



FIREHOUSE LAWYER

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Joseph F. Quinn, Editor

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Formulating and Implementing Policies

There is no subject more fundamental to fire protection districts and fire departments than the formulation and implementation of policies to guide the personnel of the district in accomplishing their mission. On June 6, 1998, the author will be co-presenting with Lee Smukalla, Pierce County Fire District 8 Director, a seminar on this very topic. The seminar is sponsored by the Washington State Fire Commissioners Association and therefore is aimed primarily at fire commissioners. This article presents, in shorter narrative format the basic content of that 3 hour seminar.

Our seminar is divided into two parts. First, we discuss the process of formulation, implementation and maintenance of applicable policies and procedures for a fire department. Second, we present the substantive side of the equation, using some of the policies developed by and for Pierce County Fire Districts on topics such as sexual harassment,

substance abuse, and discharge and discipline.

In order to achieve a truly enforceable, effective, and comprehensive policy, following a proven process for adoption is the key. The concepts stated herein have been found by the author and by Lee Smukalla to be effective based on our experience. Thorough, well designed, and enforceable policies depend heavily upon input from all interests that have reason to be involved. For example, in a combination district, input from the volunteers and paid staff is necessary. In a unionized setting, which is quite common in fire protection districts in Washington, it is required by law, because almost all policies affect wages, hours or working conditions, and are therefore mandatory subjects of bargaining. We suggest that both formal and informal input be obtained from the exclusive

bargaining representative and their represented members.

In short, we strongly recommend the use of committees for the development of policy, with the Chief or CEO coordinating the effort. Thus, the first basic principle is one of inclusion of all represented interest groups, or the policy you develop simply will not work.

The second basic principle may be paraphrased in this fashion: "Do not reinvent the wheel". We urge policy makers and CEOs to find a model that will work for your fire department. Many such suggested policies and procedures do exist and there is no point in spending huge amounts of money or hours in creating something that already exists somewhere else. Both the State Fire Commissioner's Association and the Washington State Association of Fire Chiefs

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have tremendous resources available with respect to such policies. Also, the Municipal Research Services Center is available, directly or indirectly, and has various policies that may be applicable to fire departments.

We do not recommend that fire departments hire consultants to develop policies for you. As we have stated above, it is better to obtain “ownership” of the policy by obtaining input from within. Also, the policies developed by various consultants may not be adaptable to your local fire department. If there is no model or anything you find acceptable “on the market”, of course it would be appropriate to obtain expert consulting advice. Cost is obviously also a factor, however, and consultants often charge several thousand dollars for policy books.

A third basic principle is to proceed in the development of policy “one chapter at a time”. This is because the development of comprehensive SOPs for the operation of a fire department may seem a daunting task at first. The policy books of most modern fire departments are in three-ring binders which may be 4 inches thick. There are at least 7 or 8 necessary chapters, and therefore we recommend proceeding through the entire

process described herein for one chapter before you move to the next. We have found that this process divides the project into more readily digestible bits so that the project may be completed even though it takes months to do. After all, you should not have to completely rewrite the policies every year or even every few years. Once the policies are adopted, they obviously have to be maintained (see below) but they do not have to be comprehensively rewritten very often. Therefore, take your time and do the project one chapter at a time. In that regard, it is important to prioritize the chapters or topics on which you desire to develop policy. Only the commissioners and chief or CEO are aware of the local issues of the utmost priority that must be addressed with the adoption of new policy. Therefore, in one district you might develop the personnel chapter first, but in another you might opt to develop the commissioners’ chapter first.

An important stage of the process is adoption by the board of the formulated policies that have been reviewed and essentially finalized by the groups having input. We recommend that the board actually have input before the matter comes to the commissioners for final adoption. Some districts have started to use a first reading and second reading approach, as used

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with ordinances in Washington cities. That type of phased approach works perfectly with the adoption of policies because the Board of Commissioners gets more than one opportunity to look at the policy draft.

Another important question is the necessity for legal review and the timing of that review. Just as I have said above, with respect to consultants, I strongly recommend that you do not have the lawyer do all of the work in formulating and drafting your policies. (Remember, this is a lawyer talking.)

