

IN THE CHANCERY COURT OF HAMILTON COUNTY, TENNESSEE

JAMES PHILLIP HEADDEN, *
DOUG STONE, *
ROBERT EVANS, *
SUSAN BLAINE, *
ALBERT TALLANT, *
JEFFREY DEWITT REARDEN, *
ROGER DAVID GIBBENS, *
JAMES FRANKLIN LEE HOLLOWAY, *
KEVIN DUANE KINCER, *
RODNEY CRAIG THOMPSON, *
TOMMY GENE MEEKS, *
JAMES ANTHONY BLANTON, *
REBECCA SUE SHELTON, *
WILLIAM W. PHILLIPS, *
BRYAN SCOT CHURCHWELL, *
JEFFREY TREMAYNE GAINES, *
JAMES ROSS HOGWOOD, II, *
EVANDER ELLIOTT LLOYD, JR., *
JENNIFER ANN DUGGAN DAVIS, *
WILMA JEAN BROOKS, *
TODD THOMAS ROYVAL, *
AUSTIN L. GARRETT, *
CHRISTOPHER KEITH PHILLIPS, *
ANTHONY EASTER, *
ROBERT JASON LEWIS, *
CRAIG W. JOEL, *
SCOTT ALLISON BALES, *
JONATHAN CONNOR BRYANT, *
JOHN CHAMBERS, *

Plaintiffs, *

v. *

CITY OF CHATTANOOGA, *
MAYOR RON LITTLEFIELD, *
in His Official Capacity, *
CHATTANOOGA POLICE DEPARTMENT, *
and CHIEF OF POLICE Bobby Dodd, *
in His Official Capacity. *

Defendants. *

DOCKET NO. 12-0558

CHANCELLOR _____

JURY DEMAND

2012 JUL 23 PM 12: 24

FILED
S. LEE AKERS, C&M

COMPLAINT

COME NOW, the Plaintiffs, employees of the Chattanooga Police Department (“Plaintiffs”), by and through their attorneys of record, Davis & Hoss, P.C., and hereby file their Complaint against the City of Chattanooga (“the City”), Mayor Ron Littlefield (“Mayor Littlefield”), in his official capacity, the Chattanooga Police Department (“the Department”), and Chief of Police Bobby Dodd (“Chief Dodd”), in his official capacity (collectively, “Defendants”). This is an employment case alleging age discrimination under the Tennessee Human Rights Act (“THRA”), violations of the Chattanooga City Code (“the City Code”), and the Department’s Policy Manual (“Policy Manual”), denial of substantive and procedural due process under the state and federal constitutions, and breach of contract. Plaintiffs would show unto this Honorable Court as follows:

PARTIES

1. Sergeant James Phillip Headden is fifty-three (53) years old. His date of birth is April 3, 1959. He has been employed with the City since 1988 and at all times relevant to this action. He was promoted to Sergeant on July 20, 2006. Since 2010, he has earned an annual salary of \$54,000.

2. Sergeant Douglas Stone is fifty-one (51) years old. His date of birth is September 30, 1960. He has been employed with the City since 1986 and at all times relevant to this action. He was promoted to Sergeant on January 1, 2010. Since 2010, he has earned an annual salary of \$50,000.

3. Sergeant Robert Evans is fifty-one (51) years old. His date of birth is December 18, 1960. He has been employed with the City since 1987 and at all times relevant to this action.

He was promoted to Sergeant on January 6, 2010. Since 2010, he has earned an annual salary of \$50,000.

4. Captain Susan Blaine is fifty-one (51) years old. Her date of birth is September 23, 1960. She has been employed with the City since 1984 and at all times relevant to this action. She was promoted to Sergeant in 1996, to Lieutenant in 2005, and to Captain on January 25, 2008. Since 2010, she has earned an annual salary of \$68,000.

5. Sergeant Albert Tallant is fifty (50) years old. His date of birth is April 16, 1962. He has been employed with the City since 1992 and at all times relevant to this action. He was promoted to Sergeant on February 23, 2001. Since 2010, he has earned an annual salary of \$58,000.

