Cumberland County Fire Chief's Association

Minutes of May 20, 2013 Monthly Meeting

The meeting was hosted by Eastover Fire Department and we thank Chief Thurmond and his staff for their hospitality.

Opening Prayer: Sheriff Butler provided the opening prayer.

Roll Call: Roll call was conducted with 20 departments and 10 associate members present.

Members Absent:

Fire Departments: Westarea
Associate Members: County Commissioner,

Approval of Minutes: Minutes from the April meeting were approved.

Guests: Chief Medlock, Fayetteville Police Chief was welcomed to the Association.

Senator Meredith gave everyone an update on the Volunteer Workers Compensation issues

Vendors Present: Carl Nutt and Deborah Phillips of Heritage Planning gave an overview of the North Carolina State Fireman's Association retirement program. This program is designed for incorporated Fire and EMS departments currently not in the Local state retirement system.

Treasurer's Report: No report.

Meeting Point of interests:

Next Chief's Meeting *will be June 24, 2013 hosted by Fort Bragg Fire and Emergency Services. The meeting will begin at 7:00 pm. The meeting will be held at the Community Center located on Skytrain Drive. Please see the enclosed map for assistance.*

- President Johnson advised that the Fayetteville Fire Department will pick up air truck coverage and duties in June 2013.
- President Johnson provided a packet with legal briefs and various informational materials.

- President Johnson briefly updated the membership on P25 upgrades that will be needed for the radios purchased under the grant. Motorola is currently projecting this cost to be approximately $ 600.00 per portable radio (after a 20% discount is applied).

- President Johnson updated everyone that the CCFCA website is activated. If you have not sent your station pictures to President Johnson, please do so ASAP. If you have anything that you would like advertised on the website, please send it to President Johnson. Rules on posting on our web page will be forthcoming once the web page is up and running,

- President Johnson advised everyone that Harold Shirley is the new Fire Chief for Beaver Dam Fire Department. A retirement celebration for Retired Fire Chief Richard Bullard will be held June 2, 2013 at 3:00 pm. This event will be held at the Beaver Dam Fire Department.

OLD BUSINESS

1. President Johnson inquired if everyone had the opportunity to review the amended By-Laws that were send out via e-mail on May 1, 2013. President Johnson stated that all the amendments are highlighted in yellow and reflect our current order of business. Changes include the inclusion of our Life Time Membership Category which was approved in 1997, removed the male gender only verbiage and included social media and state of the art automation in the By-Laws notification section. After a discussion by the membership President Johnson called for a **MOTION** to Approve the Amended By-Laws with an effective date of 1 June 2013. A motion was made by Fire Chief Ken Hall to approve the amendments as presented with an effective date of June 1, 2013. The motion was **SECONDED** by Fire Chief T. J. McLamb and unanimously **APPROVED** by a roll call vote by all members present. The By-Laws will be posted on our Web Page. .

NEW BUSINESS:

None.

COMMITTEE REPORTS:

I D CARD COMMITTEE Lt. Tara Whitman (Stoney Point) Chairperson

- **FYI.** Fire Chiefs are required to send a signed letter or memo with a firefighter requesting an ID Card. For any questions or an appointment contact 424-0694 or e-mail at tara@stoneypointfire.com

FIRE PREVENTION/EDUCATION COMMITTEE Retired Chief J.F. Hall, Chairperson

- No report.

COMMUNICATIONS COMMITTEE Chief B. Bullard (Stedman) Chairperson

- No report.

STANDARDS & POLICY COMMITTEE Chief K. Hall (Cumberland Road) Chairperson

- No report.

MEMORIAL COMMITTEE Chief R. Marley (Pearce's Mill) Chairperson

- No report.

AUTOMATIC AID/MUTUAL AID COMMITTEE Chief Ake (Beaver Dam) Chairperson

- No report.

FINANCE COMMITTEE Deputy Chief Freddy Johnson Jr. (Stoney Point) Chairperson

- Report provided during the Finance Report

RESCUE COMMITTEE Deputy Chief Hank Harris (Cotton FD) Chairperson

- No report.

BULK PURCHASE COMMITTEE Chief Pearce (EMS) Chairperson

- No report.

FIREHOUSE / MCT COMMITTEE Chief TJ McLamb (Spring Lake) Chairperson

- Chief McLamb reminded everyone that there would be a user's group meeting at the Stedman FD on May 28th at 0900 hours.

SPECIAL RESPONSE TIME COMMITTEE - Chief Hill (WCFD/FFD) Chairperson

No report.

ASSOCIATE MEMBERS REPORT

EMERGENCY SERVICES DIRECTOR/ ECC-911 (Randy Beeman, Director)

Gene Booth has a Knox box meeting scheduled for May 22nd at Pearces Mill Fire Department. The meeting will begin at 6 PM.

Director Beeman advised that the 9 S inspections went well and he thanked everyone for their support.

EMS DIRECTOR: Brian Pearce, Director

- No Report.