The approach I have found to work successfully involves legal review by the attorney for the department at a fairly late stage of the process. By the time the committee, the chiefs, and the board have massaged the information into a fairly “final” document, it is then ready for legal review. The role of the lawyer can be quite variable, but at the very least the attorney is looking at the policy draft for compliance with statutes, case law, and of course the State and Federal Constitutions. The lawyer will also look at the process, for example, to make sure that there has been bargaining with the union, for example. A lawyer can also provide an ancillary function of

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proof reading, checking for grammatical correctness, and logical organization. Hopefully, most lawyers will have writing skills and organizational skills that may be brought to bear at this stage of the process.

Finally, after the legal review is completed, the proposed SOP or policy document should be ready for “final reading” and approval by the Board of Commissioners or other governing body.

We believe the foregoing process is a reasonably good procedural model for the development of policy. Nonetheless, even though the foregoing process may take weeks or even months with respect to a particular chapter in your policy book, you are really not done. We recommend adherence to the four “Rs”. These four “Rs” are representative of the words “routine, regular, recurring review”. You must routinely and regularly review your policies on a recurring basis. Whether this review be accomplished semiannually, or annually, you must be aware that once policy books are adopted they are not put on the shelf and forgotten. These are meant to be living, breathing documents that are like handbooks which you work with weekly or even daily. You must continually update and review policy or it may become out of

date, or even unlawful under currently revised statutes. A good example would be policies maintained by districts on topics such as open records and healthcare records. We have noticed that since approximately 1993 there have been significant amendments to the Washington State Open Public Records Act. Washington has also since that year adopted the Uniform Healthcare Information Act. Without regular legal counsel, and without someone being responsible for continual updates, many districts did not notice these laws changed. Therefore their policies were not in compliance with applicable statutes. Obviously, there can be many other reasons why policies are no longer consistent with existing practices or with changing conditions in your particular fire department. Therefore, we cannot stress enough that the process does not end with final adoption of policy.

The second portion of our seminar, and worthy of discussion here, is a brief mention of a few examples of substantive policies that are particularly important in fire departments today.

A necessary policy in today’s litigious world is a policy against sexual harassment. A good sexual harassment policy would define terminology, provide for a strict prohibition of such activity, and a detailed procedure for

investigation and discipline of those found guilty of harassment. The policy should deal with such issues as privacy, confidentiality, and due process for the accused.

Another currently “hot policy” relates to substance abuse in the work place. Illicit drugs and alcohol being epidemic in our society, it has become necessary not only to prohibit their use during active duty time, but also to provide policy to prevent people from coming to work under the influence of such substances. Also, with due regard for protection of constitutional rights (freedom from unreasonable search or seizure), it is necessary to have a policy allowing drug or alcohol testing in some manner if the employer has reasonable cause to suspect that a person is under the influence of such substances, impairing their ability to perform.

A third key policy is one on disciplinary action and discharge, including usually a table of offenses to assist the employer. Typically, such policies provide for progressive discipline, using

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the philosophy that the employee will respond and correct their behavior if they are punished more severely with each offense. Again, the policy needs to

provide for detailed procedures for investigation, record keeping, appeals, and the like. While it is impossible to identify and characterize all the different types of misconduct that can occur, we advise fire departments to adopt a table of offenses to guide and assist the decision makers in determining the appropriate level of discipline. The goal here is to provide “punishment that fits the crime”, while at the same time ensuring equitable action so that similar offenses are punished similarly.

While it is impossible in this article to attached detailed policies in their entirety, we would note that the author has drafted, or been involved in the adoption, of numerous policies such as the ones listed above, and they are obtainable as shown elsewhere in *The Firehouse Lawyer*.

In conclusion, we believe that every fire department needs to assess what policies and procedures are required to perform the mission of the fire department in today’s modern society, taking into account the size and nature of the particular department. Obviously, large departments with many paid personnel, and perhaps with one or more bargaining units of represented employees, have far different requirements with respect to policy than small or all volunteer departments. Combination departments, that

have both paid employees, (who may be unionized) and volunteer programs, present unique policy development issues. It is beyond the scope of this article to delve into these issues, but we would only note that it is probably desirable to try to maintain similar policies and procedures for all employees, even though the process of development of the policy may in some instances include collective bargaining. Clearly, development, adoption, and maintenance of good policies and procedures is one of the key elements in managing the risks of liability, as well as simply providing the quality level of service, in today’s modern fire department.