6. Sergeant Jeffrey Dewitt Rearden is forty-nine (49) years old. His date of birth is July 12, 1963. He has been employed with the City since 1994 and at all times relevant to this action. He was promoted to Sergeant on January 25, 2008. Since 2010, he has earned an annual salary of \$50,000.

7. Sergeant Roger David Gibbens is forty-seven (47) years old. His date of birth is February 8, 1965. He has been employed with the City since 1997 and at all times relevant to this action. He was promoted to Sergeant on September 4, 2004. Since 2010, he has earned an annual salary of \$58,000.

8. Sergeant James Franklin Lee Holloway is forty-seven (47) years old. His date of birth is November 10, 1964. He has been employed with the City since 1993 and at all times relevant to this action. He was promoted to Sergeant on January 1, 2010. Since 2010, he has earned an annual salary of \$50,000.

9. Sergeant Kevin Duane Kincer is forty-six (46) years old. His date of birth is September 22, 1965. He has been employed with the City since 1992 and at all times relevant to this action. He was promoted to Sergeant on July 21, 2006. Since 2010, he has earned an annual salary of \$54,000.

10. Sergeant Rodney Craig Thompson is forty-six (46) years old. His date of birth is March 24, 1966. He has been employed with the City since 1998 and at all times relevant to this action. He was promoted to Sergeant on January 25, 2008. Since 2010, he has earned an annual salary of \$50,000.

11. Sergeant Tommy Gene Meeks is forty-six (46) years old. His date of birth is November 7, 1965. He has been employed with the City since 1993 and at all times relevant to this action. He was promoted to Sergeant on September 28, 2007. Since 2010, he has earned an annual salary of \$50,000.

12. Sergeant James Anthony Blanton is forty-five (45) years old. His date of birth is March 21, 1967. He has been employed with the City since 1992 and at all times relevant to this action. He was promoted to Sergeant on July 21, 2006. Since 2010, he has earned an annual salary of \$54,000.

13. Sergeant Rebecca Sue Shelton is forty-five (45) years old. Her date of birth is August 19, 1966. She has been employed with the City since 1987 and at all times relevant to this action. She was promoted to Sergeant on July 21, 2006. Since 2010, she has earned an annual salary of \$54,000.

14. Sergeant William W. Phillips is forty-four (44) years old. His date of birth is September 27, 1967. He has been employed with the City since 1989 and at all times relevant to

this action. He was promoted to Sergeant on September 28, 2007. Since 2010, he has earned an annual salary of \$50,000.

15. Sergeant Bryan Scot Churchwell is forty-four (44) years old. His date of birth is March 7, 1968. He has been employed with the City since 1993 and at all times relevant to this action. He was promoted to Sergeant on July 21, 2006. Since 2010, he has earned an annual salary of \$54,000.

16. Sergeant Jeffrey Tremayne Gaines is forty-three (43) years old. His date of birth is June 7, 1969. He has been employed with the City since 1992 and at all times relevant to this action. He was promoted to Sergeant on January 25, 2008. Since 2010, he has earned an annual salary of \$50,000.

17. Sergeant James Ross Hogwood, II is forty-three (43) years old. His date of birth is September 11, 1968. He has been employed with the City since 1994 and at all times relevant to this action. He was promoted to Sergeant on January 11, 2002. Since 2010, he has earned an annual salary of \$58,000.

18. Sergeant Evander Elliott Lloyd, Jr. is forty-two (42) years old. His date of birth is June 3, 1970. He has been employed with the City since 1992 and at all times relevant to this action. He was promoted to Sergeant on January 25, 2008. Since 2010, he has earned an annual salary of \$50,000.

19. Sergeant Jennifer Ann Duggan Davis is forty-two (42) years old. Her date of birth is March 5, 1970. She has been employed with the Department since 1992 and at all times relevant to this action. She was promoted to Sergeant on January 1, 2010. Since 2010, she has earned an annual salary of \$50,000.

20. Sergeant Wilma Jean Brooks is forty-one (41) years old. Her date of birth is May 10, 1971. She has been employed with the City since 1999 and at all times relevant to this action. She was promoted to Sergeant on September 28, 2007. Since 2010, she has earned an annual salary of \$50,000.