HAZMAT BC Calvin Bishop, FFD - POC telephone for HAZMAT is 433-1729

- No report.

FORESTRY DISTRICT Craig Gottfried, County Ranger

- Ranger Gottfried advised everyone that the spring fire season was considered over to the rainfall and green up of the foliage.

FTCC Ernest Ward, Director

- No report.

SHERIFF'S OFFICE Sheriff Butler

- No report.

CHRISTIAN FIREFIGHTERS Chaplain Casanova

- No report.

NC HIGHWAY PATROL

- No report

COUNTY COMMISSIONERS Fire Commissioner Ed Melvin

- No report.

FOR THE GOOD OF THE ASSOCIATION:

Chief Melvin advised everyone that the Automatic Aid contracts with Fort Bragg Fire and Emergency Services would be going out in the near future. He asked that you have these returned as soon as possible. Chief Melvin also announced that the CPSE accreditation team will be on Fort Bragg the week of June 2nd. It is possible that they will be visiting some of the automatic aid departments.

ADJOURNMENT: A motion was made to adjourn by Chief Joe Marsh, seconded by Chief Hill. The meeting was adjourned at 2035 hours.

Respectfully Submitted By:

Freddy L. Johnson
Freddy L. Johnson Sr. CFO
Fire Chief / President

Mark A. Melvin
Mark A. Melvin, CFO
Fire Chief / Secretary

7 Enclosures

1. Roll call
2. Roll call vote on by-laws
3. Legal brief's
4. CCFCA by-laws
5. House bills
6. Richard Bullard invitation
7. Directions to Fort Bragg Community Center for June meeting.

CUMBERLAND COUNTY FIRE CHIEF'S ASSOCIATION
ROLL CALL 2013

MEMBERS PRESENT (21)	17	19	21	15	20							
ASSOCIATES PRESENT (11)	5	8	11	5	10							
Cumberland County Fire Chiefs Association	28 - Jan - 13	25-Feb-13	25-March -13	22- April 13	20-May-13							
MEMBERS												
BEAVER DAM STA 26	P	P	P	P	P							
BETHANY STA 12	P	P	P	P	P							
CEDAR CREEK STA 8	A	P	P	A	P							
COTTON STA 4	P	P	P	P	P							
CUMBERLAND ROAD STA 5	P	A	P	P	P							
EASTOVER STA 1	P	P	P	P	P							
EMS EMERGENCY MEDICAL SERVICES	P	P	P	A	P							
FAYETTEVILLE FIRE DEPT	P	P	P	P	P							
FORT BRAGG FIRE DEPT	P	A	P	P	P							
GODWIN – FALCON STA 17	P	P	P	A	P							
GRAYS CREEK STA 18	P	P	P	P	P							
GRAYS CREEK STA 24	P	P	P	A	P							
HOPE MILLS STA 21	A	P	P	A	P							
PEARCE'S MILL STA 3	P	P	P	P	P							
SPRING LAKE STA 22	P	P	P	P	P							
STEDMAN STA 23	A	P	P	P	P							
STONEY POINT STA 13	P	P	P	P	P							
STONEY POINT STA 19	P	P	P	P	P							
VANDER STA 2	A	P	P	A	P							
WADE STA 16	P	P	P	P	P							
WESTAREA Stations 15,20,25	P	P	P	P	A							
ASSOCIATE MEMBERS												
HAZMAT	P	P	P	P	P							
SHERIFF'S OFFICE	A	P	P	A	P							
HIGHWAY PATROL	A	A	P	P	P							
FAYETTEVILLE POLICE DEPARTMENT					P							
CC EMERGENCY SERVICES	P	P	P	P	P							
FORESTRY	P	P	P	P	P							
FTCC	A	A	P	A	P							
COUNTY COMMISSIONERS	P	P	P	A	A							
CHRISTIAN FIREFIGHTERS	A	P	P	A	P							
LIFE LINK	A	A	P	A	P							
FORT BRAGG EMS	A	P	P	P	P							
RETIRED CHIEF OFFICERS	P	P	P	A	P							

Special Notes:

CODES: (P) – Present (A)-Absent (E) - Excused

MS/WD 5/8/02

Cumberland County Fire Chief's Association

Roll Call Vote Document

Motion TO ADOPT THE UPDATES AND AMENDMENTS TO THE CCFCA BY-LAWS WITH AN EFFECTIVE DATE OF JUNE 1, 2013

MOTION MADE BY - CHIEF K. HALL

MOTION SECONDED BY - CHIEF TJ McLAMB

DEPARTMENT	YES	NO	ABSTAIN	OTHER
Beaver Dam #26	✓			
Bethany #12	✓			
Cedar Creek #8	✓			
Cotton #4	✓			
Cumberland Road #5	✓			
Eastover #1	✓			
EMS	✓			
Fayetteville FD	✓			
Fort Bragg FD	✓			
Godwin-Falcon #17	✓			
Grays Creek #18	✓			
Grays Creek #24	✓			
Hope Mills #21	✓			
Pearce's Mill #3	✓			
Spring Lake #22	✓			
Stedman #23	✓			
Stoney Point #13	✓			
Stoney Point #19	✓			
Vander #2	✓			
Wade #16	✓			
Westarea #15, 20, 25				ABSENT

Date 20 MAY 13 Motion Carried (20) YES Motion Denied —

Legal Briefings for Fire Chiefs

How fire chiefs, fire commissioners, and other fire service officers use the law to protect their communities... their departments... their officers... and themselves.

