I hope that you would make an effort to conduct yourself in a more professional manner.

(Exhibit XV-7: August 25, 2015, email from Glover to Sisson, copied to Schmitt)

Glover's email can reasonably be read to express an expectation that Sisson was to simply execute the pay increases set forth in the Personnel Action forms. This expectation was not consistent with Sisson's guidance in his May 2015 email to "request a meeting with City Hall staff to discuss." (Exhibit XV-1) Glover stated during this investigation that he sent the Personnel Action forms merely to start a dialog, but Glover did not send the write-ups prepared by the battalion chiefs, and Glover did not initiate any contact with Sisson until he happened to see Sisson at the award ceremony a month later. Even then, instead of scheduling a meeting, Glover wrote an email insulting Sisson. Based on the fact that Glover's email was sent two days after the brief conversation with Sisson, and that Glover sent to Schmitt an earlier draft of the insulting email to Sisson several hours before, this was not simply a spur of the moment reaction. (Exhibit XV-8: August 28, 2015, email from Glover to Schmitt) The email only became more insulting after sending the draft first to Schmitt.

Despite the insults from Glover on this issue, neither Glover nor Schmitt acted further on this issue. Allen emailed Glover on December 2, 2015, asking Glover to let him know when a meeting could be held on the pay issue. Glover responded on December 2, 2015:

Battalion Chief Allen,

I have forwarded you concerns previously in the manner prescribed; however, there has been no formal response or movement to address the

issues that you have brought forth. Although it was suggested that compensation issues be discussed with me, there appears to be no official process in place that will enable me to resolve them.

Therefore, I will again forward your request so that you can perhaps meet with the parties who have the authority to adequately address your compensation. I apologize for the delay in trying to get a resolution.

Please let me know if you have any additional questions or concerns.

(Exhibit XV-9: December 2, 2015, email from Glover to Allen, copies to Olson, Sisson, and Schmitt)

By coincidence, one day later, Schmitt was informed that there was money available for pay increases to non-bargaining unit employees. All City departments were informed in mid-October 2015 that there would be money available to provide pay increases to non-bargaining unit employees. (Exhibit XV-10: October 15, 2015 email from McClellan to Schmitt and Exhibit XV-11: October 15, 2015, email from Yvette McClellan to department heads and)

Olson did not receive an apportionment from Schmitt, and, therefore, the first allocation of these additional funds, out of \$14,200 allocated to the Fire Department, was to provide administrative employee Susan Cotton a 3% raise (\$1,087 including benefits). Cotton's last pay increase was in 2007. (Exhibit XV-12 and 13) When that information was relayed to Schmitt, Schmitt reported that he was never informed of the amount to allocate, making it impossible to make the allocation. Schmitt was told he would be given one day to make an allocation to others in the department.

Schmitt emailed the October 15, 2015, emails to Cotton early morning on December 4, 2015, and he worked with Cotton to make the allocation on December 4, 2015. (Exhibit XV-14: December 4, 2015, 6:40 email from Schmitt to Cotton; Exhibit XV-15: December 4, 2015, 6:40 email from Schmitt to Cotton; Exhibit XV-16: December 4, 2015, 7:01 am email from Cotton to McClellan) Based on Schmitt telling Cotton how the pay increases would be allocated, Cotton sent a draft report allocating raises among the non-bargaining unit employees, with a 3% raise to Cotton, 2.5% raises to three battalion chiefs, 2.4% raises to the other two battalion chiefs and to Schmitt, and a 2.3% increase to Glover (due to Glover's

higher pay, the largest dollar increase would be paid to Glover). (Exhibit XV-17: December 4, 2015, 9:34 am email from Cotton to McClellan)

The final submission from Cotton to McClellan on December 4, 2015, reflected a 3% raise to Cotton, 2.5% raises to four of the battalion chiefs, 2.4% raise to Battalion Chief Allen, 2.3% raise to Glover, and .91% raise to Schmitt. Based on a \$14,200 amount to allocate, Schmitt puzzlingly left \$1,283.30 of the available funds unallocated. (Exhibit XV-18: December 4, 2015, 12:12 pm email from Schmitt to Olson and McClellan)

Olson accepted Schmitt's allocation with the exception of the .91% increase to Schmitt. (Exhibit XV-19) Olson stated that he believed Schmitt's existing pay was sufficient with no increase, and he decided not to pay Schmitt the maximum available in his pay range. The .91% figure came from a maximum increase available to Schmitt because this was the top of his salary category. This maximum existed because Schmitt never signed a written contract for employment with the City that would change his salary category. Both Schmitt and Olson indicated it was a mystery to them both as to why Schmitt never signed a contract with the City. An old memo from Schmitt to former Administrator Bill Reynolds states that "Coby offered a contract but the terms could not be agreed upon." (Exhibit XV-20)

Schmitt later complained in an EEOC charge of discrimination that Olson denied his .91% increase because Schmitt was white; because of Schmitt's age; and because Schmitt had complained about Sisson harassing Glover because of Glover's race. According to Olson, Schmitt had told Olson that Glover thought Sisson was a racist based on 1) Glover's pay increase request being denied; 2) Sisson's interfering email with the Fire Apprenticeship Program; 3) Derek Streeter was not named City Employee of the Month; 4) Sisson said something about a nepotism issue concerning Glover's brother-in-law taking a test for a promotion; and 5) Sisson did not act on the battalion chief pay Personnel Action forms that Glover signed.