21. Sergeant Todd Thomas Royval is forty-one (41) years old. His date of birth is June 26, 1970. He has been employed with the City since 1994 and at all times relevant to this action. He was promoted to Sergeant on September 28, 2007. Since, 2010, he has earned an annual salary of \$50,000.

22. Sergeant Austin L. Garrett is forty (40) years old. His date of birth is October 26, 1971. He has been employed with the City since 1993 and at all times relevant to this action. He was promoted to Sergeant on January 25, 2008. Since 2010, he has earned an annual salary of \$50,000.

23. Sergeant Christopher Keith Phillips is thirty-nine (39) years old. His date of birth is July 30, 1972. He has been employed with the City since 1996 and at all times relevant to this action. He was promoted to Sergeant on January 28, 2008. Since 2010, he has earned an annual salary of \$50,000.

24. Sergeant Anthony Easter is thirty-nine (39) years old. His date of birth is September 10, 1972. He has been employed with the City since 2000 and at all times relevant to this action. He was promoted to Sergeant on January 28, 2008. Since 2010, he has earned an annual salary of \$50,000.

25. Sergeant Robert Jason Lewis is thirty-nine (39) years old. His date of birth is January 2, 1973. He has been employed with the City since 1994 and at all times relevant to this

action. He was promoted to Sergeant on July 21, 2006. Since 2010, he has earned an annual salary of \$54,000.

26. Sergeant Craig W. Joel is thirty-nine (39) years old. His date of birth is December 8, 1972. He has been employed with the City since 1994 and at all times relevant to this action. He was promoted to Sergeant on July 22, 2006. Since 2010, he has earned an annual salary of \$54,000.

27. Sergeant Scott Allison Bales is thirty-nine (39) years old. His date of birth is May 15, 1973. He has been employed with the City since 1998 and at all times relevant to this action. He was promoted to Sergeant in January 2008. Since 2010, he has earned an annual salary of \$50,000.

28. Sergeant Jonathan Connor Bryant is thirty-seven (37) years old. His date of birth is August 3, 1974. He has been employed with the City since 2000 and at all times relevant to this action. He was promoted to Sergeant on September 28, 2007. Since 2010, he has earned an annual salary of \$50,000.

29. Sergeant John Chambers is thirty-seven (37) years old. His date of birth is January 14, 1975. He has been employed with the City since 1999 and at all times relevant to this action. He was promoted to Sergeant on July 21, 2006. Since 2010, he has earned an annual salary of \$54,000.

30. Each above-listed Plaintiff Sergeant is an active member of the Fire and Police Pension Fund.

31. Defendant the City is a duly organized municipality doing business in Hamilton County, Tennessee and employs members of the Department along with other city employees, totaling more than eight (8) individuals.

32. Defendant Mayor Littlefield, served as Mayor of the City, at all times relevant to this action.

33. Defendant the Department is one of Defendant the City's municipal bodies.

34. Defendant Chief Dodd served in his official capacity as Chief of Police for the Department at all times relevant to this action.

JURISDICTION & VENUE

35. Claims are stated under the statutory law of the State of Tennessee, in particular the THRA, T.C.A. § 4-21-101 *et. seq.*, which expressly provides for a civil cause of action in Chancery Court, T. C. A. § 4-21-311(a).

36. Claims arising from the same set of operative facts are also stated under the City Code, in particular section 2-137.

37. Claims arising under the same set of operative facts are also stated under the due process clauses of the state and federal constitutions, in particular article I, section 8 of the Tennessee Constitution and the Fifth and Fourteenth Amendments to the United States Constitution. Plaintiffs seek damages for these violations pursuant to 42 U.S.C. § 1983.

38. Claims arising from the same set of operative facts are also stated under the common law of the State of Tennessee, in particular the common law of contracts.

39. As more fully set forth below, the events complained of occurred in Hamilton County, Tennessee. Accordingly, jurisdiction and venue are proper in this Court.

FACTS

40. From highest to lowest, the ranks within the Department are Captain, Lieutenant, Sergeant, and Officer. The Department adheres to a chain of command whereby employees in

higher ranks manage and supervise employees in lower ranks and are responsible for their action or inaction.