Vol. 26, No. 5 FireChiefLaw.com May 2013

In This Issue

Promotion Exam – Cheating Alleged – Demand Promotion

A class action against the city was filed for not administering a promotion where there was no cheating. The trial court issued an injunction which delayed any promotions until the investigation was completed. Those who passed the examination charged that they were being *unjustly punished.* .....Page 2

Discrimination, Harassment, Retaliation

37 year-old firefighter trainee was dismissed from the fire department after failing to achieve passing grades. He claimed that he was dismissed because he complained about his treatment by instructors and fellow trainees. Did the claimant *exhaust all administrative remedies* before filing this lawsuit? Are any of the claims time-barred?.....Page 3

Discrimination, Harassment, Retaliation

Is the Fire Department potentially liable for harassment by a supervisor? Firefighter alleged that he was harassed by other firefighters because of the sexual orientation of his daughter. He also alleged that he was r*etaliated* against and that he received offensive emails. .....Page 5

Fire Truck Accident – Personal Injury Action

The injured civilian was also injured in a pedestrian accident weeks after the fire truck accident. The fire company provided medical opinions of a neurosurgeon and an orthopedist. Was this evidence sufficient to dismiss the case? .....Page 7

Workers' Compensation – Causal Connection

The firefighter/ claimant suffered heat exhaustion during a training exercise. He was treated and remained in the hospital overnight before being released. He filed a claim for workers' compensation for *bradycardia* which he argued has continued since being released. The city responded that his compensable injuries were resolved. .....Page 8.

In Memoriam - West, Texas

Firefighter Morris Bridges ... Firefighter Perry Calvin ... Firefighter Jerry Chapman ... Firefighter Cody Dragoo

Fire Captain Kenny Harris ... Firefighter Joey Pustejovsky ... Firefighter Cyrus Reed

Firefighter Robert Snokhous ... Firefighter Doug Snohous

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Promotion Examination – Cheating Alleged

Court enjoins promotions until the investigation is completed

Issues: Did the candidates for promotion to lieutenant who passed the examination have standing to challenge their denied promotion? Did the trial court abuse its discretion in applying an injunction to firefighters who were not parties to the lawsuit?

A class action lawsuit was brought against the City of Atlanta and related parties ("City") by a group of firefighters ("Appellees") who took a promotion examination that would be an important factor in their hoped for promotions to the rank of lieutenant.

The trial court considered the evidence and issued a temporary injunction which meant that no promotions would be made until a full investigation was completed. Any promotions that were made in the interim would only be temporary. In the end, the trial court issued a permanent injunction that contained mandatory instructions regarding the means in which the City must re-test for future promotions.

Another provision of the trial court judgment was that any firefighter who scored 84 or higher on the first examination would not be promoted unless their re-test score was higher than the first score. Finally, those who scored over 90 on the first test would have their provisional promotions revoked.

There were a number of firefighters ("Appellants") who received a passing grade on the first test, but they were not party to this lawsuit. They appealed the trial court decision. Here, Appellants contended that they were unlawfully punished for cheating when there was no actual proof that they engaged in any such action. They also claim that their reputations were damaged because they would be known as the *class of examinees who cheated.*

Appellees. who successfully sued the City and had the court issue an injunction preventing the promotions, responded that the Appellants have no standing to appeal the case because they were not parties to the first lawsuit.

Decision: Reversed and remanded.

Appellants did in fact have standing to bring this appeal even though they were not parties of the initial lawsuit. They clearly had an interest in the outcome of the trial court decision.

The trial court abused its discretion in factoring a series of injunctions that were specifically directed to Appellants and against their interests. Here, the Appellees note that the initial lawsuit was directed at the City and its agents and does not specifically enjoin Appellants nor did it name any of them .

However, the Supreme Court of Georgia decided that Appellants were in fact singled out based solely on their test scores, whether they cheated or not. The number of Appellants was small, only 14, and they would be known as probable cheaters. Thus a cloud would forever be cast over their careers. Further, the import of the case was to punish Appellants even

Continued on the next page ➤

though they were not named parties in the trial court case.

It was incumbent on Appellees in filing their case against the City to name actual firefighters who allegedly cheated and against whom the demanded injunction should be applied. *Devlin v. Scardelletti, 536 U.S. 1 (2002).*

Citation: Barham, et al. v. City of Atlanta, et al., S12A1720, Supreme Court of Georgia (2013).

Discrimination, Harassment, Retaliation

Fail to exhaust administrative remedies

Issues: Was the conduct of the supervisors "extreme and outrageous" so as to support the claims? Did the claimant exhaust all administrative remedies available to him within the statute of limitations?

