

Unique Employment Issues Facing Firefighters

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Hiring and Firing

- ▶ If a township has a population of 10,000 or more, has a fire department with ten or more full-time paid employees **and** has established a civil service commission, then its fire department personnel decisions are governed by ORC Chapter 124 ("civil service townships.")
- ▶ All other townships are governed by ORC §505.38.
- ▶ Joint Fire Districts are also governed by ORC §505.38.



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Hiring

- ▶ For townships governed by §505.38 that have a fire department, they must have a fire chief appointed by the board of township trustees. ORC §505.38(A).
- ▶ ORC §505.38 also governs the appointment of volunteer firefighters to township fire departments. It requires that they have a certificate of satisfactory completion of a firefighter training program within one year of appointment. The statute also requires satisfactory completion of a physical exam given not more than 60 days prior to receiving an appointment.



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Hiring

- ▶ ORC §505.38 also governs the appointment of **volunteer firefighters** to township fire departments. It requires that they have a certificate of satisfactory completion of a firefighter training program within one year of appointment. The statute also requires satisfactory completion of a physical exam given not more than 60 days prior to receiving an appointment.
- ▶ Civil service townships must follow the hiring procedures established by ORC Chapter 124. This means that fire department employees in such townships are classified civil service employees

Hiring

- ▶ One notable exception is that a civil service township board of trustees can appoint the fire chief, who then serves in the unclassified service at the pleasure of the board.
- ▶ The trustees of a civil service township determine the number of fire personnel required, establish salary schedules, and all conditions of employment not in conflict with O.R.C. Chapter 124.

Discipline, demotion, or suspension

- ▶ Public employees, including members of a township fire department, generally have a constitutionally protected interest in their position of employment. As such, a member of a township fire department can only be removed for cause and must be afforded due process.
- ▶ For entities governed by ORC §505.38, removal proceedings for firefighters must comply with O.R.C. §§733.35-733.39, which also apply to municipal fire departments. Removal must be based on bribery, misfeasance, malfeasance, nonfeasance, misconduct in office, gross neglect of duty, gross immorality, or habitual drunkenness. O.R.C. §733.35.
- ▶ Failure to strictly adhere to the due process requirements can result in reversal of the discipline or removal decision.

Discipline, demotion, or suspension

- ▶ Initiation of removal proceedings requires the board of township trustees to designate the fire chief or a private citizen to investigate the conduct and prepare the necessary charges to support removal. A copy of the charges must be served upon the affected employee. If possible removal is contemplated, the charges must inform the employee of that fact.
- ▶ Charges must be filed "immediately" in relation to when the inappropriate conduct occurred.
- ▶ The charges must ordinarily be heard at the next regular meeting of the township board of trustees, at which the employee may appear with counsel, examine all witnesses, and answer all charges against him. Removal must be by a two-thirds vote. O.R.C. §733.36.

Discipline, demotion, or suspension

- ▶ A fire chief or other member of the fire department has several possible avenues of appeal, including appeal directly to common pleas court and, in the case of unionized employees, possible access to a contractual grievance and arbitration procedure. The court and contractual remedies are not necessarily mutually exclusive.
- ▶ For civil service townships, a decision to suspend, demote or remove an employee of the fire department is governed by O.R.C. §124.34. Such an employee can only be reduced in pay or position, fined in excess of five days' pay, suspended, or removed for cause, as specified in O.R.C. §§124.32 and 124.34.

Discipline, demotion, or suspension

- ▶ If the fire chief in a civil service township is removed or resigns from his position, he is entitled to return to the classified service in the township's fire department in the position held immediately prior to appointment as fire chief. ORC §505.38(C).
- ▶ Prior to a civil service township suspending, fining, demoting or removing a fire chief or any member of the fire department, the employee must be provided with a copy of the order, which must state the reason for the action. The order must be filed with the civil service commission. The affected employee can file an appeal within ten days and the appeal must be heard within thirty days. The matter can be subsequently appealed to the court of common pleas. ORC §124.34(C).

The Collective Bargaining Process
for Fire Department Personnel

- ▶ In order to effectively represent a township, municipality, or fire district in the collective bargaining process, elected officials, fire chiefs, and other representatives of management must have a good working knowledge of that process.
- ▶ It helps to have an understanding of the legal context in which collective bargaining occurs and to keep abreast of SERB developments that impact on the process.