41. The average age of a Captain is approximately forty-nine (49).

42. The average age of a Lieutenant is approximately forty-eight (48).

43. The average age of a Sergeant is approximately forty-six (46).

44. The average age of an Officer is approximately thirty-eight (38).

45. In 2008-09, Defendants began implementing the Officer Career Development Program (“OCDP”), which provides career opportunities—training, promotions, and pay raises. The Department’s Policy Manual includes the specific requirement that an employee be an Officer in order to participate in the OCDP. Pursuant to policy, an Officer may participate in the OCDP, but there is no provision whereby Captains, Lieutenants, or Sergeants may opt into the OCDP.

46. The OCDP provides for the “Officer sub-ranks” of Police Cadet, Police Officer I, Police Officer II, Police Officer III, and Master Patrol Officer. Officers may advance through the sub-ranks by attending classroom and computer training. Each sub-rank promotion is associated with a pay raise of approximately 6%.

47. Officer promotions within the OCDP are not merit-based. Rather, Defendants grant applications for promotions in the order in which they are received and on the sole condition that the Officer has attended the required training.

48. There is no career development program in place whereby Captains, Lieutenants, or Sergeants may participate in training to earn promotions or pay raises. Consequently, Defendants have continued to award Officers promotions and raises to the exclusion of their supervising Captains, Lieutenants, and Sergeants.

49. In 2009, Danny Hill, a representative of the Fraternal Order of Police, sent a letter to Defendant Mayor Littlefield, explaining that, as a result of the OCDP, five (5) year Officers were being paid nearly the same as their ten (10) year supervising Sergeants. (Attached as Exhibit A). His letter cites specific examples of disparate pay and explains that "left unattended, this disparity will only grow worse."

50. Thereafter on January 1, 2010, Defendants promoted Jennifer Ann Duggan Davis from Officer to Sergeant. As an Officer, Davis had advanced through the OCDP, received the associated pay raises, and was earning a higher salary than her supervising Sergeants. When Defendants promoted Davis to Sergeant, they awarded her an additional pay raise of approximately 6%, which placed her at a higher salary than other Sergeants with more time in rank and service.

51. Thereafter, Sergeants filed grievances requesting that Defendants implement a pay plan for Captains, Lieutenants, and Sergeants that would address the pay disparity between their pay and Sergeant Davis's pay and that would prevent future disparities. Defendants refused to review these grievances on the proffered basis that employees may not grieve issues related to pay.

52. Upon information and belief, Defendants acknowledged the pay disparity as being unfair and unequal during meetings throughout 2010. In the meantime, the complaining Sergeants sent a second letter to Defendants explaining the pay disparity and requesting relief.

53. On August 31, 2010, Defendants implemented a new pay plan for Captains, Lieutenants, and Sergeants ("the 2010 Pay Plan"). (Attached as Exhibit B). Chief Dodd presented the 2010 Pay Plan to the Captains, Lieutenants, and Sergeant as an attachment to an email and then conducted a staff meeting to explain the plan.

54. The 2010 Pay Plan is a written step plan pursuant to which Defendants promised to immediately pay each Captain, Lieutenant, and Sergeant a salary commensurate with his or her time in rank and then award him or her a raise after three (3) and/or five (5) years of service in rank. At the staff meeting, Chief Dodd confirmed that pursuant to that plan Defendants would award raises after three (3) and/or five (5) years in rank.

55. Pursuant to the 2010 Pay Plan, Defendants promised to pay Sergeants with 1-36 months (1 month to 3 years) in rank \$50,000 and then award them a raise to \$54,000 after three (3) years and \$58,000 after five (5) years.

56. Pursuant to the 2010 Pay Plan, Defendants promised to pay Lieutenants with 1-36 months (1 month to 3 years) in rank \$61,000 and then award them a raise to \$63,000 after three (3) years and \$65,000 after five (5) years.

57. Pursuant to the 2010 Pay Plan, Defendants promised to pay Captains with 1-36 months (1 month to 3 years) in rank \$68,000 and then award them a raise to \$70,000 after three (3) years and \$72,000 after five (5) years.

58. Since August 31, 2010 Plaintiffs and other Captains, Lieutenants, and Sergeants have served for three (3) and/or five (5) years in rank, but Defendants have refused to award them their promised pay raises.

