

Exhibit 23

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF FLORIDA
3 PENSACOLA DIVISION

4 JOSEPH GLOVER,

5 Plaintiff,

CIVIL ACTION NO.:
3:16-CV-00697-RV/CJK

6 vs.

7 CITY OF PENSACOLA, et al.,

8 Defendants.

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF FLORIDA
11 PENSACOLA DIVISION

12 MATTHEW SCHMITT,

13 Plaintiff,

CIVIL ACTION NO.:
3:16-CV-00421-RV-MET

14 vs.

15 CITY OF PENSACOLA, et al.,

16 Defendants.

17 DEPOSITION OF RUSSELL FRANK VAN SICKLE,
18 taken at the offices of Hitchcock & Associates,
19 111 South Baylen Street, Pensacola, Florida, on the
20 20th day of December, 2017, at 9:07 a.m.

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25

1 of testimony did you all discuss?

2 A. The sequence of events that led to me
3 being asked to do this investigation, and then I think
4 it was just generalized discussion about the various
5 areas in the report.

6 Q. Like what?

7 A. Like Mr. Deas's issues. The hiring
8 round for the firefighters in January of 2016.

9 Q. Did you all discuss -- tell me what you
10 discussed about each of these areas.

11 A. Well, we discussed that I was asked to
12 attend a meeting at City Hall on January 29th, I
13 believe it was. I don't have that right in front of
14 me. We discussed the fact that I had a memo that
15 referred to that meeting and people present at the
16 meeting.

17 Q. Your notes were accurate, weren't they?

18 A. Yes.

19 Q. Go ahead.

20 A. We discussed the timing of my being
21 asked to do the investigation.

22 Q. Tell me what -- more specific as to what
23 he told you and what you all discussed about asking to
24 attend the meeting.

25 A. That was pretty much it.

1 Q. You went through the timeline, didn't
2 you? Didn't you go into more specifics, or did he
3 say -- you were asked to attend the meeting. There is
4 a memo that refers to the meeting. The timing of the
5 investigation. There was more discussion than that,
6 Mr. Van Sickle, so I want to know the specifics of
7 your conversations with Mr. Larkin, who represents the
8 city in this matter.

9 MR. LARKIN: Object to the form.

10 A. We discussed who called me. He asked
11 who called me to come to the meeting.

12 Q. (By Mr. Calamusa) And who was that?

13 A. That was Rusty Wells. Discussed my
14 recollection of when the mayor was at the meeting, and
15 my recollection was that he was there towards the very
16 end of the meeting, and he wasn't there very long. We
17 discussed whether Ed Sisson was there and if he
18 participated, and my recollection was that Mr. Sisson
19 was there, but did he not speak very much. My
20 recollection of Mr. Sisson speaking at the meeting was
21 that I could get up with him later for the details of
22 the concerns that he had with -- regarding Mr. Schmitt
23 and Mr. Glover.

24 We discussed that there was a discussion
25 at the meeting regarding the -- regarding when I was

1 A. I don't remember who specifically said
2 that.

3 Q. Did you learn in that meeting that the
4 allegations that they made were against Olson and
5 Sisson?

6 A. Yes. And that was the gist of the
7 discussion, that is, who could look into these matters
8 when there were pending allegations against Mr. Sisson
9 and Mr. Olson.

10 Q. Now, you told me Mr. Wells invited you
11 to the meeting?

12 A. Correct.

13 Q. And we're clear from everything I've
14 seen in your report, your notes, your meeting was
15 January 29th of --

16 A. That's what my notes say and I trust
17 those notes, yes.

18 Q. Who was present at the meeting?

19 A. My notes would be the better
20 recollection, but I was present, Rob Larkin was
21 present, Rusty Wells was present, Eric Olson was
22 present, Dick Barker I believe was present. Like I
23 said earlier, I think Ed Sisson was present. The
24 mayor came at the tail end of the meeting.

25 Q. Did you know at the meeting that

1 Mr. Larkin was representing the city in regards to the
2 EEOC charges filed by Glover and Schmitt?

3 A. Yes.

4 Q. And we're clear from your notes and your
5 recollection and what you told me earlier that
6 Mr. Sisson was there?

7 A. I believe he was there.

8 Q. And your notes would be accurate. I
9 think I asked that. You believe your notes as the
10 best you took at the time would be accurate?

11 A. I believe so, yes.

12 Q. The reason I'm asking you,
13 Mr. Van Sickle, is because the city's answers to
14 interrogatories leaves him out of the meeting and
15 Mr. Olson doesn't remember him being present.

16 A. I haven't seen any interrogatory answers
17 in this case and --

18 Q. But your recollection is and your notes
19 were that he was present and, in fact, spoke during
20 the meeting --

21 MR. LARKIN: Object to the form.

22 Mischaracterizes.

23 Q. (By Mr. Calamusa) -- correct?

24 MR. LARKIN: Same objection.

25 A. My recollection is that he did not speak

1 Q. So what do you recall -- what do you
2 recall on the telephone call with Mr. Sisson?

3 A. I recall very little of that
4 conversation. I think it was just to set a time to
5 meet, and I was letting him know that whatever
6 documents he could provide me would be helpful.

