



GENERAL COUNSEL

OGC Career Ladders – Recommendations

Introduction

Pursuant to a Memorandum of Understanding dated September 17, 2009 and entered into between the Department of Housing and Urban Development's Office of General Counsel (OGC HQ) and Local 746, American Federation of Government Employees, a Career Ladders Committee was established to assess current headquarters career ladders in the Office of General Counsel. OGC assigned primary responsibility for implementing the MOU to Principal Deputy General Counsel Nestor Davidson. Negotiations on behalf of Local 476 were to be conducted by its president, Eddie Eitches.

Subsequently, the executive vice-president of the bargaining council for Local 476, the National Council of HUD Locals (C-222), directed the president of Local 476 to cease and desist all activity with respect to the MOU on the grounds that it improperly undercut the authority of the bargaining council. In December 2009, the C-222 Executive Board met and reversed the action of its executive vice-president. In January, 2010, C-222 President Varnado filed an unfair labor practice charge with FLRA against the agency alleging that the agency had bypassed the Council in its role as exclusive representative. In March, 2010, the executive vice-president of the C-222 bargaining council again directed president of Local 476 to cease and desist all activity related to the MOU. Finally, in July 2010, AFGE National President John Gage resolved the dispute by affirming the actions of the C-222 Executive Board in approving Local 476's MOU.

Subsequently, there was an OGC leadership transition with the departure of Principal Deputy General Counsel Nestor Davidson in late July and the arrival of his successor, Kevin Simpson, late the following month.

The Committee had two meetings in October 2010 attended by Kevin Simpson, Sinthea Kelly, Eddie Eitches, Avril Sisk, George Corsaro, Sharelle Higgins, Tina Short and James Knox (later replaced by Jerry Gross) as an additional union representative.

The Committee agreed on two areas of focus: (i) whether HQ attorneys should be entitled to non-competitive promotions to the GS-15 level as part of their career ladder; and (ii) whether greater consistency could be created in the way that legal support staff is classified and compensated.

I. OGC HQ Career Ladders for Attorneys

In the course of the Committee's deliberations, we considered numerous issues, including: past and current OGC promotion policies; the effect of those policies on the current distribution of GS-15 positions in OGC and on the recruitment, retention and morale of HUD attorneys; and the promotion and compensation policies of other Federal agencies and quasi-governmental agencies.

The committee also reviewed an August 2000 recommendation on this topic from former HUD General Counsel Gail Laster. In summary, GC Laster made the following recommendations to the HUD Deputy Secretary:

- Establishment of a career ladder promotion to GS-15 for all attorneys in HUD HQ who: (i) have served at least four years at the GS-14 level and who had earned at least an overall highly satisfactory performance rating at the GS-14 level; and (ii) for whom work at the GS-15 level of skill exists or is already being performed.
- Establishment of a new pay band higher than GS-15 but lower than SES for supervisory attorneys who are also Assistant General Counsel in charge of OGC Headquarters Divisions or Field Legal Centers.
- Establishment of a career ladder promotion to GS-15 for all Field attorneys and an increase in grade level to GS-15 for selected Chief Counsel and supervisory attorneys with especially broad responsibilities

Ultimately, none of these recommendations were implemented.

Associate General Counsel were asked for their opinions on creating a career ladder to GS-15. A substantial majority of the Associate General Counsel who responded to the survey opposed the creation of such a career ladder, citing the difficulty that it would create in attracting candidates to supervisory positions. Instead, they favored reserving the promotion of attorneys to non-supervisory GS-15 positions for those who had demonstrated unique abilities and consistent outstanding performance.

Demographic information concerning OGC was shared with all committee members, including: (i) a listing of all non-supervisory GS-15 positions; (ii) a listing of all OGC HQ personnel and their titles and grades; (iii) a summary of the numbers of attorneys and non-attorneys on staff for each division of OGC HQ. In summary, there are a total of 166 attorneys in OGC HQ, of which 47 are supervisors (Associate, Assistant or Deputy General Counsels) and 32 are non-supervisory GS-15s.

The Committee also gathered information about how other federal agencies, including DOJ, EEOC, Administrative office of the Courts, SSA, DOE, and HHS, define career ladders for their attorneys. As the attached Appendix A shows, with the exception of some components of Justice, the majority of the other agencies we surveyed do not provide a career ladder to GS-15 for their attorneys. Instead, they promote to GS-15 non-supervisory positions through competitive processes or reviews of justification statements by executive promotion panels.

A. Incentivizing the assumption of supervisory responsibility

Currently, attorneys who take on GS-15 supervisory roles assume substantial additional responsibilities and workload pressures, including administrative tasks relating to weekly reports and performance management. At the same time, they do not always enjoy the same benefits as non-supervisory attorneys. They cannot telework, cannot receive credit hours, and only limited forms of alternative work schedules are permitted to them. Several Associate General Counsel expressed the opinion that this made it very difficult to attract candidates for these positions.