In 2005, Douglas Fuller ("Plaintiff"), 37 years old, was selected as a trainee for the County of Los Angeles Fire Department. He was assigned to the 118th Fire Academy.

On August 5, 2005, a fellow trainee poured water into one of Fuller's firefighter boots as a prank, allegedly in response to something Fuller previously said to him. Fuller emptied the boot, but it remained very damp. During a training exercise, the remaining dampness in the boot allegedly caused Fuller's boot to heat up and boil, resulting in burns and blisters to his foot.

Fuller reported his injuries and named the other trainee. The prank was a violation of internal County Fire Department rules. Fuller's supervisor imposed disciplinary consequences on both men because each was involved in pranks.

Fuller alleged that his instructors started to harass him and find fault with his training exercises. He also alleged that one instructor stated, "old guys have no motivation." Fuller, an Air Force veteran, also alleged that his supervisor told him during an interview that he did not like veterans.

On August 16, 2005, Fuller was taking part in a hose lay exercise as part of his training. He was graded and alleged that points were deducted from his score, while others were treated in a more favorable manner. Two days later, on August 18, The County informed Fuller that he was being terminated from training because he failed to accumulate enough points in the training program.

On August 30, 2005, Fuller appealed to the County's employee relations department. An investigation was conducted, and the termination decision was affirmed.

It is important to note that Fuller did not file a grievance or any administrative complaints related to the incidents, including his termination, which occurred during August 2005.

In February 2006, Fuller started working as a deputy sheriff trainee with the Riverside County Sheriff's Department ("Sheriff's Department") at its 168th Training Academy. However, Fuller's first choice was to become a firefighter. In April 2006, he received an invitation to attend a background orientation regarding possible employment as a firefighter

Continued on the next page ➔

Mission Statement

Our intention is to report legal matters and the outcomes of lawsuits to fire service officers in order that they learn from the experiences of their colleagues. We do not give legal or any other professional advice, nor do we guarantee the accuracy of our content. Rather, we strongly urge subscribers to have access to competent, experienced attorneys. We hope that this information will help you avoid needless litigation; successfully defend against legal claims that are unavoidable; and use the law to protect your community.

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Around the Nation

Case Dismissed

Union alleged political retaliation

A federal judge decided to toss a case filed by a firefighters' union, noting that many of the same claims have already been decided during at least 13 other proceedings. The judge reasoned that the union should not be granted a fourteenth "bite" of the same apple.

The union has been complaining that the mayor and other township officials have been targeting the firefighters' union because of the union's alleged political preferences.

Some of the allegations evolve from what the union considers retaliation for supporting a certain candidate for mayor.

Among the allegations are that the township hired non-firefighters to serve as emergency medical technicians and fire inspectors. This particular issue was brought to the state's labor commission which sided with the town.

One of the issues prompting this and the other actions is fiscal cuts the township has been making in an effort to conduct township government business during declining revenue and a very tight budget.

Township officials have maintained that the cuts made are consistently applied to all other departments. The union countered by trying to prove that firefighters' hours have been cut much more than other township employees.

The union also has claimed that firefighters have been disciplined more harshly than other township employees charged with similar infractions.

In the decision, the judge clearly appears to be indignant in that these same issues have been exhaustively decided in other forums. He went on to suggest that this case is frivolous and a waste of expensive judicial resources.

(Continued on next page)

trainee. Fuller called in sick to attend the orientation. He filled out an application and made it clear that his current employer should not be contacted for a reference unless he was to be selected as a trainee.

The Riverside County Fire Department's background investigator, Captain David Saran, talked to Fuller, and Fuller reiterated that he did not want his current employer to be contacted. On June 5, 2006, Fuller was terminated by the Sheriff's Department without explanation. Fuller later learned that Saran did, in fact, call the Sheriff's Department and it became known that Fuller attended the orientation on the day he called in sick.

On August 4, 2006, Fuller filed a complaint with the Department of Fair Employment and Housing ("DFEH"). Here, Fuller alleged that he had been harassed by County Fire Department personnel and wrongfully terminated. On the form, where a complainant is asked what type of discrimination he was alleging, Fuller marked "other." He also mentioned that he received a "poor reference." Fuller did not mention his age, nor did he identify the people who harassed him.

On August 24, 2006, the DFEH issued its "right to sue" letter, advising Fuller it was his right to pursue a civil action under FEHA within one year. In October 2006, Fuller was notified that he was not eligible for employment as a firefighter trainee.

Fuller filed a grievance which was denied, when it was determined that he was terminated as a firefighter training due to poor performance and that his termination from the Sheriff's department was because he was not honest and truthful.

Fuller filed a claim with the County Board of Supervisors where he alleged misconduct of his instructors at the training academy, and advised the County that he was pursuing claims of retaliation, negligent and intentional infliction of emotional distress, and negligent and intentional interference with his employment with the Sheriff's Department. The Board denied the claim, deciding that Fuller failed to indicate any liability on the part of the County of Los Angeles.