59. Defendants have continued to offer training and award promotions and pay raises to Officers through the OCDP. As a result, Defendants are currently paying approximately thirteen (13) Officers higher salaries than their supervising Sergeants. In addition, Defendants are currently paying at least one (1) recently promoted Sergeant who advanced through the OCDP and received an additional 6% raise upon his promotion to Sergeant a higher salary than Sergeants with more time in rank and service.

60. Specifically, as an Officer, Patrick Hubbard advanced through the OCDP and received the associated promotions and pay raises. Just prior to his promotion to Sergeant in January 2012, Defendants paid Officer Hubbard an annual salary of \$51,827, which was \$1,827 more than approximately twenty-five (25) of his supervising Sergeants.

61. Upon his promotion to Sergeant, Defendants awarded Patrick Hubbard an additional pay raise of approximately 6%, which placed him at an annual salary of \$54,936.14.

62. In his first year as a Sergeant, Defendants are therefore paying Hubbard a higher salary than approximately thirty-six (36) senior Sergeants.

63. On June 26, 2012, Defendants allotted an additional 1.3 million dollars of the City's 2012-13 budget to fund the OCDP. Defendants did not allot any money to fund training, promotions, or salary raises for Captains, Lieutenants, or Sergeants.

64. On July 16-17, 2012, Plaintiffs filed individual grievances alleging the following causes of action based on the above-described conduct: age discrimination, violations of the City Code and Policy Manual, denial of substantive and procedural due process, and breach of contract.

65. On July 17, 2012, Chief Dodd scheduled a meeting for 9:00 a.m. the following morning to discuss Plaintiffs' grievances. Counsel notified Chief Dodd that they would be attending that meeting as Plaintiffs' representatives. Chief Dodd responded that Plaintiffs could attend without counsel or not at all.

66. On July 18, 2012, counsel appeared at the Department with Plaintiffs. Shortly thereafter, Chief Dodd's office notified Plaintiffs via email that the meeting had been cancelled. Later that afternoon, Chief Dodd denied Plaintiffs' grievances via email.

CAUSES OF ACTION

COUNT I – AGE DISCRIMINATION

67. The following eighteen (18) Plaintiffs re-allege and incorporate herein by reference paragraphs 1-66 as if fully set forth herein: Headden, Blaine, Tallant, Rearden, Gibbens, Kincer, Thompson, Meeks, Blanton, Shelton, William W. Phillips, Churchwell, Gaines, Hogwood, Lloyd, Brooks, Royval, and Garrett.

68. Plaintiffs are ages forty (40) and older and are therefore protected by the provisions of the THRA, T. C. A. § 4-21-101 *et seq.* The THRA prohibits employers from intentionally discriminating against older employees, i.e. disparate treatment liability. The THRA also prohibits employers from adopting facially neutral policies that disproportionately exclude and negatively impact older employees, i.e. disparate impact liability;

69. Captains, Lieutenants, and Sergeants are on average older than Officers: rank correlates directly with age. In 2008-09, the City began implementing the OCDP, which provides career opportunities—training, sub-rank promotions, and pay raises—to employees within the Officer rank only. Since 2008, Defendants have awarded numerous Officers training, sub-rank promotions, and pay raises;

70. The Policy Manual includes the specific requirement that an employee be an Officer in order to participate in the OCDP. Pursuant to policy, an Officer may opt out of the OCDP, but there is no provision permitting Captains, Lieutenants, or Sergeants to participate in the OCDP. Plaintiffs were promoted to Sergeants prior to the implementation of the OCDP and therefore never had the option of participating. Defendants have refused to implement a career development program for Captains, Lieutenants, or Sergeants;

71. As a result, Defendants are paying younger, subordinate employees higher salaries than their older, supervising employees. Likewise, Defendants are paying at least one recently promoted Sergeant who advanced through the OCPD a higher salary than older Sergeants with more time in rank and service and with the same or greater qualifications, duties, responsibilities, and authority;

72. Plaintiffs aver that age was a determining factor in Defendants' decision to implement the OCPD for Officers only and that this decision was motivated by the fact that Officers are on average younger than their supervising Captains, Lieutenants, and Sergeants. Defendants would not have implemented the OCPD but for the fact that Officers are on average younger. Defendants' conduct constitutes intentional discrimination in violation of the THRA;