7 Q. You knew at least as of the January 29th
8 meeting -- so when you're talking to Mr. Sisson on the
9 3rd and you meet with him on the 4th, you knew that he
10 was the subject of the EEOC charges that had been
11 filed against the city?

12 MR. LARKIN: Object to the form.

13 A. He was certainly a part of at least one
14 of them, as I recall.

15 Q. (By Mr. Calamusa) And you knew this at
16 the time you were talking to him on the 4th?

17 A. Correct.

18 Q. So did you meet with him in person on
19 the 4th?

20 A. Yes.

21 Q. Did he come to your office?

22 A. Yes.

23 Q. And what do you recall about the meeting
24 on the 4th with Mr. Sisson?

25 A. I recall meeting with him and him

1 walking me through the various areas of his concerns
2 regarding the management of the fire department.

3 Q. Did you record the interview?

4 A. I did not.

5 Q. Why not?

6 A. I don't typically record interviews.

7 Q. You recorded interviews in this
8 investigation.

9 A. I recorded some of them.

10 Q. And how did you make a decision as to
11 which people you would record and which people you
12 wouldn't?

13 A. Generally if they were a firefighter,
14 they have a Firefighter Bill of Rights that would
15 indicate that recording is appropriate.

16 Q. But there were some individuals that
17 were not firefighters you recorded, I believe. We can
18 go back and pull a list but --

19 A. There may have been some firefighter
20 employees perhaps.

21 Q. But you didn't record any of your
22 conversations with Mr. Sisson, did you?

23 A. I did not.

24 Q. You didn't record any of your
25 conversations with Mr. Olson, did you?

1 Q. These are from your original meeting
2 with him, correct, Mr. Sisson?

3 A. That's my recollection.

4 (Document handed to attorney.)

5 Q. And you've starred for me the ones that
6 were the original conversation. I would take it the
7 other documents are different times you interviewed
8 Sisson through the process and your notes?

9 A. That is my recollection. My file got
10 disemboweled when it got scanned.

11 Q. That's why they weren't in any real good
12 order.

13 A. It was no fun for me either.

14 Q. To your recollection did Mr. -- I'm
15 sorry -- did Mr. Sisson bring any documents with him
16 when you all met on February 3rd?

17 A. He brought a limited number of
18 documents. He did not bring all of the documents that
19 I needed to conduct an investigation.

20 Q. Now, I'm going to put your memory to the
21 test, and you've sat in my chair so you know. What do
22 you recall he brought with him?

23 A. I recall that he brought with him this
24 document that is -- is this the exhibit part
25 (indicating)?

1 Q. Yes, sir. So he brought with him, you
2 recall, Exhibit 2 to Mr. Sisson's deposition, which is
3 a document entitled "2015 Joe Glover matters,"
4 correct?

5 A. Correct.

6 Q. And Exhibit 1 to your deposition, which
7 you refer to as the second page?

8 A. Correct. He brought -- I know he
9 brought these two pieces of paper with him
10 (indicating). He brought some -- a few additional
11 pieces of paper. Sitting here today I cannot recall
12 exactly what they were. I believe some of that was
13 dealing with the apprenticeship program. It may have
14 been Mr. Glover's email about "I want a meeting ASAP."
15 It seems to ring a bell for that first meeting. And
16 then he brought some documents involving Employee of
17 the Month for the City of Pensacola because that was
18 apparently a complaint that Mr. Sisson received from
19 Mr. Glover.

20 The document that he -- that I
21 specifically recall him bringing, this Exhibit 2 to
22 Sisson's Deposition, Exhibit 1 to my deposition, was a
23 document that -- assuming he had but I don't know --
24 well, I know he had prepared it for Mr. Larkin, and he
25 brought that and said -- because he didn't want to

1 EEOC claim filed by Mr. Glover?

2 A. Not the EEOC claim, but if they had a
3 concern, then I would investigate that. And it is in
4 Exhibits 1 and 2 to Hayward's deposition that you just
5 showed me, the February 11th letters. It says, "In
6 addition to the issues above, I want to hear from you
7 as to any concerns or complaints you may have that you
8 believe should be a part of this investigation. I
9 wish to hear from you about your allegation that a
10 raise was denied to you by the city administrator, but
11 there may be other issues I am not aware of that you
12 wish to discuss with me." That is in reference to a
13 letter to Mr. Schmitt.

14 And then there is a paragraph in the
15 letter to Mr. Glover that's similar that identifies
16 Mr. Glover's issues.

17 Q. The issues that you raised in the
18 February 11th letters were allegations that were
19 raised by Ed Sisson, correct?