On April 25, 2007, Fuller filed a lawsuit against the County, alleging civil rights violations, interference with prospect economic advantage, and retaliation.

The County filed a motion for summary judgment, claiming the non-FEHA charges were time-barred because Fuller failed to file an administrative appeal within six months of the date the causes of action occurred. The County also argued that the FEHA claims exceeded the scope of the DFEH complaint and thus were barred under FEHA's exhaustion doctrine.

Finally, the named parties were either employees or agents of the County and were acting in the scope of their employment and, thus could not be held liable.

The trial court granted summary judgment, deciding that the non-FEHA claims were time-barred, and the FEHA claims were barred under the exhaustion doctrine. Fuller appealed.

Decision: Affirmed.

Fuller's allegations fall short of what would be extreme and outrageous conduct by the instructors or named officials such that a jury should consider them. The court noted that "...plaintiffs must necessarily be expected and required to be hardened to a certain amount of rough language..."

Continued on the next page ➪

The court also noted that Fuller's initial discrimination claim did not specify what type of discrimination he was alleging. The court agreed that the non-FEHA claims were time-barred because Fuller failed to file an administrative appeal within six months of the incidents.

Citation: Fuller v. County of Los Angeles, et al., B228815, Court of Appeal of the State of California Second Appellate District Division Seven (2013).

Discrimination, Harassment, Retaliation

Firefighter's daughter's sexual orientation

Issues: Was there sufficient evidence of discrimination and retaliation? If a supervisor harasses a firefighter on his shift, is the employer strictly liable for the supervisor' conduct even if the employer attempts to ameliorate the problem?

David Derr ("Derr") a former firefighter sued the Kern County Fire Department ("Fire Department"), Kern County ("County"), and James Rummell ("Rummell") for discrimination, retaliation, and harassment.

Derr was employed by the Fire Department for over thirty years. For a time, Derr worked on the same shift as Defendant Rummell who was a captain and Derr's supervisor. While working together, Rummell expressed his "condemnation of homosexuals."

Derr took offense and told Rummell that he had "family members who were gay."

One year later, Rummell stated in conversation that he watched a news report that allegedly stated that people became homosexuals either by being "led in that direction or as a result of childhood traumas that 'twist' them." Once again, Derr told Rummell that he did not want to engage in such conversation and that he was misinformed. Derr also reminded Rummell that members of his family were gay.

Later, Derr told a fellow firefighter that his daughter was gay but admonished the firefighter that he did not want Rummell to know. However, Rummell somehow found out.

In 2008, there was an upcoming referendum vote, Proposition 8, which would limit marriage to opposite-couples only. Derr placed a "No on 8" sign in his yard along with a corresponding bumper sticker on his automobile. Rummell allegedly told Derr that someone asked him to give him a bumper sticker supporting Proposition 8, but he refused, explaining "he worked with a man who had a gay daughter."

Rummell then allegedly yelled at Derr, "But you didn't show me the same respect!" Derr responded that "he had never intentionally disrespected Rummell, but that his first loyalty was to his children."

Derr did not have to drive to work, but Rummell drove by Derr's house and noticed both the sign and bumper sticker.

On November 1, 2008, Derr forwarded a few amusing emails to a list of people, including Rummell and his wife. Rummel's wife allegedly responded by sending offensive anti-gay email, which "accused [Derr's] 'embrace' of homosexuality as a 'blatant opposition to the commands of God" and accused Derr of standing "with fist in [God's] face" and

Continued on the next page ➤

Around the Nation

The township has indicated that the court should consider bringing sanctions against the union for bringing this case to the federal court.

Should this case be declared a frivolous lawsuit? In England, the rules are different – the loser pays the legal fees.

However, sanctions for questionable or seemingly frivolous lawsuits are rarely imposed. Courts generally are reluctant to apply sanctions due to the obvious chilling effect on other potential litigants who have a strong case but are concerned about being assessed costs if the case is lost.

Case Dismissed

Firefighter discharged after losing sight in one eye

The former firefighter ("Claimant") lost the sight in his right eye when he was handling a bottle rocket during a July 4th celebration.

The accident occurred while he was off-duty. Claimant was a ten-year veteran of the fire department.

After Claimant recovered and it was determined that he would never regain the sight in his right eye, he asked to be returned to duty. By this time, he had used up all of his sick leave.

Claimant's request was denied; fire department officials reasoned that with the loss of vision of one eye, Claimant could no longer safely operate fire trucks with sirens and lights as well as other equipment.

Claimant filed this lawsuit, alleging that the fire department refused to provide reasonable accommodations for his disability.

The case was filed in federal court because the claims came under the *Americans with Disabilities Act* ("ADA") and the state civil rights act. He also alleged retaliation.

Here, Claimant alleged that the

(Continued on next page)

Around the Nation

retaliation claim comes from his previous testimony at an arbitration hearing a number of years ago.

Claimant also made allegations about the fire chief that the court found to be irrelevant.

