

Human Resources Grievance April 8, 2014

The **Human Resources Committee** met Tuesday, April 8, 2014, at 5:30 p.m. in the Conference Room at City Hall. Present were Committee Members Sheena Martin, Ken Gardner, Roxanna Brush and Mark Ahner. Also present was Billie Burkhalter, Human Resource/Payroll Officer, Samantha Malenovsky, Floodplain Administrator/Auto Cad/Assistant PWPV, City Attorney Dan Rice and Legal Advisor Jeanette Jones. Police Chief Colombik arrived later.

Various City employees were present, including: Tom Speelmon, President of 238B Union, Dennis Hirsch, Building Inspector, Connie Watts, Deputy Clerk, Patti Bishop, Utility Billing Clerk, Gail Krezelak, Deputy City Court Clerk, Dawn Colton, Grant Writer/Planner in Training and Gloria Archdale, Circulation/Inter Library Loan Librarian. Councilpersons Sue Galbraith and Dwayne Andrews were also present.

Chairperson Brush opened the meeting by explaining that the meeting will be a wage grievance hearing for Human Resource/Payroll Officer Billie Burkhalter and Floodplain Administrator/AutoCAD/Assistant PWPV Samantha Malenovsky.

Jeanette Jones introduced herself as the Legal Advisor who was appointed by City Council. She explained that Billie Burkhalter and Samantha Malenovsky had started the grievance process by completing step number one, received on 8/28/2012. Step number two, the Mayor's response to the grievance was received on or about 9/12/2012. The last step was a request for further review from Billie Burkhalter and Samantha Malenovsky, received on 9/13/2013. This is all in compliance with the grievance policy. She said the Human Resources Chairperson reviewed the correspondence and at this point it is at the Human Resources Chairperson's discretion as to how to proceed with the review. It could include review of the investigation, mayor's response, review of grievance form, or additional investigation. With that, Legal Advisor Jones added that the Human Resource Chairperson has called this meeting a review hearing for the grievance dated Aug 28, 2012. She informed the audience the meeting was not open to public comment. After the meeting, the Human Resource Chairperson will need to file a written response within 20 days.

Human Resource/Payroll Officer Billie Burkhalter introduced herself and noted she was also representing Floodplain Administrator/Auto Cad/Assistant PWPV Samantha Malenovsky. She went on to explain the Exhibits they presented to the hearing members.

Exhibit A- The Wage and Benefit Analysis Survey was reviewed by: Two representatives from each of the three city unions, a non-organized staff member, John Uden Chairperson of the Human Resource Committee, Mayor Butch Grenz, who represented the City, Jeff Minkler, Former Labor negotiator for the City to represent himself, Betsy Webb, MSU Local Government Center to facilitate the meetings and Debra McAtee, Magpie Tech Writing, who performed the research. The cities contacted by McAtee were Anaconda, Havre, Belgrade, Livingston, Laurel, Whitefish, Lewistown, Sidney, Glendive, Columbia Falls and Hamilton. Kalispell and Lockwood were added for the Fire Department's survey. Human Resource/Payroll Officer Burkhalter said that in the survey study, Betsy Webb explained that "An inherent challenge in this type of wage and benefits analysis occurs in the comparison of one municipality's job titles and job duties to similar titles and position in other municipalities. There is no guarantee that the comparisons are entirely aligned". Chairperson Brush said there was a part of the sentence missing and that was "While a significant effort has been made to align like position, there is no guarantee that the comparisons are entirely aligned".

Human Resource/Payroll Officer Burkhalter explained how the salary survey was implemented by the City. She said it's a 6 year contract between the City and City unions and is reflected in the Administrative Personnel wages. The survey city average would be compared to all positions and then, if needed, would be increased 2 percent each year. In Fiscal year 2017-2018 the employee's actual wage would be compared to the survey's average. She broke down the Payroll and AutoCAD position as to how the salary would be built. If the employees' wages fell under the salary survey average, then they would be increased 2 %, with an additional increment amount that would make them whole in 6 years. If the position was above the average, they would not receive any increase. The position would be frozen and monitored for the next 6 years to see if they fall under the average. This would apply to job titles only, not job description or qualification. The only exception was by Mayor Grenz to have 2 administrative positions of Police Captain to be treated like Assistant Police Chiefs. These positions would have been frozen otherwise, according to the survey. She said apparently if there was not a survey for your position, then you would be frozen for the next 6 years.