20 A. They were --

21 MR. LARKIN: Object to the form.

22 A. -- concerns that Mr. Sisson had about
23 firefighter management decisions, yes.

24 Q. (By Mr. Calamusa) And your letter
25 specifically says, "These allegations were raised by

1 Ed Sisson, Human Resources Administrator," right?

2 A. Correct.

3 Q. And the issues that are outlined in the
4 February 11th letters, or at least Mr. Glover's
5 letter, are the issues set forth in Exhibit 2 to
6 Sisson's exhibit, his memo that he brought to you?

7 A. They are a subset of that, yes.

8 Q. I walked through it yesterday, so I
9 don't really want to do it again. We walked through
10 it with Sisson and matched up every one of those
11 bullet points. Other than the one that says the EEOC
12 claims --

13 MR. LARKIN: Object to the form.

14 Q. (By Mr. Calamusa) -- we matched up those
15 bullet points with the allegations in the letter. Do
16 I need to do that again for you, Mr. Van Sickle?

17 MR. LARKIN: Object to the form.

18 A. Well, so you're excepting one of the
19 items in your question?

20 Q. (By Mr. Calamusa) I'm asking you, isn't
21 it true that your letters and the allegations that you
22 were -- wrote in these letters that you were
23 investigating came from not only -- came from
24 Mr. Sisson? Yes? Correct?

25 A. Correct.

1 truth, or was he lying at that point?

2 MR. LARKIN: Object to the form.

3 Mischaracterizes.

4 A. I think you are trying to conflate the
5 issue in your question.

6 Q. (By Mr. Calamusa) No, sir. I'm reading
7 a statement and using the English language as to what
8 this statement says, and this statement says, "The
9 assistant city administrator has asked me to
10 investigate several issues." And when I asked
11 Mr. Wilkins that, he said no. So I'm trying to find
12 out, is he telling me the truth or not?

13 MR. LARKIN: Object to the form.

14 Mischaracterizes.

15 A. I don't believe Mr. Wilkins would do
16 anything but other than tell the truth as he knows it.

17 Q. (By Mr. Calamusa) Yes, sir. And at no
18 point during -- prior to the January 29th meeting or
19 during the January 29th meeting was it Mr. Wilkins
20 that was leading the discussions and said, hey, ask
21 you to investigate. That wasn't Wilkins, was it?
22 That's all I'm trying to get at.

23 A. Well --

24 MR. LARKIN: Object to the form.

25 A. -- there's a number of layers. It was

1 Mr. Sisson who brought forth the concerns.

2 Q. (By Mr. Calamusa) Yes, sir.

3 A. So to that extent, you can say Sisson
4 was the one seeking an investigation. The mayor made
5 the ultimate decision because that is his job, but
6 Mr. Wilkins was who I was reporting to. He was in
7 charge of the investigation. He was my point of
8 contact and who I communicated with during the
9 investigation in addition to Ms. Bowling, so therefore
10 he was the one in charge of the investigation.

11 Q. Who is Mr. Bosso, B-O-S-S-O?

12 A. Mr. Bosso is a citizen of this area.

13 Q. What's his first name, David?

14 A. Could be. I don't remember.

15 Q. I was hoping you would know since you
16 are a citizen in this area and the fact that you
17 interviewed or talked to him as part of this
18 investigation.

19 A. I did.

20 Q. Tell me how it went about that you
21 talked to Mr. Bosso, B-O-S-S-O, and how that related
22 to this investigation.

23 A. Mr. Bosso called me and said that he had
24 read about the investigation in some sort of media. I
25 don't know if it was the paper or a blog or what it

1 the investigation prior to its completion?

2 A. To report on the status of the
3 investigation.

4 Q. There is a difference, you would agree,
5 in the status, "I'm not done. I have more witnesses,"
6 versus the substance of, "Here is what I'm finding and
7 what people are testifying to"?

8 MR. LARKIN: Object to the form.

9 A. No --

10 Q. (By Mr. Calamusa) There is a difference
11 there, right?

12 MR. LARKIN: Same objection.

13 A. -- I don't see the --

14 Q. (By Mr. Calamusa) You see no difference
15 in those two concepts; is that what you're telling me?

16 A. No. In terms of providing a status
17 report on the update of the investigation, no, I
18 didn't see any problem with that.

19 Q. You met with Mr. Wilkins on April 27th.
20 It's based on -- what I understand from Mr. Wilkins,
21 you met with him on April 27th to provide him an
22 opportunity to review the draft report and give you
23 comments. Do you recall that?