The Committee discussed the possibility of creating more distinctive bonus opportunities for supervisory GS-15s than for non-supervisory GS-15s in order to maintain some distinction between the two roles in terms of rewards.

Although there are some differences in the type and amount of awards that can be given to supervisory GS-15s, these differences are not dramatic. The following chart summarizes the current distinctions between supervisory and non-supervisory GS-15s in terms of potential monetary awards:

Type of Award	Supervisory 15s (LDRS)	Non-Supervisory 15s (EPPES)	Notes
Spot awards	\$50-\$500	Maximum award of \$300	None were granted in 2010
Special Act or Service awards	\$250- 3% of base pay (approx \$2900)	\$50-\$10,000	None were granted in 2010
Peer to Peer Awards	\$100-\$500	n/a	
Supervisor/Manager of the Month	Up to \$1000	n/a	
Performance Awards	Outstanding: \$1,745 Excellent: \$1,250	Outstanding: \$1,495 Excellent: \$1,000	

As the above chart demonstrates, supervisory 15s are eligible for some bonuses, such as Peer to Peer awards and Supervisor/Manager of the Month, that non-supervisory 15s are not eligible to receive. However, it may be impractical to use these tools to ensure that supervisory 15s consistently receive greater rewards year after year. It may be possible to increase the overall performance awards for supervisory 15s to heighten the existing distinctions in bonus potential.

Recommendation: OGC Management and Union representatives on the Committee could not reach a consensus and have two different recommendations. OGC Management recommends that more precise criteria be developed to justify a promotion to a non-supervisory GS-15 position. Promotion to such a position should only be possible by satisfying a majority of the following proposed criteria: (i) sustained above-average performance; (ii) ability to exercise judgment and to act independently with little or no supervision; (iii) possession of specialized expertise and knowledge that is valuable to HUD OGC and would be difficult to replace; (iv) ability to assume duties which are beyond the position requirements; (v) demonstrated knowledge of applicable law, imagination, creativity and innovation; ability to handle complex

matters; (vi) ability to write clearly and persuasively; (vii) ability to analyze quickly and accurately; ability to plan and implement legal strategies; (viii) good oral communication skills; (ix) the ability to quickly and easily handle the unexpected (e.g., adapt knowledge to new tasks or new program areas); and (x) the ability to negotiate.¹

At the same time, OGC Management believes it is important to provide those who do undertake supervisory responsibilities greater incentives to do so. OGC Management supports developing a performance award structure which would allow performance awards for supervisors to substantially exceed the total award potential for similarly situated non-supervisory GS-15s.

Finally, although the Committee's work is focused solely on HQ personnel, it bears noting that attorneys in field offices can be promoted as a matter of course only up to GS-13. To be promoted higher than GS-13 requires the assumption of supervisory responsibility. When solicited for comment, many of the Associate General Counsel in HQ strongly advised against modifying HQ career ladders without first attempting to address the discrepancies between the field and HQ.

The Union representatives of the Committee do not join in this recommendation. They have recommended that all Headquarter OGC attorney position descriptions be written to include a career ladder promotion to a non-supervisory GS-15 position and that the position of Deputy Assistant General Counsels be converted to non-supervisory GS-15 attorney positions.

The Union is concerned that none of the recommendations made by former General Counsel Gail Laster relating to the OGC HQ career ladder for attorneys was implemented. The Union asserts that Ms. Laster's recommendations more appropriately address the concerns of the bargaining unit represented in OGC, and their implementation should be reconsidered. OGC Management does not address the challenges of senior attorney morale and flattening the OGC organization.

The Union notes that numerous new layers of management have been implemented since General Counsel Laster left the agency in January, 2001. For example, as of that time, there had never been Deputy Assistant General Counsel positions. Had General Counsel Laster's recommendations been accepted, it is likely that the organization would have been flatter

¹ The Committee examined the issue of whether non-supervisory 15s might be characterized as "supervisory" attorneys based on their role in managing others in the context of a special project or initiative. OGC's Personnel Law Division advised that such special responsibilities would not be sufficient to justify a removal of the employee from the bargaining unit. Labor law defines a supervisor "as an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment." 5 U.S.C. 7103(a)(10). If a GS-15 is just overseeing a specific project, then the employee is still in the bargaining unit and is not considered a supervisor. Alternatively, if the employee is doing one of the above (hire, direct, assessing, etc) consistently with independent judgment (such as assessing team members' qualifications before assigning the work) then he or she may be considered a supervisor.

already. New career ladder 15s would assume more responsibility, decreasing the number of concurrences. In other words, the development of the deputy assistant positions is directly related to the rejection of General Counsel Laster's recommendations.

