

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, March 4, 2019

5:00 PM

**1 West Street
Cromwell, CT**

Present: Executive Director Julius Neto (Chairman), Commissioner Mertie Terry, Nicole LaTerra and Curt Anderson. Deputy Chief Michael Salonia had an excused absence.

- I. Call to Order. The meeting was called to order at 5:00 PM by Chairman Neto.
- II. Approval of Minutes of January 28, 2019. The Subcommittee requested that the minutes of January 28, 2019, be emailed to them. Based on receipt of the minutes via email, the Subcommittee agreed to table the January 28, 2019, minutes until the next meeting.
- III. Public Comment. There were no public comments to report.
- IV. New Business
 - A. Finalize the Plan to Submit to the Personnel Committee. There were some questions regarding the Per Diem component. Chairman Neto reported that at the last meeting there was a request to vet the Per Diem component to an attorney. Mr. Neto did reach out to the President of the Board and the Chair of the Personnel Committee. They felt comfortable with the Subcommittee submitting something to them, and if approved they would do whatever would be appropriate. They had moved the Personnel Committee from March 7 to March 14 giving the Subcommittee an extra week to prepare a presentation to the Personnel Committee. They also have a high expectation that next week the Subcommittee will be able to present a plan to them. The Chair asked the Subcommittee what can be done today to bring their work a step closer to making a presentation to the Personnel Committee on March 14. Is there anything that needs to be done to the plan in terms of editing.

Mr. Anderson stated that the Per Diem component needs to be physically merged into the Volunteer plan so that there can be a Power Point presentation to the Personnel Committee. However, Mr. Anderson was not comfortable presenting any plan to the Personnel Committee without being vetted by an attorney. He honestly would not vote for it the way it is. Mr. Anderson wants to make sure that what they are proposing to do is legal. The main reason being that if they are proposing anything that is illegal, they would have an opportunity to address it before it is presented to the Personnel Committee. Commissioner Terry was not present at the last meeting, and had some

questions regarding the staffing model that was approved by the Subcommittee. Mr. Anderson gave a brief review of what has been proposed including the Per Diem component.

Mr. Neto added that there are Departments in other towns that have a Per Diem component in their working world. Mr. Neto thought that Mr. Anderson had concerns with the Per Diem component associated with the present By-Laws and the present environment that the Department finds itself in.

Mr. Anderson is not so worried about the By-Laws but is more concerned about the term volunteer. There is also reference to the Volunteer Activity fund in the By-Laws, but the word volunteer does not appear in there. There is no definition of an active member of the Department being a volunteer or not being a volunteer. The first time the word volunteer is mentioned is way back in discussions of developing working relationships, but there is no definition for member or volunteer.

Mr. Anderson had reviewed the SOP's after the last meeting. Under membership definitions the word volunteer never shows up. Under the SOP's for Pensions, no volunteer is mentioned. Under the SOP for new member applicants, nowhere does it say if you are a new member, you are a volunteer. Even for procedures for new applicants for the Fire Department, there is no mention of the word volunteer. Under the SOPs for all non-career fire and EMS personnel the word volunteer has been substituted with non-career.

Regarding the handbook that is given out, the word employee is continuously used. Mr. Anderson stated at the start of the Subcommittee's work, Mr. Anderson had recommended having DOL come in and evaluate what has been done, where we are and what the recommendations would be going forward. Also discussed was having an attorney come in to discuss these issues, and none of that has happened.

Mr. Neto stated he is not comfortable with DOL coming in to explain what is or is not being done. Commissioner Terry agreed. The DOL would be coming in to do their job which would be to find issues. Having a government entity come in will give them an opportunity to report on their findings.

Regarding being a volunteer, Mr. Neto did not want to get into what constitutes being a volunteer. What he did state is that the Department is in a position that needs to change. The Subcommittee needs to figure out a different approach to get it to the next level. The Subcommittee has voted to continue with the volunteer plan and the modification to it. Although there is no lawyer present, it does not mean it cannot be sent to a lawyer to ask if the Department is violating anything. He does not think there is any violation by using Per Diem under the constraints of FLSA. However, he does not know about Per Diem with volunteers. It would go back to the definition of volunteer.

An individual that is compensated on a regular basis is not a volunteer. There are "volunteers" in another town that do not get compensated other than a tax credit on their tax bill. The IRS considers "volunteers" that get compensated an employee/employer relationship. There is a relationship of employment in that scenario. There are FLSA guidelines under the State and Federal government, IRS and the Dept. of Revenue Services. We may not be within the guidelines of those four entities. We need to move to be fully compliant in whatever model we are working towards. There needs to be full

compliance with any and all State statutes, any and all Federal laws and any and all IRS and Revenue Services regulations.

The proposed plan resembles a lot of what is in place today with the exception of the Per Diem component. Commissioner Terry asked for clarification on how the volunteers will get paid. Mr. Neto stated that it is the same way they are getting paid today including a W-2 at the end of the year. Under the IRS code, an employee/employer relationship would be determined. Under the wage and hour law, it would be an employee/employer relationship even though members do not consider themselves that.

It was noted that there are approximately 10 individuals currently that fall into the category of being over the 20% FLSA limit. If the same individuals were under the category of part-time employees, there would not be an issue with FLSA. Also, volunteer individuals cannot be paid by the hour.

Ms. LaTerra explained that the proposed model is trying to maintain the volunteer organization status but still operate within the guidelines of FLSA and provide better coverage to the citizens. Another goal is to stay within budget which is why it is important to keep it as a volunteer organization which is what the members want. It is unclear at this point if the Per Diem component would affect the pay of the volunteers. One reason why a lawyer was requested was to see if there were other issues to consider besides pay. The IRS does not care what the members call themselves.