24 A. Yes.

25 MR. LARKIN: Object to the form.

1 Q. (By Mr. Calamusa) And according to
2 Mr. Wilson, he went into another room and read the
3 report?

4 MR. LARKIN: Object to the form.

5 Q. (By Mr. Calamusa) Is that right?

6 A. I believe that's right.

7 Q. Then he came back with you and provided
8 any comments that he had as to the draft report. Do
9 you recall that?

10 A. I don't recall him making any
11 suggestions to change anything.

12 Q. But you asked him did he have anything?

13 MR. LARKIN: Object to the form.

14 A. Yes. I wanted -- because he was my
15 contact I was reporting to, I wanted him to read it.

16 Q. (By Mr. Calamusa) Yes, sir. And you
17 asked him to read it and provide any comments as to --
18 or any changes, you gave him that opportunity?

19 A. Correct.

20 Q. And that was prior to it being
21 finalized. As I understand it, based on your notes,
22 that this was the end. I get it.

23 A. It was the end of -- of writing the
24 report. I don't think it was the end of lining up
25 exhibits and whatnot.

1 report, we all knew what was coming, and so "here you
2 go" basically.

3 Q. Did you turn over the summaries/
4 guidepost/transcripts of the audio interviews?

5 MR. LARKIN: Object to the form. Asked
6 and answered.

7 Q. (By Mr. Calamusa) Prior to May 10th?

8 A. I believe so. I think everything was --
9 that's my recollection.

10 Q. Did you --

11 A. Because it is a --

12 Q. Yes, sir. I get --

13 A. -- government entity --

14 Q. I understand.

15 A. -- they already knew they were getting
16 these requests coming.

17 Q. Did you turn over your personal notes?

18 A. I believe the whole file, yes. That's
19 my recollection.

20 Q. Did you provide any advice during the
21 April 29th meeting or thereafter regarding the
22 employment status of Mr. Glover?

23 A. No. I left that decision to the city
24 and Mr. Larkin to do with or not to do with as they
25 saw fit.

1 Q. The same question for Mr. Schmitt: Did
2 you --

3 A. Same answer: I did not involve myself
4 in making any decisions about whether to do something
5 or not to do something with either Mr. Glover or
6 Mr. Schmitt.

7 Q. Because in the report I don't see any
8 recommendation towards discipline; am I correct?

9 A. You're correct.

10 Q. There is no recommendation to terminate
11 made by you?

12 A. Correct.

13 Q. Let's see if I can -- I don't want to
14 have to do this, but I don't know any other way to ask
15 you specifically about some of the report without
16 marking it.

17 (Plaintiff Exhibit 7 marked for
18 identification.)

19 Q. Exhibit 7 is -- is that your 2016
20 Investigative Report into the allegations relating to
21 the Pensacola Fire Department prepared for the mayor's
22 office April 29, '16? And I understand no exhibits
23 are attached.

24 A. Right. It's not the complete report
25 because exhibits are not attached, and I obviously

1 A. Correct.

2 Q. -- that they've dismissed and...

3 Let's jump into the meat of -- issue 1
4 of your February 11th letter is an allegation that
5 during the week of January 21, 2016, that
6 Mr. Glover -- let's focus on him for a minute --
7 attempted to conduct a hiring process for new
8 firefighters in a manner contrary to established
9 protocol. Do you recall that being the allegations
10 set forth in the letter?

11 A. Yes.

12 Q. And the same allegation as to
13 Mr. Schmitt, correct?

14 A. Yes.

15 Q. That Mr. Schmitt attempted to conduct a
16 hiring process for new firefighters in a manner
17 contrary to established protocol?

18 A. Yes.

19 Q. Who was the hiring manager in this
20 situation January 2016?

21 A. That would be Mr. Schmitt.

22 Q. Who was responsible for the hiring
23 process for the fire department in January 2016?

24 A. That would be -- typically the hiring
25 manager would be Mr. Schmitt.

1 Q. Were you provided any sort of written
2 protocol?

3 A. For hiring firefighters?

4 Q. Yes, sir. I'm sorry.

5 A. As I put in the report, there is not a
6 city rule that lays out the specific hiring process.

7 Q. So, no, there is not a city rule or
8 document or policy that lays out the hiring process
9 for firefighters?

10 A. Well, the application to the
11 firefighters informs the firefighters that there will
12 be structured interviews, and there was no dispute,
13 even from Mr. Glover and Mr. Schmitt, that the hiring
14 protocol was not followed in January of 2016.

15 Q. Well, what's a structured interview?

16 A. A structured interview in this context
17 the way that Mr. Glover and Mr. Schmitt --

18 Q. No. What is a structured interview?

19 MR. LARKIN: Object to the form.

20 A. It is an interview where there is a
21 panel of firefighters that uses the same set of
22 questions and the same criteria to ask applicants
23 during the interview process, where those interviewers
24 score and rank the candidates.

25 Q. (By Mr. Calamusa) How many individuals

1 make up a panel?