She went on to explain the exhibits that were handed out.

Exhibit B- Is the survey for AutoCAD which is Malenovsky's position. The survey included wages for that position from Miles City and Havre. Since there were no other cities in the salary survey her wages were frozen.

Exhibit C- Is the survey for Payroll/HR Officer, which is her own personnel position. The survey included only Miles City's wages.

Exhibit D- A letter from Doug Colombik, Chief of Police, dated June 6, 2012. At this time Police Chief Colombik was the Administrative Personnel's Representative. She stated that Floodplain Administrator/AutoCad/Assistant PWPV Malenovsky's position was not in the letter and there wasn't any wage adjustment to her position. She added that her own position showed an average of \$17.44 for Payroll only. It did not incorporate Human Resource/Payroll duties.

Exhibit E- A follow-up letter by Police Chief Colombik dated 6/18/12. She said in the letter, he recommended increases for those positions missed in the salary survey. The letter was submitted to Human Resources Chairperson Uden, and then Chairperson Uden submitted it to Mayor Grenz.

Exhibit F- An e-mail she sent to the Mayor asking for correspondence by August 14, 2012. This involved the letter that Police Chief Colombik had presented to Chairperson Uden on June 23rd. She said she never received a response, and on August 8, 2012, the final budget was passed for Fiscal Year 12/13.

Exhibit G- Step two of her grievance process, filed on 8/28/2012.

Exhibit H- Step two of Floodplain Administrator/AutoCad/Assistant PWPV Malenovsky's grievance process filed on 8/28/2012.

Exhibit I- Human Resources Committee Minutes from September 7, 2012. She pointed out the motion made to recommend to the Council that the information relevant to pay and benefits for the four positions be sent to Larry R. Martin, (City Labor Attorney), and to the Montana State

University wage study group. It had passed by a vote of 4-0, and she doesn't know why there was no action taken on this motion.

Exhibit J- A letter from Mayor Grenz dated September 12, 2012, denying the grievances. She pointed out the last paragraph, which states "the City Council will take up as an action item, the issue of adjustment of wages for non-unionized staff at its next Council meeting. You have the right to appear and address the Council". She stated this action was never followed through.

Exhibit K- A request by Becky Stanton, Billie Burkhalter, Samantha Malenovsky and Dawn Colton to advance the grievances to step three, dated 9/13/2012.

Exhibit L- Letter from Mayor Grenz notifying Floodplain Administrator/Auto Cad/Assistant PWPV Malenovsky that he had received the request to advance the grievance to step three. He then forwarded the letter to Chairperson Uden.

Exhibit M- Letter from Chairperson John Uden addressed to her. The letter states the grievance has been referred to him by Mayor Grenz, and a hearing will commence at 6pm on October 26, 2012 at City Hall to hear her grievance.

Also attached to Exhibit M is a letter to Floodplain Administrator/AutoCad/Assistant PWPV Malenovsky stating the same as above, except the hearing would be October 25, 2012.

Exhibit N- Letter from Chairperson John Uden to Floodplain Administrator/Auto Cad/Assistant PWPV Malenovsky rescheduling the hearing to November 29, 2012 at 6pm

Exhibit O- Council meeting dated 9/25/2012. She pointed out that former City Attorney Huss suggested mediation between the grievants and the City. It was then passed to Special Counsel Jones, who passed it on to the Human Resources Committee. After several discussions, the grievance party decided to go to mediation before proceeding with the hearing.

Exhibit P- Minutes of the Human Resources Committee, dated November 20, 2012. Chairperson Uden recommend to the Council that the City enter into mediation concerning the grievances filed by the four City employees and it be held as soon as possible to bring this to an end. The motion was passed unanimously, 4-0.