OSHA CLARIFIES FIREGROUND STAFFING

The International Association of Fire Chiefs website, in the On Scene magazine, recently published an article regarding OSHA’s clarification of fireground staffing requirements. The acting director of OSHA’s Directorate of Safety Standard Programs, Thomas Seymour, clarified that OSHA will follow the options permitted in NFPA 1500. That standard does not restrict the fire department to a strict two-in, two-out policy for

the initial phase of operations. Whenever a team is operating in the hazardous area, at least one additional member shall be assigned to stand by outside of the hazardous area where the team is operating. The initial stages of an incident shall encompass the tasks undertaken by the arriving company with only one team assigned to operate in the hazardous area, under NFPA 1500. Thus, it is important to differentiate between the initial stages of an incident and the fireground staffing required after the initial stage is over. Finally, it is important to recognize the exception that, if upon arrival at the scene members find an imminent life threatening situation where immediate action may prevent the loss of life or serious injury, such action shall be permitted with fewer than four persons on the scene if conducted appropriately otherwise under the standard.

It is also important to consider whether your state is a
**OSHA CLARIFIES
FIREGROUND
STAFFING
(continued)**

“plan state” which is subject to their own approved state plan, as opposed to being directly regulated by OSHA. Washington State is a plan state, and therefore so long as the

WISHA plan is deemed to be at least as safe as the OSHA regulations, then the OSHA regulations are not deemed to apply directly.

SEMINAR SERIES

The Firehouse Lawyer is conducting a monthly seminar series during 1998, attended by those fire districts participating in the Interlocal Agreement for Legal Services here in Pierce County. The monthly schedule of seminars for 1998 is as follows:

JANUARY 22

Open Public Meetings Act and Minutes

FEBRUARY 26

Discharge and Discipline

MARCH 26

Consolidation and Merger

APRIL 23

Excessive Absenteeism and Leaves

MAY 28

Subjects of Bargaining and The Duty to Bargain

JUNE 25

Public Bidding Statutes and Sample Problems

JULY 23

Open Public Records Act and Health Care Records

AUGUST 27

Public Works Statutes:
Assembling a Bid
Package, Bid Bonds,
Performance and Payment
Bonds, Retainage, etc.

SEPTEMBER 24

Election and Campaign
Laws

OCTOBER 22

Safety regulations,
including WAC 296-305

NOVEMBER 19

ADA and Other
Discrimination Laws

DECEMBER 17

“Avoiding the Ten
Cardinal Sins that Lead to
Audit Findings.”

Written materials will be made available upon request at a moderate price; see request form below.

Q AND A COLUMN = Sector Boss

The winner of our “Rename the Q&A Column” was Rick Rohlman, who suggested the name “Sector Boss”, an archaic term in the fire service for a guy who, with his crew’s help, put out the fire (the guy with all the answers!).

Disclaimer

The purpose of this feature is to allow readers to submit short questions which lend themselves to general answers, on various legal issues. More detailed questions would require a formal legal opinion and are beyond the scope of the Q&A column. By giving answers in the Q&A column, the Firehouse Lawyer does not purport to give legal advice and disclaims any attorney/client relationship with the reader. Detailed legal opinions require a greater explanation of the facts, possible legal research and a more thorough discussion of the issue. Readers are therefore urged to contact their legal counsel for legal opinions.

Q AND A COLUMN (continued)

Q Our fire department CEO has an army background, but no fire fighting experience. The CEO proposes to act as a senior fire commander on the fireground, including becoming the incident controller in charge of the incident management team.

The team consists of logistics officer, planning officer and operations officer, all overseen by the incident controller. The incident controller has final approval of the action plan, type 3. My question is: Should the CEO in these circumstances be the incident controller? Also, are there other command structures available?... Wayne Trezise, Australia

A While the Firehouse Lawyer does not purport to be an expert in Australian law, or all the intricacies of incident command systems it seems to me there are certain basic principles at work here. First, the modern CEO in today's sophisticated fire department is primarily an administrator, with expertise in fiscal and human resources management, but perhaps little or no direct fire service expertise. Since the larger fire departments are complex municipal organizations, with significant budgets, large numbers of personnel, and sophisticated administrative issues, most departments believe it is more beneficial to have a non-fire administrative leader than a fire chief with no administrative experience or training in these CEO positions.