2 A. I believe the answer to that I got
3 during the investigation was three.

4 Q. Who gave you that?

5 A. Either or both Mr. Glover and
6 Mr. Schmitt, I recall.

7 Q. There is nothing in the city guidelines,
8 city policies or procedures, that require a panel, is
9 there?

10 MR. LARKIN: Object to the form.

11 A. As I put in the report, there is not,
12 and I just told you that there is no written rule.

13 Q. (By Mr. Calamusa) And the panel, as
14 Mr. Sisson sat here yesterday, could be two or more,
15 correct?

16 MR. LARKIN: Object to the form.

17 A. I do -- I wasn't there for Mr. Sisson's
18 interview.

19 Q. (By Mr. Calamusa) Do you agree that a
20 panel could be two or more?

21 A. I don't, because the information I got
22 during the investigation was that there were three.

23 Q. At some point in that -- in some hiring
24 processes there were three; you learned that, right?

25 MR. LARKIN: Object to the form.

1 A. I understood there were three in each
2 one until we got to January 2016.

3 Q. (By Mr. Calamusa) Are you aware of
4 individuals hired that did not go through a panel
5 interview of three or more?

6 A. Mr. Tibbitt, he went through the fire
7 so-called apprenticeship program.

8 Q. And HR approved that hire?

9 MR. LARKIN: Object to the form.

10 A. Yes.

11 Q. (By Mr. Calamusa) Looking at the
12 allegations in your February 11th letter, the bullet
13 points, where did you obtain the information set forth
14 in the bullet points as to the conduct that they
15 engaged in that was contrary to established protocol?

16 A. Mr. Sisson.

17 Q. No. 1, failing to notify HR the day of
18 the physical ability test, that was Mr. Jester, wasn't
19 it?

20 MR. LARKIN: Object to the form.

21 Q. (By Mr. Calamusa) Your investigation
22 found that that was Mr. Jester's responsibility and
23 his dealings with HR?

24 A. Yes. My finding was that Mr. Jester was
25 the point person to tell the candidates for that

1 date or -- excuse me -- not only the candidates but
2 HR.

3 Q. And there was some confusion on the part
4 of the Jester and HR as to whether or not he had
5 accurately told them the dates?

6 A. Yes. There was an email where
7 Mr. Jester had said one date or possibly the next,
8 which was construed as being less certain than
9 Mr. Jester construed his own email.

10 Q. You would agree that this bullet point
11 deals with Mr. Jester, correct?

12 MR. LARKIN: Object to the form.

13 A. Well, it doesn't deal with him to the
14 extent that at the time that this letter is written I
15 haven't done the investigation yet, so I don't know --

16 Q. (By Mr. Calamusa) Right.

17 A. -- what the results are going to be.

18 Q. Exactly. I don't mean that -- let me
19 ask it better. These allegations, including the one
20 we're on now, came from Mr. Sisson, that were
21 allegations that Glover and Schmitt failed to do the
22 protocol; that was the understanding, right, that you
23 had going in?

24 A. Correct.

25 Q. And you learned as part of your

1 investigation, where we are at No. 1, that that was
2 Mr. Jester's responsibility?

3 MR. LARKIN: Object to the form.

4 A. Yes.

5 Q. (By Mr. Calamusa) No. 2 --

6 A. In that --

7 Q. I'm sorry. I don't want --

8 A. In that the investigation was looking
9 into the top two managers at the fire department. I
10 did not know who was particularly in charge of what as
11 of February 11th than anyone else. The question
12 becomes from an employer's standpoint is -- when
13 you're dealing with the managers, the employer always
14 has -- I say "always" -- should look to see are there
15 flaws in the management process or system that led to
16 any kind of error.

17 So to the extent that you're saying this
18 involved Jester and not Schmitt or Glover, I think
19 that this particular error, as I found it, was on
20 Mr. Jester, because Mr. Jester was the one who had
21 communicated with HR about the date.

22 Q. And Mr. Sisson at the time that he gave
23 you these allegations would have been aware of that,
24 would he not, that this was Jester and not Glover?

25 MR. LARKIN: Object to the form.

1 A. I don't know that he would have because
2 he was hearing this from Amy Workman, who was his
3 subordinate.

4 Q. (By Mr. Calamusa) And Amy Workman had
5 provided him a memo that set forth that this was
6 Jester --

7 MR. LARKIN: Object to the form.
8 Mischaracterizes.

9 Q. (By Mr. Calamusa) -- it's one of the
10 documents.

11 MR. LARKIN: Mischaracterizes.

12 A. I don't know -- I know there was a memo
13 from Amy Workman.

14 Q. (By Mr. Calamusa) The next point --
15 let's hit these fast -- failing to notify HR of the
16 date of the candidate interviews. If anything was
17 done wrong -- and my understanding is you found it was
18 some confusion -- that that would be between Jester
19 and HR?

20 MR. LARKIN: Object to the form.

21 A. Yes. I -- well, what I found was
22 that -- that's the same conclusion as the first bullet
23 point, and that is Jester had notified Amy Workman at
24 HR about the date of the physical abilities test and
25 the candidate interviews, which would be on the same

1 day, and gave two possible dates or words to that
2 effect. Ms. Workman interpreted that as not a defined
3 or a definite date. Mr. Jester thought that that
4 meant it was going to be the first date "unless I tell
5 you it's going to be the second one." So yes, that
6 was -- that communication was centered on Mr. Jester
7 and Ms. Workman.