Exhibit Q- Minutes of the Human Resources Committee, December 5, 2012.

Exhibit R- Explains Dwayne Andrews, Roxanna Brush, Becky Stanton, Dawn Colton, Patricia Peterson (Grievants Attorney) Larry Martin and herself were at the mediation meeting. The attachment to Exhibit R is a letter stating the Committee has offered a 2% raise starting in fiscal year 2013-2014. She expressed there were no negotiations; it was a take it or leave it deal. She stated the offer did not go back to 2012, so the offer was declined.

Also attached is an e-mail from Floodplain Administrator/AutoCad/Assistant PWPV Malenovsky with a counteroffer. She asked for a \$.50 increase every year with 2% added onto that new number every year for the next six years and a letter to Floodplain Administrator/AutoCad/Assistant PWPV Malenovsky from Labor Negotiator Martin stating that mediation efforts were unsuccessful and a hearing before the Human Resources Committee would be scheduled once he had heard back from her.

Exhibit S- Minutes from the Human Resources Committee, dated April 18, 2013. In the minutes Floodplain Administrator/AutoCad/Assistant PWPV Malenovsky requested a meeting

with the Human Resources Committee to figure this issue out, as it had nearly been a year without any resolution. She had expressed that the meetings previously held were not mediation. City Attorney Rice replied that with mediation there has to be a third party present to work with both sides to agree on something.

She went on to explain that after that meeting, the grievants did not hear anything for over 6 months. On 11/1/13 there was a Human Resource Meeting, which set up a hearing on 11/13/12 for Floodplain Administrator/AutoCad/Assistant PWPV Malenovsky. Human Resource/Payroll Officer Burkhalter also asked for a meeting. Chairperson Uden said he would get the meetings scheduled. The grievants were never notified of the hearing, and it was never noticed. Chairperson Uden rescheduled the hearing for 11/25 & 11/26. On 11/20/13, she and Floodplain Administrator/AutoCad/Assistant PWPV Malenovsky asked to postpone the hearing due to insufficient notice, and requested to postpone the meeting until after the Holiday. She said three dates were scheduled, and the grievants were told that the meeting would be held with or without them. The grievants then agreed on 12/5/13 as the new meeting date. That hearing was cancelled due to not being posted to the public. After that there was no attempt to schedule the hearing. Then on 2/3/14 the grievants wrote a letter to address the situation.

Human Resource/Payroll Officer Burkhalter closed by stating that she felt they were not being treated equally, they do not want special treatment, they just want what other City employees are receiving. The grievants requested the Police Chief Colombik wage finding, be implemented, effective July 2012.

Chairperson Brush asked what the grievants hourly wages were: Human Resource/Payroll Officer Burkhalter replied \$19.57, and Floodplain Administrator/Auto Cad/Assistant PWPV Malenovsky replied \$18.19.

City Attorney Rice requested a five minute recess to call Labor Negotiator Larry Martin. After five minutes the meeting was called back to order by Chairperson Brush.

City Attorney Rice's response to the grievants was that the City feels the survey was completed in good faith and no survey is perfect. He added that there was no bad faith involved in the timeline or delays. He said the delays were more due to requests of the grievants than the City. He said most delays were mutual, and a mediator was not required in the process. The City asked for Police Chief Colombik to present the background of the survey. The request was approved by the Human Resources Committee.

Police Chief Colombik explained that in 2010 he asked then Mayor Whalen for a pay study for the police officers, because he had big turnover with his employees. The police officers felt their job demanded too much responsibility and liability for the pay they were receiving. When the pay study was received, there were three cities listed for Police wages: Anaconda, Lewistown, and Glendive. Those wages were similar to a Patrolman wage. He was very concerned that he would lose his best two employees, so he voiced his concerns to Mayor Grenz. The mayor agreed that the two Captains would be paid similar to the Assistant Chiefs listed in the pay study. It had nothing to do with anything else except for the concern of losing his most experience employees. By doing this, the stability and experience has slowly been improving.

