

# Cromwell Fire District

1 West Street  
Cromwell, CT 06416  
Telephone 860-635-4420

FIRE DISTRICT OFFICE  
WATER DIVISION

FIRE DEPARTMENT  
FIRE MARSHAL'S OFFICE

## **BOARD OF COMMISSIONERS** **Subcommittee for Non-Career Staffing Solutions**

**Monday, January 14, 2019**

**6:00 PM**

**1 West Street  
Cromwell, CT**

Present: Executive Director Julius Neto, Commissioner Mertie Terry, Nicole LaTerra, EMS and Deputy Fire Chief Michael Salonia. Attorney Ken Weinstock was also in attendance. Subcommittee member Curt Anderson had an excused absence. Commissioner Donohue was present as part of the public.

- I. Call to Order. The meeting was called to order at 6:06 PM, by Chairman Neto.
- II. Approval of Minutes of December 27, 2018 & January 3, 2019. The minutes were tabled until the next meeting.
- III. Public Comment. There were no public comments to report.
- IV. New Business
  - A. Continue Discussions for Non-Career Staffing Solutions/Possible Approval of Specific Suggestions Related to Solutions. The Chairman noted that this meeting will continue discussions focusing on solutions. He added that Attorney Weinstock was present at this meeting to possibly offer more insight regarding the Fair Labor Standards Act (FLSA). Mr. Neto asked if the group would like to have an open discussion with Attorney Weinstock or have a discussion regarding the information received from D/C Salonia on how other departments are built. Mr. Anderson had also sent out some information to the group via email. It was agreed to wait to review it until Mr. Anderson was present to walk through the material.

Since Mr. Anderson was not present, Commissioner Terry asked if Attorney Weinstock could give the Subcommittee an overview on the Fair Labor Standards Act (FLSA). Mr. Weinstock noted that what he cannot do is look at Cromwell's particular situation in a public session such as this one. He would be able to give a general explanation of what the Fair Labor Standards Act states regarding volunteers and how it is differentiated. Some material he cannot discuss in an open forum because some of it is his legal opinion which is Attorney/Client privileged information.

The FLSA governs employment and how people are paid. The law was passed in 1938 and is still in effect today. Originally it did not apply in the public sector for the first 50 years or so of the law (1985). There was a court ruling at that time, and Congress

amended the law. Since 1985, the law now applies to the public sector. The law spells things out for public and private employers. The FLSA states that the normal work week is 40 hours. Anything over that amount means an employee is entitled to overtime. The law has created exceptions for police and fire service among others. There is a different way to look at the work schedule in compliance with overtime rules. For Fire and Police a 28-day look can be done to determine if someone is entitled to overtime or not. That would be a total of 212 hrs. in a 28 day period.

He added that in the private sector it is very clear people are not allowed to volunteer for a private employer and not get paid. However, Congress has said in the public sector there are people that would want to volunteer for charitable, religious or help-the-community reasons who would volunteer for public entities. Congress and the DOL carved out an exception and have allowed people to generally volunteer for a public employer. They can volunteer without an expectation of being paid because they are doing a civic or charitable duty that they believe they want to do.

Over time the courts and the DOL further examined the volunteer issue and narrowed it down to put a definition on what is a volunteer and can a volunteer be paid. Congress, the courts and DOL have determined that a volunteer can be paid a nominal fee or receive certain benefits, and it will not change their volunteer status. The DOL looked at other benefits such as pension contributions and tax breaks (tax abatement on property tax). They can also be reimbursed for things such as gas, meals or equipment. Those types of things are permissible depending on the amount. This can offset the nominal fee. The nominal fee is defined as 20% of what you would normally pay a full-time employee. There are certain components to measure what would make up that 20%.

When asked how the subcommittee could get copies of any information outlining components that make up the 20%, Mr. Weinstock replied that it is very difficult to get that information. The Federal DOL has some of it outlined. There are wage and hour opinion letters. The DOL will periodically ask private and public employers who seek the DOL's opinion on things on whether or not someone has complied. The DOL will look at specific factual situations that the employer has outlined to DOL. DOL will then give their opinion letter that the employer can use as a reference. The letter would be fact specific to that employer and the information that employer provided. You can sometimes use general concepts out of that letter. He added there has not been a lot of litigation over the years to make things clearer on these matters. Calculations are determined on just wages, not other benefits.

The subcommittee needs to determine what the 20% threshold number will be (Firefighter or EMS). Mr. Neto thinks that two numbers should be calculated. Hardcore numbers on a yearly basis for volunteers that would establish a barometer depending on the rank of the individual. Mr. Weinstock added that the law has not changed since 1985, even though there have been changes to the work place.

Commissioner Terry asked if someone can be a part-time employee and come in and work as a volunteer. A person does not have to be part-time, but any employee working for a public employer, can come in and volunteer for work other than what they are paid for by fair labor standards. Deputy Chief Salonia noted that in Cromwell stipends can only be received if a quota for pay per call (10% of calls or 360 hours) is satisfied. He discussed the stipend program and current quota requirements and wondered if this would be considered recognizing performance and/or if it would be acceptable under DOL

guidelines. This seems like a productivity based system which should not exist for volunteers. There was a question as to whether or not volunteers can be paid another way and not be taxed. Attorney Weinstock is not a tax attorney so he could not answer the question.

It was noted that some of his opinions that could not be shared in a public forum could be shared with the Commissioners or a smaller group of Commissioners designated to address these issues. Mr. Neto noted that the Subcommittee's work is to provide a document or documents identifying what the suggested next steps are as far as modeling or recommendations. Once that is done, it will be referred to the Personnel Committee in conjunction with the Commissioners who would engage legal opinion. Next steps can be adjusted based on what legal opinions there are. Attorney Weinstock agreed with the process for next steps.

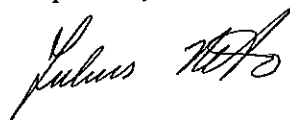
Mr. Neto reviewed the circumstances and the tasks at hand for the subcommittee. In October there was a system in place that was close to an uncomfortable number for the Chief, Mr. Neto and others in terms of FLSA guidelines. At that time it was thought to regroup. The Subcommittee's objective based on better serving the community, is to identify career staff with CBA's, and then look at some of the models discussed to cover an additional 181 hrs a week without the career hrs., and without getting close to the FLSA issue. There is a part-time component that may help, and another component is the volunteers. How can this be fully defined to meet the service needs of the community and the needs of the part-time and volunteer staff. There have also been discussions regarding per diem and on-call. The DOL says that per diem can be used for volunteers but being mindful of the 20% threshold (the nominal fee).

Ms. LaTerra asked how a model can be developed when the Subcommittee cannot determine what the threshold is or what areas of the law were violated. Mr. Weinstock stated that there has not been a determination from DOL that Cromwell has violated anything. To begin creating a model, a threshold can be determined based on an average between the highest and lowest rates of pay. Another average can be determined with fire officer rates of pay from lieutenant to Chief. Models can be tailored as volunteer models, part-time models, etc. The current model needs to be upgraded. The model utilized can be the present salary of career firefighters.

V. Public Comment. There were no public comments to report.

VI. Adjournment. There being no further business, a motion was made by Deputy Fire Chief Michael Salonia, seconded by Nicole LaTerra and unanimously approved to adjourn the meeting at 6:55 PM.

Respectfully submitted,



Julius Neto, Chairman

Nancy Deegan  
Recording Secretary  
1-22-19