8 Q. (By Mr. Calamusa) Failing to notify each
9 of the firefighter candidates of the date of the
10 physical abilities test, what did you find there?

11 A. There was a candidate that did not
12 receive notification of the date, and that would have
13 been Mr. Jester's --

14 Q. Again.

15 A. Again, Mr. Jester's responsibility
16 because he sent out the notifications to the other
17 applicants.

18 Q. Failing to notify each of the
19 firefighter candidates of the date for conducting
20 interviews, same thing, that one firefighter?

21 A. Correct.

22 Q. Same thing, that was Mr. Jester?

23 MR. LARKIN: Object to the form.

24 A. Correct. It was Mr. Jester who was
25 tasked with communicating with those candidates.

1 Q. (By Mr. Calamusa) So nothing in those
2 four was any part of what Joe Glover was tasked with
3 in this hiring process, correct?

4 A. Correct. That's -- that's what I -- I
5 found as I'm writing the report that was Jester's
6 role.

7 Q. Conducting the physical abilities test
8 without an HR representative present, my recollection,
9 sir, is that you found there was -- there had been
10 instances where HR was not present for these, so -- in
11 my words -- not that big of a deal; this was not a
12 valid concern because HR had previously not been
13 present?

14 MR. LARKIN: Object to the form.

15 Q. (By Mr. Calamusa) Not whether they
16 should be, but protocol?

17 MR. LARKIN: Same objection.

18 A. Correct. And what had happened here, as
19 I recall it, is that Ms. Workman was planning to
20 attend with someone else in HR, Natalie Brou, B-R-O-U,
21 I think, who also interviewed. So she was
22 particularly keen on attending, but I looked into
23 whether that was consistently done, and I found that
24 it was not consistently done in terms of having an HR
25 representative present, as I write in the report, so I

1 did not -- to use your slang, I did not consider that
2 a big deal if it wasn't protocol so to speak.

3 Q. (By Mr. Calamusa) You didn't find any
4 wrongdoing on the part of Mr. Glover or Mr. Schmitt as
5 to that incident?

6 A. Correct.

7 Q. Conducting interviews without an HR
8 representative present, same thing, you found that
9 that was not normal procedure that they be present?

10 A. Correct. It had happened sometimes, it
11 had not happened other times, and so because it was
12 not consistently done, I did not.

13 Q. Conducting employment interviews without
14 taking any notes, my recollection is that you found
15 that Mr. Glover did take some notes?

16 MR. LARKIN: Object to the form.

17 A. No -- well, I think he wrote down
18 someone had an EMT certification. Mr. Schmitt took no
19 notes. Mr. Glover only wrote I think it was only EMT
20 certification. They are the only ones who
21 interviewed, so since you're going on bullet points
22 that would apply to them, so to speak, now we're
23 getting to --

24 THE WITNESS: The water has caught up
25 with me. Take a quick break?

1 MR. CALAMUSA: Sure.

2 (Break in proceedings.)

3 Q. (By Mr. Calamusa) You don't dispute that
4 the same questions were asked of all candidates, do
5 you?

6 A. By Mr. Glover and Mr. Schmitt?

7 Q. Yes, sir. I'm sorry.

8 A. No, I do not dispute that.

9 Q. And the process was stopped before it
10 was complete, correct?

11 A. Well, I'm not sure how to answer that
12 question. Both Mr. Glover and Mr. Schmitt told me
13 that they did not follow the regular protocol.

14 Q. That wasn't my question. My question
15 was --

16 A. Right, but the process was --

17 MR. LARKIN: Object to the form.

18 Q. (By Mr. Calamusa) The hiring process was
19 stopped. Sisson stopped it before it was complete,
20 correct?

21 MR. LARKIN: Object to the form.

22 A. Mr. Sisson stepped in I believe on
23 January 26th or later in terms of not selecting anyone
24 to be hired.

25 Q. (By Mr. Calamusa) No one was submitted

1 had been suggested to HR?

2 A. Right, because what happened, as I
3 recall, is that -- although Mr. Schmitt told me in his
4 interview with him that they had -- he and Mr. Glover
5 had scored and ranked the candidates, but not actually
6 done that. I think Mr. Schmitt had differing versions
7 of that in his statement to me. So they had not even
8 gotten to the point where they could submit anyone
9 because they still had not figured out how to apply
10 the veterans preference, which requires some sort of a
11 point system, and apparently they had not gotten
12 together as of at least January 26th from the
13 January 21st interviews to move it forward.

14 So what I'm -- my recollection is that
15 Mr. Schmitt and Mr. Glover had not gotten to the point
16 where they could submit someone as a name to HR when
17 HR got word that the normal process was not followed.