73. Plaintiffs aver that Defendants' implementation of the OCPD to the exclusion of Captains, Lieutenants, and Sergeants, and failure to implement a career development plan for those ranking employees is a facially neutral practice that disproportionately excludes and negatively impacts older employees in violation of the THRA;

74. Plaintiffs aver that Defendants intentionally excluded Captains, Lieutenants, and Sergeants from the OCPD and refused to implement an incentivized pay plan for those ranking employees with knowledge of and reckless disregard for whether their conduct was prohibited under the THRA;

75. Plaintiffs aver that Defendants' conduct towards Plaintiffs is a violation of the THRA, as a result of which the Plaintiffs have suffered damages;

76. Plaintiffs are entitled to recover damages, including but not limited to back pay, lost benefits—including contributions to the Police Pension Fund, liquidated damages, and other

damages set forth in the ADEA and the THRA, plus attorney's fees and court costs, from the Defendants, jointly and severally, in an amount to be established at trial.

**COUNT II – VIOLATIONS OF THE CITY CODE AND THE DEPARTMENT'S
POLICY MANUAL**

77. All Plaintiffs re-allege and incorporate herein by reference paragraphs 1-76 as if fully set forth herein.

78. Section 2-137 of the City Code mandates that Defendants “establish a fair and uniform system of personnel administration for all employees, ” that “[e]mployment shall be based on merit and fitness, without regard to age,” and that Defendants “provide just and equitable incentives and conditions of employment”;

79. Plaintiffs aver that Defendants have violated Section 2-137 by establishing a system of personnel administration that is discriminatory and disparate and by implementing incentives and conditions of employment that are discriminatory, disparate, unfair, and inequitable, as a result of which Plaintiffs have suffered damages;

80. Specifically, Plaintiffs aver that higher ranking employees have greater qualifications, duties, responsibilities, and authority. Nonetheless, Defendants are currently paying Officers a higher salary than their supervising Sergeants. Defendants are also paying at least one Sergeant a higher salary than Sergeants with more time in rank and service. Plaintiffs aver that there is no rational basis to pay lower ranking Officers higher salaries or to pay recently promoted Sergeants more than Sergeants with more time in rank and service;

81. The City Code and the Department's Policy Manual outline a detailed grievance procedure as the proper redress of problems that arise from the employer-employee relationship and that relate to the incentives and conditions of employment. Ch. 2, Div. 8; Per-4. The Policy Manual guarantees “[a] department employee having a complaint relating to any matter affecting

his or her employment [] *the right of review* at successive levels of department command until his or her grievance is resolved.” Per-4, I (emphasis added). The Policy Manual also states that “[t]he employee may have a representative present at any step of the procedure.” Per-4, V. G;

82. Plaintiffs aver that neither the City Code or the Policy Manual preclude them from individually grieving issues related to pay especially when those grievances allege that Defendants are engaging in discriminatory conduct or violating the City Code and Policy Manual provisions that guarantee fair and equal administration, incentives, and conditions of employment.

83. Plaintiffs aver that Defendants violated the City Code and the Policy Manual by refusing to consider all grievances related to pay, denying Plaintiffs their right of review of their grievances, and refusing to permit Plaintiffs to have representation present at a grievance meeting, as a result of which Plaintiffs have suffered damages;

84. Specifically, Plaintiffs aver that on July 16-17, 2012 they filed individual grievances regarding the disparate and discriminatory impact of Defendants’ conduct, violations of City Code and the Policy Manual, denial of substantive and procedural due process, and breach of contract. Defendants denied Plaintiffs’ grievances without conducting a meeting at which Plaintiffs had requested to have counsel present;

85. Plaintiffs further aver that Defendants have adopted a practice of refusing to consider all grievances related to pay whether brought individually or collectively;

86. Plaintiffs are also entitled to recover damages, including but not limited to back pay, lost benefits—including contributions to the Police Pension Fund, liquidated damages, and other damages set forth under state and federal law, plus attorney’s fees and court costs, from the Defendants, jointly and severally, in an amount to be established at trial.