ORC Chapter 4117

- ▶ A public employer in Ohio has the duty to bargain in good faith with the union representing its employees. O.R.C. §4117.04(B) and §4117.11(A)(5).
- ▶ An employer must bargain as to "wages, hours, or terms and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement..." O.R.C. §4117.08(A).
- ▶ An employer is not required to bargain "on subjects reserved to the management and direction of the governmental unit **except** as affect wages, hours, terms and conditions of employment, and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement." (Emphasis added.) O.R.C. §4117.08(C).

ORC Chapter 4117

- ▶ Unilateral changes affecting wages, hours, or terms and conditions of employment are risky unless the contract has a clear and unmistakable waiver of the duty to bargain.
- ▶ The duty to bargain includes the duty to furnish the Union with information requested by the Union that is reasonably necessary to enable the Union to bargain intelligently on the issue raised.

ORC Chapter 4117

- ▶ The statute mandates that certain provisions be included in a collective bargaining agreement, including:
 - A grievance procedure
 - A dues deduction mechanism
- ▶ Where an agreement makes no specification about a matter, the employer and the employee remain subject to all applicable state or local laws or ordinances pertaining to wages, hours, and terms and conditions of employment for public employees. O.R.C. § 4117.10(A).
- ▶ If an employer does not want a statutory provision to apply, the contract must expressly negate that provision.

ORC Chapter 4117

- ▶ Certain external laws cannot be contradicted by the terms of a collective bargaining agreement, including laws pertaining to civil rights, affirmative action, unemployment and workers' compensation, retirement, and residency requirements.
- ▶ Request for funds necessary to implement an agreement and for approval of any other matter requiring approval of the appropriate legislative body must be submitted within 14 days of reaching agreement. Submission must be accepted or rejected as a whole and is deemed approved if not acted upon within 30 days.

Preparing for Collective Bargaining

- ▶ Thorough advance preparation is critical to a successful outcome in negotiations.
- ▶ The public employer must identify an appropriate bargaining team to represent it at the bargaining table. Considerations include:
 - Persons with knowledge of operational issues
 - Persons with knowledge of legal requirements and bargaining tactics
 - Persons with integrity and credibility to effectively present management's position

Preparing for Collective Bargaining

- ▶ The public employer should review bargaining history to identify likely objectives of the union.
- ▶ It should also review its grievance history to identify possible problems with the existing agreement or to identify provisions that might need modification or clarification.
- ▶ It is important to establish goals and objectives that include fixing contract language that has caused operational problems and establishing economic parameters for wages and benefits.
- ▶ Goals and objectives must be realistic and attainable.

Fact finding and Conciliation

- ▶ O.R.C. Chapter 4117 establishes a procedure for settling contract issues where negotiations alone do not succeed, including:
 - Mediation
 - Factfinding
 - Conciliation for no-strike safety forces, including members of a police or fire department, civilian dispatchers, and emergency medical or rescue personnel
- ▶ Parties may also negotiate a mutually agreed upon dispute settlement procedure in lieu of the statutory procedures. For no-strike safety forces, the procedure must provide for final and binding resolution of disputed issues by a neutral third party. OAC § 4117-9-03(C).

Fact-finding and Conciliation

- ▶ Ultimately, whether any bargaining goal is attainable may depend on the outcome of fact-finding and/or conciliation.
- ▶ Factfinders and conciliators are obligated to resolve issues based on the following considerations:
 - Past collectively bargained agreements between the parties
 - Comparison to other public and private employees doing comparable work, considering both factors peculiar to the area and classification involved
 - The interests and welfare of the public, ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service
- ▶ The conciliator must chose between the final offers put forth by the employer and the Union on each issue; cannot "split the baby."

Fact-finding and Conciliation Cont'd

- ▶ The lawful authority of the public employer
- ▶ The stipulations of the parties
- ▶ Such other factors which are normally or traditionally taken into consideration in the determination of the issues submitted to a dispute settlement procedure.
- ▶ In preparation for negotiations, a public employer should identify "comparable" employers (both public and private) and gather data on them for use in fact-finding or conciliation.
- ▶ SERB is an outstanding source of data and reports.
- ▶ A public employer should also analyze its own financial status and be prepared to address "ability to pay" issues.

Firefighter Exposure to Environmental Elements Grant (FEEEG) Program

- ▶ ORC 4121.37 and OAC 4123-17-56
- ▶ Policy Purpose:
 - BWC created the Firefighter Exposure to Environmental Elements Grant (FEEEG) Program as an extension and modification of BWC's general industry Safety Intervention Grants Program. BWC uses the FEEEG Program to partner with Ohio employers to minimize firefighter exposure to dangerous environmental elements.
- ▶ Applicability:
 - This policy applies to BWC Division of Safety & Hygiene (DSH), employers and their authorized representatives.
 - See the handout for more information about this Program.