As to why, when provided some additional available funding in December 2015, Schmitt did not correct Hobb's perceived pay discrepancy, Schmitt said this

was probably inadvertence on his part caused by the short time frame he had to get the pay increase requests to City Hall. (Schmitt 277:6-14)

On December 16, 2015, Hobbs made an appeal to Sisson to increase his pay by about \$2,800 to \$73,000 so that Hobbs' pay would come up to the level of the other battalion chiefs. Hobbs became an interim battalion chief in April 2014, for which he received a 10% pay increase in June 2014 effective to April 18, 2014. Subsequently, a separate "HIRE/PERSONNEL ACTION FORM" was prepared in July 2014 identifying Hobbs' job class as Battalion Chief, with a hire date of July 7, 2014, a pay rate of \$73,000, and a comment that read in part: "Pay rate set per former City Administrator Bill Reynolds (all CO-4 Battalion Chief positions will start at \$73,000)." Sisson and Barker are identified in printed form as approvers on July 11, 2014.

On January 6, 2016, Sisson sent a memo to Schmitt denying Hobbs' appeal of his pay. Sisson concluded that Hobbs received the "standard" 10% pay increase when his duties expanded to battalion chief; Hobbs' April 18, 2014, employment contract for the interim battalion chief position does not identify a specific pay amount and was signed after Bill Reynolds was no longer the City Administrator; no City Personnel Action forms have been processed to change Hobbs' status from interim battalion chief; and Hobbs recently received a raise from the fire department in the amount requested by the Fire Department. (composite Exhibit XV-21)

Conclusions

Glover and Schmitt were informed by email from Sisson in May 2015 that the method to be used to request a pay increase from employees under contract was to request a meeting with City Hall, with the comment that typically such pay increases accompany a significant change in duties. Instead of requesting a meeting, Glover and Schmitt had Personnel Action forms drafted and signed (by Glover), and sent those to HR. The Personnel Action forms did not attach the justification for the proposed raises. (Glover 289-15-21) Even then, neither Glover nor Schmitt requested a meeting as Sisson had advised.

For Sisson's part, Sisson could have picked up the phone or emailed a question as to why he was receiving Personnel Actions for all of the battalion

chiefs, but Sisson simply ignored them. The issue was discussed only in passing by a chance meeting of Glover and Sisson prior to the start of an awards ceremony. Sisson responded to Glover's inquiry that he thought sending the Personnel Actions was a joke, which made Glover mad. Glover's August 28, 2015, email to Sisson two days later was unnecessarily insulting and extreme. In his email, Glover described sending the Personnel Action forms "a simple request", but that is inaccurate at best, with Glover never actually requesting a meeting.

I find that there is blame to go around to all on this issue. Glover and Schmitt should have followed the process described by Sisson, as opposed to merely sending signed Personnel Action forms with no meeting request or even a phone call. On seeing these Personnel Action forms, Sisson should have informed Glover and Schmitt that nothing would be done with them if he was going to do nothing with them. Similarly, although his point was to say that sending a signed Personnel Action form was not the method he had told them follow, Sisson should not have called the act of sending him signed Personnel Action forms a "joke" before the awards meeting. Glover and Schmitt then unnecessarily escalated the dispute by Glover sending an over-the-top insulting email to Sisson. That this was seen by Glover and Schmitt as an opportunity to antagonize Sisson more than a comment on the substantive issue at hand is evidenced by the fact that neither Schmitt nor Glover followed up on the issue, and, when provided funds by the City, they made no attempt to reconcile the pay issue with Hobbs, particularly, or allocate even the remaining available funds to the battalion chiefs. Schmitt attributed this failure to the short time frame of one day he said he had to allocate the additional funds for pay increases, and, on that issue, I find that Olson should have informed Schmitt of the amount of funds that could be allocated earlier. However, Schmitt sent his allocation figures to City Hall early in the day, and in so doing he knew that there was no attempt to bring Hobbs up to the other battalion chiefs, and no attempt to distribute the funds remaining that otherwise could have been distributed to these employees for pay increases.

This investigation makes no conclusions regarding whether the battalion chiefs should have received the 5% increases, or some other increase.

I do not find any evidence that Schmitt not receiving the .91% pay increase had anything to do with Schmitt being a white male, as other white males received

pay increases at this time, his age, or anything to do with Schmitt telling Olson that Glover thought Sisson was racist over the matters he identified. (Exhibit XV-22)