The fire department explained that Claimant would have to work in a three-man crew, and the situation might arise where he would have to either drive or operate emergency equipment.

The court agreed, noting that the very nature of a firefighter's duties is to respond to emergency situations. The fire department had a legitimate reason for denying Claimant's reinstatement.

Lawsuit Filed

Wrongful termination

The former director of public safety ("Claimant") of a city was terminated after being given an unscheduled performance appraisal that was negative.

At the time of his termination, Claimant was in charge of both the police and fire departments.

Claimant filed his claim under the state's *whistleblower statute.* He alleged that certain training records were falsified by a number of firefighters.

He also alleged that time records were also falsified. Claimant reported his allegations to city officials who, he claims, took no action.

Firefighters in the city are required to complete 24 hours of continued training each year in order to maintain state firefighter certification.

Further, if firefighters do not maintain this certification they cannot earn creditable service under the state firefighters' pension. It follows, Claimant states, that the intentional falsification of training records constitutes fraud, waste, and abuse.

(Continued on next page)

"mocking His plan for marriage."

On election day, Mrs. Rummell allegedly sent a number of other anti-gay emails, which Rummell allegedly agreed with. When Derr arrived at the station, he gathered his belongings and indicated that he was too distraught to work.

Later, Derr went to Fire Chief Brent Moon ("Chief Moon") and asked for a shift change, explaining his previous confrontations with Rummell, especially about the subject of homosexuality.

The shift change was approved. However, Rummell continued to come in contact with Derr and allegedly continued harassing him. Derr contended that his chief and captain were aware of this.

In December 2008, Derr started seeing a therapist through the Employee Assistance Program ("EAP"), and the treatment continued until he was told to "suck it up." Derr then went to Captain Monterrosso who agreed to file a workers' compensation claim for him and sent Derr home. The claim alleged that Derr suffered from stress and other physical ailments. Initially Derr's condition was considered work related, and he did not work while being treated and examined.

In the meantime, Chief Moon investigated the issues between Derr and Rummell. Rummell and another firefighter opined that Derr's condition stemmed from problems at his home. Chief Moon agreed and made a report to that effect to risk management. Later, Chief Moon went to Derr's home, when Derr continued to complain about Rummell's harassment.

Then, Chief Moon explained to Derr that his own religious views considered homosexuality a sin and that he did not want to be involved in such discussions.

Rummell approached a new captain on Derr's shift and "falsely informed him that [Derr] had a severe drinking problem." The captain immediately cautioned Rummell that such an accusation could result in his liability for causing a hostile work environment.

Derr's workers' compensation claim was denied, and Derr did not appeal. He then contacted Dr. Irene Sanchez, who initially treated him for emotional problems, and asked if he could be released from work. She agreed. Derr returned to work on February 21, 2009 and his supervisor advised him to come in late and leave early so as to avoid meeting Rummell during shift changes. However, Rummell allegedly continued his harassing conduct, there were several other alleged incidents.

In January 2009, Derr was transferred to another fire station. Derr then told a deputy chief that he wanted not only separation from Rummell, but he also wanted his sick leave restored so that he could tend to his medical issues. His sick leave was not restored. Later, Derr was diagnosed with ulcerative colitis. Since he had used up all of his sick leave, Derr claims he was forced to retire. Here, he claimed that continuing to work would subject him to intolerable working conditions caused by Rummell's continued harassment and retaliatory conduct.

Defendants filed demurrer to Derr's complaints, and the trial court dismissed all claims. Derr filed this appeal.

Decision: Affirmed in part; reversed in part.

The court of appeal agreed that the discrimination and retaliation claims were fatally flawed, and the court sustained the demurrer.

However, Derr has sufficiently stated a cause of action for harassment. Thus, the trial court erred in sustaining the demurrer on the harassment

Continued on the next page »

claim. Here, the court conceded that the Fire Department and County did take some steps to ameliorate Rummell's harassment of Derr. However, it must be determined if these steps were reasonable attempts to provide Derr with a workplace free from harassment. *State Dept. of Health Services v. Superior Court, 31 Cal. 4th 1026 (2003).*

The court noted that the transfer of Derr away from Rummell might affect damages, but it will not affect liability.

Citation: Derr v. Kern County Fire Department, et al., F 064539, Court of Appeal of the State of California Fifth Appellate District (2013).

Fire Truck Accident

Court refuses to dismiss negligence action

Issue: Were the medical opinions submitted by the fire company sufficient to establish that the plaintiff's injuries were not caused by the fire truck collision?

Brett Balliet ("Plaintiff") sued the North Amityville Fire Company and firefighter John Daley ("Daley") ("Defendants") to recover damages for personal injuries allegedly sustained when a vehicle he was driving was struck by a fire truck driven by firefighter Daley. The accident happened on November 12, 2004 in the Town of Babylon, New York. At the instant of the collision, Plaintiff was travelling southbound on Route 110.