18 Q. And you found in your investigation that
19 there were score sheets done by Mr. Glover?

20 MR. LARKIN: Object to the form.

21 A. Correct. In some form. They were not
22 what was normally done, as Mr. Glover told me.

23 Q. (By Mr. Calamusa) More than one person
24 interviewed the candidates, correct? Two. Glover and
25 Schmitt?

1 A. Mr. Glover and Mr. Schmitt interviewed.

2 Q. Same questions were asked of the
3 candidates, correct? You already told me yes.

4 A. As far as I know, yes.

5 Q. There were score sheets on Mr. Glover's
6 desk when the process was halted, correct?

7 MR. LARKIN: Object to the form.

8 A. There were score sheets on his desk,
9 yes.

10 Q. (By Mr. Calamusa) And you found in your
11 report that neither Schmitt nor Glover was trying to
12 intentionally manipulate the hiring process?

13 A. Well, what I found was that I did not
14 believe that either Mr. Schmitt or Mr. Glover were
15 trying to exclude some particular candidate.

16 Q. In an attempt to manipulate the process,
17 in order to exclude or manipulate the process.

18 MR. LARKIN: Object to the form.

19 A. I did not find that they followed the
20 process because they themselves told me they did not
21 follow the process.

22 Q. (By Mr. Calamusa) And you found that --
23 and so we're clear, the process part that wasn't
24 followed, in your mind, was lack of a panel
25 interviewing prior to Schmitt and Glover interviewing?

1 MR. LARKIN: Object to the form.

2 Q. (By Mr. Calamusa) -- or -- and request a
3 meeting?

4 A. The implication is that if you want it
5 acted upon, this is what you would need to do.

6 Q. And you found that Sisson completely
7 ignored the requests?

8 A. Yes.

9 Q. And I noticed you didn't mention in your
10 report that during this timeframe of summer and fall
11 of 2015 Mr. Schmitt was regularly meeting with
12 Mr. Olson regarding the availability of pay raises.
13 Were you aware of that?

14 MR. LARKIN: Object to the form.

15 A. No, I was not aware of that. A regular
16 meeting about pay raises between Mr. Schmitt and
17 Mr. Olson, no.

18 Q. (By Mr. Calamusa) And other department
19 heads where other pay raises were being discussed.

20 MR. LARKIN: Same objection.

21 A. Well, the pay raise was discussed
22 regarding the noncovered group employees.

23 Q. (By Mr. Calamusa) That's what we're
24 talking about, and that was the meetings that
25 Mr. Schmitt and Mr. Olson was having. But you were

1 few steps. And let's start with this: That on
2 July 29th, Glover submitted the request to Sisson. We
3 can agree with that, right? You said that --

4 A. I don't recall the date but that's --

5 MR. LARKIN: Object to the form.

6 A. And it was forms filled out for the
7 battalion chiefs.

8 Q. (By Mr. Calamusa) Yes, sir. And that
9 Sisson ignored that, those requests, correct?

10 MR. LARKIN: Objection. Asked and
11 answered.

12 A. He ignored the forms.

13 Q. (By Mr. Calamusa) He never contacted
14 Glover or Schmitt and said, "I've got these forms.
15 What are they? I got these forms. Let's meet." That
16 never happened on Sisson's part, correct?

17 MR. LARKIN: Object to the form. Asked
18 and answered.

19 A. Correct.

20 Q. (By Mr. Calamusa) Did Mr. Sisson ever
21 tell you that he went and talked to Mr. Barker about
22 the process?

23 A. No.

24 Q. When Sisson is asked about it a month
25 later by Mr. Glover, "where do we stand on the

1 and answered.

2 A. I'm not sure all of the words in your
3 question apply, but he responded in part by saying, "I
4 thought they were a joke."

5 Q. (By Mr. Calamusa) What else did he say?
6 You say in part. What else did he say?

7 A. Well, as I understand the
8 conversation -- that's the most memorable part. Let
9 me put it that way. I don't remember the other part.
10 It was a brief conversation as I understand it.

11 Q. Exactly. It was. I'm unaware of
12 anything else said. Are you?

13 A. Well, I believe Mr. Sisson's intent
14 was --

15 Q. Where do you get this?

16 A. I get it from the fact he had written in
17 a specific email about what to do about it.

18 Q. Did -- but you're assuming what
19 somebody -- what -- his intent when he was
20 unprofessional in a response and said it was a joke.

21 MR. LARKIN: Object to the form.

22 Q. (By Mr. Calamusa) That's all you knew at
23 the time, and that's all you have before you is his --

24 A. That's not right.

25 Q. -- response, it was a joke?

1 the last hour.