On the letter dated 6/6/12 to Human Resource/Payroll Officer Burkhalter, he explained the non-union wage breakdown as he saw it. He said he believed that if the position wage was below average, you would take that amount, divide your base wage, and whatever that percent was, divide by six (years).

On 6/18/12 he sent a letter to Chairperson Uden explaining the wage survey differences. To get the difference, he called every city on the wage study and discussed the listed positions in depth.

Human Resource/Payroll Officer Burkhalter asked for clarification as to if Mayor Grenz did authorize the change in the Animal Control wages. Colombik replied yes, after getting more information, per letter dated 6/18/12. Human Resource/Payroll Officer Burkhalter asked him to confirm that Colombik represented the non-union personnel at the meetings. Colombik replied yes. She also wanted confirmation that Brian Certain, Animal Control Officer is a member of the 283B. He said yes, but ultimately the City had to go by the study. Unfortunately, there were some positions that were not included in the study.

Human Resource/Payroll Officer Burkhalter asked that during the Committee meeting when the initial study was presented was there any opportunity to correct any positions? Police Chief Colombik replied that the Animal Control position hardly had any information. He met with McAtee and MSU and told them there was a lot of information missing.

Human Resource/Payroll Officer Burkhalter mentioned that there were several people that vocalized their concerns on the survey, so she was wondering if the Committee did anything about it. Police Chief Colombik said they did the best that they could, and there was a lot of areas missing. Human Resource/Payroll Officer Burkhalter said she believed it was a rushed decision, and it was a take it or leave it situation. Police Chief Colombik agreed, and added that at the meeting, he expressed his concerns that there were a lot of women at City Hall that would be frozen.

Committee Member Ahner asked Police Chief Colombik to clarify the Animal Control position. He asked if his salary was set in accordance to the MSU study. Police Chief Colombik replied, yes. He added that he had talked to Mayor Grenz about the position, but Mayor Grenz said the city had to stick to the study.

Chairperson Brush clarified that nowhere on the study does it specify whether a man or a woman performs that position. City Attorney Rice also said that gender was not raised in the grievance, and asked Police Chief Colombik if gender was ever a consideration regarding the Captains or otherwise. Police Chief Colombik replied no.

Legal Advisor Jones said that the presentation for the grievance position and the Cities response was satisfied at tonight's meeting. She then asked if there were any more questions.

Chairperson Brush asked Human Resource/Payroll Officer Burkhalter if she had her Human Resource certification. Burkhalter said she thought that question was irrelevant, because nobody was asked on the survey about their certifications. It was based on job title, and she didn't think it should be considered for the grievance.

Committee Member Gardner asked Human Resource/Payroll Officer Burkhalter that, as far as her position was concerned, what cities were surveyed. Burkhalter said Havre and Laurel were the most similar. He asked how close she thought they were to her position; she replied pretty close, about as close as you can get. She then corrected herself saying that her position was Exhibit C and she was compared to nobody.

Committee Member Gardner then asked Floodplain Administrator/AutoCad/Assistant PWPV Malenovsky the same question, and she replied that there was one town, and it was Havre. That position was AutoCad/GIS.

Legal Advisor Jones asked the committee if they were in the position to make a decision, or would they like to ask for additional investigation.

Chairperson Brush asked the committee if they had enough information. Everyone thought they did.

Committee Member Martin asked Human Resource/Payroll Officer Burkhalter if she had done any research to find any positions that are comparable to her position to help support her grievance. Burkhalter said Havre or Laurel, and thought Havre was probably the closest.

Legal Advisor Jones suggested the grievants position is they believe that the action of City Council in its Resolution 3539 was incorrect and that they believe Police Chief Colombik's letter dated 6/18/12 should be included or be part of the resolution. Both grievants agreed to that being true.

Attorney Rice presented Exhibit A for the City, an e-mail from Police Chief Colombik to Human Resource/Payroll Officer Burkhalter dated 7/7/12. The e-mail explains that Police Chief Colombik had completed the comparison survey for her position. It states that in some cities her position is shared among employees, while other cities have a set up like the City of Miles City. In some cases the Clerks perform payroll while Assistant Clerks help, as well as complete the paperwork for new employees. Also in the letter was information he gathered on wages from the other cities.