Contrast those skills with the necessary knowledge, skill and ability that must be brought to bear by the incident commander in a typical emergency fireground

incident. (Arguably, even in the more simple emergency fireground incident such as a residential structure fire, these skills are required.) It seems to me that the incident commander or controller needs to have fire service background. After all, the incident commander has to make decisions regarding subordinates who are engaged in activities in hazardous atmospheres, sometimes dealing with unusual building materials, toxic or hazardous fumes, and the like.

Moreover, incident command systems today are quite sophisticated and have been developed with a great deal of study.

In the United States, the National Fire Academy has adopted the Incident Command System as the base for teaching essential concepts of incident command. Of course, many systems exist throughout the United States for command and control of resources at emergency incidents, and there is not only one best way of doing things. The incident command system was developed after devastating wild land fires, that also consumed structures, in Southern California in 1970. As a result, fire agencies saw the need to create a system that allowed them to work together toward a common goal. ICS is designed to begin when an incident occurs and continue until the requirement for management and control of the operation no

longer exists. The term "incident commander" could apply equally to an engine company captain in a small incident, or to the chief of a department in a greater emergency. The ICS structure must be flexible and able to expand depending upon the changing conditions of the incident. The incident commander must be a qualified person, and the ICS personnel may obviously involve people from a variety of agencies.

ICS is designed to be used in response to emergencies caused by fires, floods, earthquakes, hurricanes, tornadoes, tidal waves, riots, hazardous materials, or other natural or human caused incidents.

All of this implies that an incident commander needs to be educated and/or trained

Q AND A COLUMN (continued)

thoroughly in ICS as it has been developed throughout the world. The ICS has five major functional areas: Command, operations, planning, logistics, and finance.

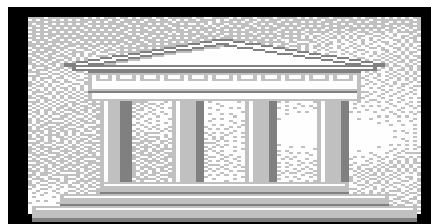
It seems to me that fire service expertise and background is a necessary prerequisite for being an incident commander or controller. By contrast, the

function of the CEO is to manage and coordinate all of the activities of the agency on a day-to-day basis, without being distracted by the emergency requirements of any particular incident. The CEO should have an operational person subordinate to him/her within an agency who is trained and capable of being the incident commander for any level of emergency incident likely to occur within your jurisdiction.

In Washington, we have standards adopted by a State agency, that require the fire department to establish an Incident Command System with written guidelines. Our regulations require that: "Personnel shall be trained and qualified by their department in the incident command system prior to taking a supervisory role at an emergency scene." The regulations also provide that: "At an emergency incident, the incident commander shall be responsible for the overall safety of all members and all activities occurring at the scene." Thus, the incident commander needs to be an expert on all of the safety regulations applicable to fire departments in Washington. This would not otherwise be a requirement for a CEO. Thus, as I look at the details of our regulation on emergency fireground operations and incident command system, I believe a person with a fire service background is necessary. For example, after the initial stage of

a structure fire incident is over, and additional crews are on the scene, the incident commander must evaluate the situation and risks to operating crews. These evaluation skills suggest that a fire chief should be the incident commander.

While I strongly support the trend toward hiring CEOs who do not necessarily have a fire service background, for the day-to-day management of large fire departments (for example, those with 100 or more firefighters) I do not believe that they should become operational employees. Thus, I agree with you that the CEO should not be an incident controller.



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NOTA BENE:

In 1997 I developed a fire department safety checklist and a set of forms for safety officers. Designed to help fire departments comply with the new WAC 296-305 safety standards, these materials are available to fire departments throughout the state, subject to payment of \$50.00 to defray reasonable copying and mailing costs.

In June, 1997, a model Safety Resolution and complete set of operating instructions (SOPs) were completed, to comply with the “vertical standards”. Cost \$100.

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