The Union hoped that Management would directly address the concerted effort to restructure OGC by streamlining leadership positions and eliminating extraneous supervisory positions. This would result in fewer supervisors in OGC and would demonstrate that supervisors and staff attorneys require different skills and have different work responsibilities. The experienced and effective attorney should be able to aspire to a GS-15; the work level and its importance to the agency merit this consideration. Indeed, an experienced, high level lawyer is likely harder to replace than a supervisory attorney, and is more valuable to the fulfillment of HUD's mission. The Union believes that personnel should not be rewarded merely for their status as supervisors. HUD itself agreed this year that managers would not receive more money than workers in reference to performance evaluation bonuses. The Union asserts that HUD OGC has too many managers relative to the number of employees, and OGC must address the discontent and lack of incentives that are part and parcel of the senior level (GS-14) attorney positions through reassignment in a flatter operation.

In response, OGC Management states that it is their position that whether Deputy Assistant General Counsels should have supervisory roles is exclusively a management right and not subject to bargaining.

II. Equitable Treatment of Legal Assistants

We also discussed the need to establish equity in OGC for legal assistants and legal technicians. OGC currently employs 7 persons classified as Legal Assistants. In contrast to Paralegals, there is no formal educational requirement for this occupational category and entry-level begins at GS-4 (more typically GS-5) and goes up to GS-9. OGC also employs three persons classified as Legal Technicians, which is a "legacy" occupational category that is no longer in use. Similar to Legal Assistants, there is no formal educational requirement for this category, but the career ladder for this position only goes to GS-8, which has led to dissatisfaction and a sense of inequitable treatment given the similarity of the roles carried out by Legal Assistants and Legal Technicians.

Recommendation: The Committee recommends that the three Legal Technicians be reclassified as Legal Assistants, which would allow for the possibility of their eventual promotion to GS-9. The Union also recommends that new position descriptions be developed that would allow for the possibility of their eventual promotion to GS-9. It is noted that both Legal Technician and Legal Assistant classifications are in the 986 kindred series.

III. Staff Assistants

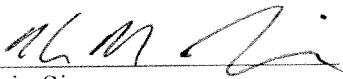
Staff Assistants are non-attorney support positions within OGC that fall within the GS-301 miscellaneous administration and program series. The existing position descriptions for the Staff Assistants generally offer a career ladder up to GS-10. The union representatives to the Committee sought to have these position descriptions amended to allow greater promotion

potential to GS-11 or GS-12. OGC Management notes that paralegal specialists have promotion potential to the GS-11 or GS-12 level and have specialized educational and skill requirements. If the existing staff assistants are willing to obtain the education and skill levels to become paralegals and supporting appropriations are available, then the staff assistants could compete for paralegal positions.

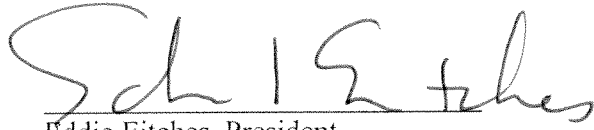
The Union proposes that the position descriptions be changed so that these employees can be on a career ladder with greater promotion potential. Furthermore, it is essential to update the position descriptions to ensure they are current rather than using inappropriate or inaccurate but historical position descriptions. The Union recommends that the staff assistants' position descriptions be modified to allow greater promotion potential to the GS-11 or GS-12 level within the 301 miscellaneous administration and program series.

ON BEHALF OF OGC MANAGEMENT

ON BEHALF OF HUD LOCAL 476



Kevin Simpson
Principal Deputy General Counsel



Eddie Eitches, President
Local 476, AFGE

**APPENDIX A: SUMMARY OF POSITION MANAGEMENT
PRACTICES AT OTHER AGENCIES**

Agency	Policy	Notes
Dept of Justice	Policy varies between divisions <ul style="list-style-type: none"> • GS-15 part of career ladder • Competitive promotion procedure required 	
EEOC	Career ladder to GS-14; competitive promotions to GS-15	
Administrative Office of US Courts	Statement of justification and review/approval by executive panel required for promotion to non-supervisory GS-15	
SSA	Recommended promotions to non-supervisory GS-15 are reviewed by executive panel	
Dept of Energy	Competitive promotions to GS-15 are typically utilized, but not absolutely required	
HUD	Competitive promotions to non-supervisory GS-15 positions	
USDA	Competitive promotions to non-supervisory GS-15 positions	
Dept of Interior	Competitive promotions to non-supervisory GS-15s	
Internal Revenue Service	Competitive promotions to non-supervisory GS-15s	
Dept of Labor	Competitive promotions to non-supervisory GS-15s	