**COUNT III – 42 U.S.C. SECTION 1983 BASED ON DEPRIVATION OF
SUBSTANTIVE AND PROCEDURAL DUE PROCESS**

87. All Plaintiffs re-allege and incorporate herein by reference paragraphs 1-86 as if fully set forth herein.

88. Plaintiffs aver that Defendants have violated their rights to substantive and procedural due process under Article I, Section 8 of the Tennessee Constitution and the Fifth and Fourteenth Amendments to the United States Constitution, as a result of which Plaintiffs have suffered damages. Plaintiffs seek damages for these violations pursuant to 42 U.S.C. Section 1983.

89. Plaintiffs aver that Defendants are arbitrarily, capriciously, and shockingly paying lower ranking Officers higher salaries than their supervisors and paying at least one recently promoted Sergeant more than Sergeants with more time in rank and service in violation of Section 2-137 of the City Code and the Policy Manual and that such conduct violates their substantive due process rights;

90. Plaintiffs aver that the THRA, Title 13 of the City Charter, Section 2-137 of the City Code, and the Policy Manual recognize a property interest in and entitlement to their continued employment under conditions that are non-discriminatory, fair, uniform, just, and equitable. Plaintiffs further aver that this property interest and entitlement merits procedural due process protection;

91. Plaintiffs aver that Defendants' violated their procedural due process rights by adopting a practice of refusing to consider all grievances related to pay, denying Plaintiffs their right of review of their grievances, and refusing to permit Plaintiffs to have representation present at a grievance meeting all in violation of the City Code and the Policy Manual;

92. Plaintiffs are entitled to recover damages under 42 U.S.C. Section 1983, including but not limited to back pay, lost benefits—including contributions to the Police Pension Fund, liquidated damages, and other damages set forth under state and federal law, plus attorney's fees and court costs, from the Defendants, jointly and severally, in an amount to be established at trial.

COUNT IV – BREACH OF CONTRACT

93. The following twenty-two (22) Plaintiffs re-allege and incorporate herein by reference paragraphs 1-92 as if fully set forth herein: Headden, Blaine, Rearden, Kincer, Thompson, Meeks, Blanton, Shelton, William W. Phillips, Churchwell, Gaines, Lloyd, Brooks, Royval, Garrett, Christopher Keith Phillips, Easter, Lewis, Joel, Bales, Bryant, and Chambers.

94. Plaintiffs aver that the 2010 Pay Plan created an express, binding contract whereby Defendants offered Plaintiffs pay raises after three (3) and five (5) years of service in rank as consideration for Plaintiffs' continued service to the citizens of Chattanooga.

95. Plaintiffs accepted this contract and performed under this contract by serving for three (3) and/or five (5) years in rank. Plaintiffs aver that the pay raises for three (3) and five (5) years served in rank are vested contract rights;

96. Plaintiffs aver that Defendants have failed to perform under said contract by refusing to pay Plaintiffs an annual salary that reflects their promised raises under the terms of the 2010 Pay Plan contract.

97. Plaintiffs reasonably relied on the 2010 Pay Plan to organize their financial affairs and retirement plans, which are directly affected by their salaries;

98. A contract also arose by operation of the City Charter, the City Code, and the Policy Manual, the terms of which govern Plaintiffs' employment relationship with Defendants.

99. Plaintiffs aver that Defendants' conduct amounts to a breach of contract, as a result of which Plaintiffs have suffered damages.

100. Plaintiffs are entitled to recover damages, including but not limited to back pay, lost benefits—including contributions to the Police Pension Fund, liquidated damages, and other damages set forth under state and federal law, plus attorney's fees and court costs, from the Defendants, jointly and severally, in an amount to be established at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray:

1. That proper process issue and be served upon the Defendants, the City of Chattanooga, Mayor Ron Littlefield, in his official capacity, the Chattanooga Police Department, Chief of Police Bobby Dodd, in his official capacity, and that Defendants be required to appear and answer this complaint within the time required by law;

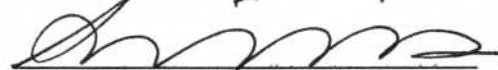
2. That Plaintiffs be awarded a judgment against Defendants jointly and severally for all damages including but not limited to back pay, lost benefits—including contributions to the Police Pension Fund, humiliation and embarrassment, and actual damages sustained, plus liquidated and punitive damages, attorney's fees, discretionary and non-discretionary costs, and court costs in an amount to be proven at trial;

3. That each Plaintiff be awarded such other, further, and general relief to which he or she may be entitled;

4. That a jury of twelve (12) persons be empanelled to try all issues in this case.

Respectfully Submitted,

DAVIS & HOSS, P.C.