They consider the Department to be employees/employers. Mr. Neto asked the Subcommittee what it is that they want to do. If the two components are combined, how will they be presented as one plan to the Personnel Committee. Mr. Neto can ask for a quick review of the plan when it is presented to the Committee. One issue to be considered is the number of hours and dollars that people are going to be compensated so that the District will not fall into the same situation they were in at the end of 2018.

Ms. LaTerra noted that they were never given a schedule or guideline to use in preparing a proposal. They never understood the rules of the FLSA. Dual accountability was added as part of the new component because they now understand some of the guidelines. Mr. Anderson added that adding the Per Diem component, a person would be treated just like a volunteer, a voting member of the Department and will be rewarded by not having a cap in terms of how much money they can make. Mr. Neto stated that the Department stopped being a volunteer organization when members started being compensated for their service.

There was discussion regarding how the members should be defined. Some members have always considered themselves volunteers. The IRS on the State and Federal level consider members to be in an employee/employer relationship because they are compensated. The membership has worked with the Subcommittee members to come up with a plan to maintain how they currently operate but to be in compliance with FLSA guidelines. The IRS information is relatively new to the subcommittee. It was learned over the last week. This new information provides clarity to the objective of the Subcommittee.

Much of the information that was discussed at the last meeting was repeated for the benefit of Commissioner Terry who was absent from that meeting. It is important that

the Subcommittee understands what the members should be classified as and the difference between being a Per Diem employee and a part-time employee.

Again, a legal opinion was suggested before the Subcommittee can move forward. It was noted that this group is serving as an advisory group, and that the ultimate decisions will be made by the Personnel Committee and the Board of Commissioners. Ms. LaTerra noted that the work that has been done thus far has not been with accurate information. What has been learned regarding the IRS is new information and has not been incorporated into the proposal. Mr. Neto felt that the plan going forward does address being compliant with FLSA, IRS and the Dept. of Revenue services. Mr. Neto feels that this model needs to move forward even though the IRS information was not known until 3 or 4 days ago.

It was also discussed that levels of compensation need to be defined, regarding an hourly rate. There was also a discussion about volunteers only with a pension only. The new finding at this meeting tonight is the interpretation of the IRS of a volunteer which means pension only and no compensation. Receiving monetary compensation means employee/employer, but it is not the IRS who cares what the membership calls themselves. Ms. LaTerra asked if the model presented meets all the criteria of the objectives of the Subcommittee. Mr. Neto said that it could.

They suggested moving forward with the proposal as is. Mr. Neto will forward copies of the proposal to the Personnel Committee for review before the Personnel Committee meeting.

- V. Public Comments. Ms. Jennifer Anderson felt that the Department could operate with volunteers and per diem employees. Brett Hallden stated that Per Diem employees would be contractors receiving a 1099. He also questioned whether those same employees would be covered under Workers' Compensation. What would be the guidelines in terms of what contractors would be covered. Mr. Hallden also noted that regarding the FLSA, the Department has probably been in violation for years. Nothing has changed in terms of the laws, etc. The only thing that has changed is that the Department now has a Fire Chief that has paid attention to the laws and brought the issue to the attention of the Board of Commissioners. He added that a true volunteer is not compensated. He discussed various issues with the Dept. of Labor in terms of violations. He discussed the fact that the Subcommittee needs to make a final decision on a plan. One was voted on last week, and now a Per Diem component has been added. One issue that he has heard through the membership is frustration because nothing has been decided or finalized.

Chief Terenzio shared a story regarding an applicant that had come into the Fire Chief's office. He had explained to the applicant that the membership was a volunteer membership, and the person was under the impression that it was a paid operation. The person stated it was a member that gave her that information. He also stated he thought the purpose of the Subcommittee was to vet all the information regarding FLSA, IRS, DOL, all the acronyms. At this point in time the Subcommittee should not be bringing new information to consider. He stated in his opinion the IRS trumps everything else in terms of regulations. Chief Terenzio explained his experience with volunteer departments within the state. He also explained his knowledge of FLSA and the fact that Cromwell was a true volunteer organization up until 1986. Prior to that time it was a volunteer organization. He had heard that since he has become Chief, the objective is to make the whole Department a paid

Department. However, he thinks that the volunteers are an important part of the community. He had been a volunteer since he was 17 years old.

Ms. Jennifer Anderson discussed the time involved with volunteers servicing the community. She thinks it is wrong to not be paid for the amount of time they are volunteering in addition to those individuals that work full time jobs. She stated some of the reasons members get involved are helping each other, needing the money and dedication. She also had issues about volunteering and the FLSA allowing nominal fees.

Chief Terenzio commented that nominal fees are recognition of people's sacrifices as a volunteer for expenses incurred for such things as gas, mileage, personal insurance, education, equipment, uniforms. The intent is not to compensate for time spent, but rather a recognition of your sacrifice. Mr. Hallden shared his experience and knowledge about volunteerism. He feels that the root cause of this issue in Cromwell is the fact there are not enough volunteers.

- VI. Commissioners' Comments. President Brow commented about his experience as a volunteer when there were true volunteers. What he got out of the experience was training that the taxpayers funded.
- VII. Adjournment. There being no further business, a motion was made by Mr. Anderson, seconded by Ms. LaTerra and unanimously approved to adjourn the meeting at 6:37 PM.

Respectfully submitted,



Julius Neto, Chairman

Nancy Deegan
Recording Secretary
3-28-19