Human Resource/Payroll Officer Burkhalter asked if the position in the e-mail were Payroll/HR positions. Police Chief Colombik replied mostly clerks.

Legal Advisor Jones said the Committee has 20 calendar days to make its decision in writing and it has to come from the Human Resources Committee Chairperson.

Chairperson Brush asked if a meeting can be set up to discuss the grievance. Legal Advisor Jones said the final review was this process tonight, so the committee can agree to meet, discuss and/or make a decision. There is no protocol in the grievance policy as to how a decision is reached. Legal Advisor Jones said there could be another meeting. City Attorney Rice explained that if another meeting was scheduled, it would be an open meeting. He said the Chairperson renders the decision, so the Committee might want to have the discussion tonight. Legal Advisor Jones explained the next meeting would be an open meeting and public notification is needed. Chairperson Brush thought the Committee should discuss it tonight. Committee Member Ahner agreed, he added the grievance had gone on way too long.

Chairperson Brush said she had never seen Exhibit A before, which shows an average of \$17.44 for Human Resource/Payroll Officer Burkhalter position. She said the Committee understands there are problems with the survey. She felt that a 2% increase is reasonable and would be a good option that the Council could agree on. She understands that Floodplain Administrator/AutoCad/Assistant PWPV Malenovsky position has nothing to compare to.

Committee Member Ahner had a couple of concern on the whole process. He said the negotiation between the union and Police Chief Colombik, who was representing nonunion

personnel, took over a year to complete. It wasn't until after everybody was in agreement with the study that the letter of agreement was adopted by each of the three unions, as well as the Council. At the City Council meeting nobody protested anything in the study itself. No one argued against it or for it. He has seen correspondence back and forth of the whole review. The e-mail from Police Chief Colombik shows an average of \$17.44 for the nine cities that were his own comparison. He knew there was going to be some comparisons that weren't going to be easy to make, because of titles and responsibility. What it boils down to for him is to look at all positions, that are similar and compare the pay to what the individual receives now. The Committee needs to ask if it is equitable to their duties now. Is it equitable, adequate, and fair compared to their duties and responsibility.

Committee Member Gardner said that he read everything that he could. The MSU study was completed the best that it could be completed. Also, Police Chief Colombik did the best he could do. He agrees with Committee Member Ahner on asking yourself, "is the job as it currently exist receiving comparable pay". He said it's real tough to weigh all the facts from 2011, and he has to go by his gut feeling as to what he has read, and by interviewing others involved.

Committee Member Martin didn't see hard data to support a direct increase. She doesn't agree with the 6 years frozen wages and she would like to see wage increases come from a performance based level.

Committee Member Gardner agreed with Committee Member Martin.

Chairperson Brush agrees that freezing wages for 6 years is a long time. She asked if everyone wanted to think about it more, and everyone said no. Committee Member Martin said that when you look at the average amount in City's Exhibit A the wage wouldn't be any better than what Human Resource/Payroll Officer Burkhalter is receiving now.

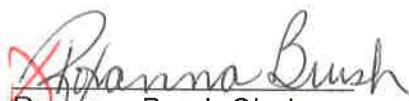
Chairperson Brush asked the Human Resource Committee if they felt a 2% wage increase effective July 1, 2014 was a fair offer. Committee Member Martin and Gardner agreed. Committee Member Ahner disagreed, he said he felt that by giving the 2% increase, the Committee would be treating the grievants different than the other employees who have had their wages frozen under the current study plan. All Committee Members agreed.

Chairperson Brush said that based on the discussion tonight, the Committee's decision is that the Committee will not treat the grievants positions any different than other positions in the study. She said "the grievants request at this time is denied". Chairperson Brush asked if all Committee Members were in agreement. Agreement passed 4-0.

Committee Member Ahner moved to adjourn, seconded by Committee member Martin. Motion passed 4-0.

The hearing was adjourned at 6:45p.m.

Respectfully submitted,


Roxanna Brush Chairperson


Lorrie Pearce City Clerk/Recorder