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To Honorable Mayor Littlefield et al.,

We at the FOP as briefly as possible wish to bring a matter to your attention on behalf of those holding the rank of Sergeant within the Chattanooga Police Department. The following is a situation that existed prior to the implementation of the newest pay plan, but the new plan has exacerbated the issue to an all-time high and the letter you are reading was prompted by the fact that most administrators and officials were unaware it existed. Before we proceed any further please know that while this issue is related to pay, we are keenly aware of the current economic situation both nationally and locally, with news of the City dipping into reserve funds being front page news even as this letter is being composed. We are aware of this obstacle, but that doesn't mean this problem doesn't exist and shouldn't be addressed.

After our new plan was implemented, five year Police Officers are now being paid nearly the same as ten year veteran Sergeants (Supervisors). Ten year Officers are being paid over 6% more than many of *their own ten year Supervisors*. The City has literally implemented a system in which these Sergeants can request a *demotion* and not only receive a \$2,791 dollar pay raise by meeting Master Patrol Officer requirements, but choose any shift they please, apply for any position in the Department again, and (as precedents show) apply again for promotion and re-enter their old pay grade for yet an *additional* raise. This isn't a potential problem; this currently exists.

-Police <u>Officer III Rusty Morrison, 6 yr.</u> employee:	\$42,961	(-\$731 less than)
- <u>Sergeant C.W. Joel, 11 yr.</u> emp., <u>3 yr.</u> Supervisor:	\$43,692	←
-Master Patrol <u>Officer K. Hogans, 11 year</u> emp.:	\$46,483	(+\$2,791 more than)

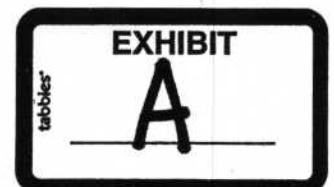
(-Even further, a *fourteen year* sworn Officer and *seven year* Sergeant (Sgt. Z. McCullough, \$44,695) now makes \$1,788 dollars *less* than the 11 year Master Patrol Officer.)

In addition to these gross deficiencies, there are no step raises, and Longevity Checks are subject to budget availability and do not go towards their pensions, the sole reason many remain employed here despite the pay inequities.

While the Mayor, Council, and executive management determine the vision and direction of the Department on paper, it is this middle management that *executes* that vision, one-on-one, on your streets...yet they are forced to work under a system that literally *promotes backwards travel* in order to better their pay. While the press is notably and intentionally absent from this memorandums distribution, Chattanooga Police Sergeants requesting demotions for a raise would certainly be newsworthy, and would reflect *poorly* on the City at best.

Left unattended, this disparity will only grow worse. Since this only involves the pay of an estimated 44 employees, the dollar amount to resolve this would be far less than a percent of the overall City budget and that investment would be quickly recovered by the retention of these supervisors. We are eager to not just point out the issue at hand, but to offer positive solutions at your request. Please consider this information and communicate with us at your earliest convenience.

Danny Hill,
Fraternal Order of Police - 423.867.5309



City of Chattanooga
POLICE CIRCULAR

Tuesday, August 31, 2010 #31 (Pay Adjustments)

PAY ADJUSTMENTS
(Sworn Personnel)

Listed below you will find the adjusted salary bands for the ranks of Sergeant, Lieutenant, and Captain. Your individual salary will be listed on your next pay check. This will be retroactive to July 1, 2010.

CHATTANOOGA POLICE DEPARTMENT 2010 SALARY ADJUSTMENTS

July 1, 2010

RANK	Seniority 1-36 mths	Seniority >36-60 mths	Seniority > 60 mths
SERGEANTS	\$50,000.00	\$54,000.00	\$58,000.00
LIEUTENANTS	\$61,000.00	\$63,000.00	\$65,000.00
CAPTAINS	\$68,000.00	\$70,000.00	\$72,000.00

Bobby H. Dodd
Chief of Police