2 MR. CALAMUSA: Because it's ridiculous.

3 MR. LARKIN: That may be your opinion.

4 MR. CALAMUSA: It is.

5 MR. LARKIN: Can we move on to the next
6 issue?

7 MR. CALAMUSA: I'm trying.

8 Q. (By Mr. Calamusa) That's what you found,
9 right? Blame to go around?

10 MR. LARKIN: The document speaks for
11 itself.

12 A. I believe I used that term, and I
13 described that in the report in more detail.

14 Q. (By Mr. Calamusa) The firefighter
15 comment that Mr. Sisson identified, you put in the
16 allegations about Mr. Glover, you found that he did
17 not mention HR or Mr. Sisson in any comments at all,
18 correct?

19 MR. LARKIN: Object to the form.

20 A. He did not identify by name Mr. Sisson,
21 correct.

22 Q. (By Mr. Calamusa) Or HR, anybody with
23 HR.

24 MR. LARKIN: Object to the form.

25 A. By name, no.

1 between Olson, Sisson, and Glover, which I believe was
2 April 2015?

3 MR. LARKIN: Object to the form.

4 A. I don't remember when the date was.

5 Q. (By Mr. Calamusa) It was all before that
6 meeting?

7 MR. LARKIN: Same objection.

8 A. I think it would have been prior to that
9 meeting, yes.

10 Q. (By Mr. Calamusa) One of the allegations
11 raised was dealing with an -- unreasonably resisted a
12 drug test request on January 20, 2016. As I
13 understand, you found that he did not unreasonably
14 resist; am I right?

15 A. I found that he went ahead and got it
16 done. He made an objection.

17 Q. He asked a question. It wasn't an
18 objection; am I right?

19 MR. LARKIN: Object to the form.

20 A. No. I would phrase it as an objection.
21 And as you're looking for it, I think he was asking on
22 whose authority or something like that.

23 Q. (By Mr. Calamusa) Yes, sir. "Why am I
24 being sent? I'm not part of the collective bargaining
25 agreement. Why am I being sent to get a drug test?"

1 Exhibit 9 to Olson's deposition.

2 MR. LARKIN: Object to the form.

3 A. It says, "Good morning, Lee. I'm not a
4 member of the collective bargaining unit which
5 negotiated the terms of their agreement with the City
6 of Pensacola. Part of the agreement included
7 urinalysis testing. Please advise if I am being
8 ordered to report to the clinic. If I'm being ordered
9 to report, please advise me who is ordering me to
10 appear and under what terms."

11 Q. Mr. Sisson responded back, correct?

12 A. He did, yes.

13 Q. Mr. Sisson responded back. "You have to
14 go because you are a public safety employee and upon
15 direction of the city administrator," right?

16 MR. LARKIN: Object to the form.

17 A. Yes. It says, "Due to the nature of
18 your work as a public safety employee and at the
19 direction of the city administrator, you are required
20 to participate as requested."

21 Q. (By Mr. Calamusa) And your report found
22 that upon receipt of that answer to Mr. Sisson's
23 question -- I'm sorry -- Mr. Glover's question,
24 Mr. Glover went and got drug-tested?

25 A. Correct.

1 Q. So he did not, as the allegation set
2 forth in the February 11th letter, states reasonably
3 resist a drug test?

4 MR. LARKIN: Object to the form.

5 A. He took the drug test as I found out.

6 Q. (By Mr. Calamusa) I read in your
7 report -- the justification that I understood you gave
8 in your report for why he was tested dealt with the
9 collective bargaining agreement. Do you remember
10 that?

11 MR. LARKIN: Object to the form.

12 A. No. What I recall is -- was that his
13 name with all of the other firefighters came up
14 through a pool of firefighter department employees.

15 Q. (By Mr. Calamusa) I understood your
16 report to say that even that was part of the --
17 because they negotiated that as part of the collective
18 bargaining agreement, as part of the reason under the
19 bargaining agreement, that Chief Glover, Chief
20 Schmitt, and other non-bargaining units could be
21 required to test?

22 A. Well --

23 MR. LARKIN: Object to the form.

24 A. -- there is a slight distinction to be
25 made --

CERTIFICATE OF OATH

STATE OF FLORIDA

COUNTY OF SANTA ROSA

I, the undersigned authority, certify that
RUSSELL FRANK VAN SICKLE appeared before me and was
duly sworn.

WITNESS my hand and official seal this 29th day
of January, 2018.

MARY ELLEN THURSBY, RPR
Notary Public, State of Florida
My Commission No: #GG 142026
Expires October 4, 2021

CERTIFICATE OF REPORTER

STATE OF FLORIDA

COUNTY OF SANTA ROSA

I, MARY ELLEN THURSBY, Registered Professional Reporter and Notary Public, certify that I was authorized to and did transcribe the foregoing deposition; and that the transcript is a true and complete record of the statements given by the witness and transcribed by me.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action. Dated this 29th day of January, 2018.

MARY ELLEN THURSBY, RPR
Notary Public, State of Florida
My Commission No: #GG 142026
Expires October 4, 2021