Plaintiff was involved in another accident on December 4, 2004, when a vehicle owned by LL Cool J, Inc. struck Plaintiff as he was walking across a street. As a result of both accidents, Plaintiff sustained various injuries, including an annular tear at level L4 –L5 and a herniated disc at level L5-S1 in the lumbar region, a mild sprain of the medial collateral ligament in the right knee, a small intestinal tear of the supraspinatus in the right shoulder and "multilevel degenerative change with a combination of disc bulging and disc herniations" in the cervical region.

Which injuries were caused by what accident? Were any of these injuries caused by a previous accident the month before?

The case was tried in December 2008, but, by that time, Daley was deceased. The court granted a motion by Plaintiff for an order allowing the Public Administrator of Suffolk County, Franklyn Farris ("Farris"), to serve as a defendant in the place of John Daley.

Defendants filed a motion for summary judgment, reasoning that Plaintiff did not sustain his injuries as a result of the accident with the fire truck.

To support the motion, Defendants submitted sworn affidavits of Dr. Bernhang, an orthopedist, and Dr. Reiser, a neurosurgeon. Both doctors examined Plaintiff and reviewed medical records as well as records of injuries suffered in a previous boating accident.

Dr. Bernhang concluded that Plaintiff suffered soft tissue injuries to the lumbar and cervical regions and that "such injuries appear to have resolved without residual [effects]." Dr. Reiser concluded that Plaintiff did not reveal any objective evidence of an ongoing neurological disorder causally related to the accident.

Decision: Denied

The medical evidence submitted by Defendants is not sufficient to

Continued on the next page ➤

Around the Nation

Claimant alleges that his termination is directly related to his reporting of the alleged falsification of the training records.

He also notes that a state level investigation agrees with his allegations, although state officials responded that the investigation is not completed.

City officials have responded to this lawsuit by noting that they are conducting their own investigation into Claimant's allegations about possible falsification of the training records, but no comment will be released until that investigation is completed.

Claimant alleges he brought these allegations directly to the mayor and city manager, but they failed to investigate complaints of fraud, waste, and abuse.

Claimant also alleged that certain electronic files related to his allegations were deleted.

With regard to his termination, Claimant contends that he was given a several page report outlining deficiencies in his performance.

He claims that the alleged deficiencies are without merit.

Claimant also alleges that a city official threatened him with immediate termination if he did not accept the terms of an amendment of his employment contract, thus making him an *employee at will* who could be fired without any notice for any reason or no reason.

Claimant notes that he agreed to the amendment only because he needed the job to support his family.

The relationship between Claimant, the mayor and city manager became very corrosive.

They later started considering splitting up the fire and police departments, thus eliminating the public safety director 's decisions.

Missing an Issue?
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establish a prima facie case that Plaintiff did not sustain a serious injury as a result of the accident with the fire truck.

Citation: Balliet v. North Amityville Fire Department, et al., Index No. 06-3266, Supreme Court – State of New York, I.A.S. Part 43 – Suffolk County (2013).

Workers' Compensation

Heat exhaustion during training exercise

Issue: Is the continued condition suffered by the firefighter a result of the original compensable injury?

Eric King ("Claimant") is a firefighter for the City of Charleston, West Virginia. He suffered a heat event during a training exercise on September 8, 2007. He was treated overnight and released the following day.

Claimant filed a claim for workers' compensation benefits. On September 18, 2007, the claims administrator issued an order that disallowed the following conditions: other specified cardiac dysrhythmias; orthostatic hypotension; acute renal failure unspecified; and syncope and collapse.

On November 9, 2010, the Office of Judges modified the order to reflect that the claim was determined to be compensable for heat exhaustion and dehydration.

The next administrative step was for the Board of Review ("Board") to consider the order of the Office of Judges. The Board modified that order to reflect that the following conditions are compensable components of the claim: neurogenic orthostatic syncope (the singular event on September 8, 2007); acute renal failure, perenal, resolved; and bradycardia during the hospitalization of September 8-9, 2007.

The Board also decided that these diagnoses were resolved at the time that Claimant was discharged on September 9, 2007.

Claimant appealed, arguing that "it was a material misstatement of the evidentiary record for the Board to find that the additional compensable components had resolved at the time of discharge..." Here, Claimant noted that he had no prior symptoms of bradycardia.

The City responded that the bradycardia associated with Claimant's heat event during the training exercise was resolved by the time he left the hospital. Any bradycardia from which Claimant suffers is not related to the compensable injury.

The Board noted that two cardiologists, Dr. McCowan and Dr. Wall, examined Claimant, and neither could find any causal connection between the compensable injury on September 8, 2007, and Claimant's continued bradycardia. Thus, the Board maintains that there is a preponderance of evidence that the persistent bradycardia is not the result of the compensable injury.

Decision: Affirmed.

The court concluded that the Board is not in clear violation of any constitutional or statutory provision, nor is it clearly the result of erroneous conclusions of law.

Citation: King v. West Virginia Office of Insurance Commissioner, et al., No. 11-0822, State of West Virginia Supreme Court of Appeals (2013).

Tweeter Messages Lead to Resignation

Racially inflammatory

Editor's Note: If a message is tweeted, emailed, texted it is out there and will remain out there. We have reported too many cases involving digital messages sent by firefighters that are intended to be funny but are considered and determined to be offensive by others. Careers are being shattered simply because it is too simple to hit the "send" button. Pause and think before hitting "send."

In a major city fire department, the son of a high ranking officer in the department has resigned after tweeted messages were intercepted and found to be offensive to minorities. This type of behavior has residual consequences of bringing unwanted attention to the fire department and may open a panoply of investigations.

BY-LAWS

OF

CUMBERLAND COUNTY FIRE CHIEF'S ASSOCIATION

ARTICLE 1

OFFICERS

The principal office of the Corporation shall be in the State of North Carolina. The Corporation shall designate a registered office in accordance with law and shall maintain it continuously. The Corporation may have offices at such other places within and without the State of North Carolina as the Board of Directors may from time to time determine.

ARTICLE 2

Section 1. Qualifications. Membership is open to all persons over the age of eighteen (18) years who are admitted pursuant to Section 2, below, to a class of membership for which he/she is qualified under Section 3, below,

Section 2. Manner of Admission. Each application for any form of membership must be sponsored by a Voting Member in good standing and be approved by a majority of the Board of Directors at a regular or special meeting of the Board of Directors.

Section 3. Membership Classes. There shall be four (4) classes of Membership:

3.1. Voting Members. The Corporation shall have Voting Members who shall have all the rights and privileges of Members of the Corporation. A Voting Member shall be the Chief of a Volunteer, Municipal or Federal Fire Department and the Commander of the County Ambulance or Rescue Squad in Cumberland County. If the directors establish the collection of association dues any voting member shall have paid, all dues directed by the Board of Directors. In order to be a voting member, all dues must be current and not delinquent. Dues are considered if not paid within one hundred eighty (180) days of the due date established by the Board of Directors from time to time.

3.2. Regular Non-Voting Members. Regular Non-Voting Members are Assistant Chief's or one of the Volunteer, Municipal or Federal Fire Departments, or Assistant Commanders of the Rescue Squad or Ambulance Service in Cumberland County who's Chief/Commander is a Voting Member.

3.3. Associate Members. Associate Members are any other individuals in the community who are interested in the furtherance of the purposes of the Corporation, and pay the dues established by the Board of Directors for Associate Member's from time to time. The

following listed organizations by virtue of their direct link to the Cumberland County Fire Service are considered regular Associate Members:

1. Cumberland County Emergency Services (Vote on Financial Matters)
2. Fayetteville Hazmat Team
3. Fayetteville Technical Community College
4. Cumberland County Sheriff's Office
5. North Carolina State Highway Patrol
6. Municipal / Federal Law Enforcement Agencies in Cumberland County
7. Christian Fire Firefighters / Chaplains
9. Fire Commissioner

3.4. Honorary Members. Honorary Members are any person who, by reason of special service to the fire service of Cumberland County, is nominated and elected by two thirds (2/3) of the Voting Members of the Corporation to said position. Said membership is to continue until terminated by a similar two thirds (2/3) vote of the Voting Members of the Corporation.

3.4.1 Honorary Life Time Membership. Association members that have achieved a minimum twenty (20) years of membership and during this period he/she has served as a Chief Officer / Director / Commander or assistant for a minimum of five (5) years and applies to the President of the Association shall meet the established Honorary Life Time Membership designation.

3.4.2 The following waiver of times should be considered on a case by case and as approved by the entire Board of Directors.

- Any fire related Medical Retirement Automatically receives the benefit
- Non-fire related Medical Retirement must have a minimum of fifteen (15) years with the Cumberland County Fire Service and a minimum of three (3) years as a Chief Officer / Director / Commander or Assistant.
- Forced retirement due to Annexation of the district by a municipality must have a minimum of fifteen (15) years with the Cumberland County Fire Service and a minimum of 3 years as a Chief Officer / Director / Commander or Assistant.
- An individual associate member having completed twenty (20) years of service with the association can apply for life time membership. The President of the Association will present the request to the Board of Directors for a vote.
- Honorary life time member will be exempt from any annual dues to the association if any.
- The association secretary will maintain a current roster of all approved life time members.
- Life time honorary members will be presented with a resolution by the Association President indicating the Life Time Membership Recognition.

Section 4. Election Meetings. The purpose of the election meeting of Members is to elect Directors and to transact such other matters as may properly come before the Members. The election meeting of the members of the corporation shall be held every twenty-four (24) months at the time and place designated by the Board of Directors or the President of the Corporation. However, failure to hold a Bi/Annual meeting timely shall be no way affect the terms of Officers of Directors of the Corporation or the validity of action of the Corporation.

Section 5. Regular Monthly Meetings. Regular monthly meetings shall be held on the fourth (4^{th}) Monday of each month at such a time and at such places as is developed by the scheduling process adopted by the Board of Directors and no notices of regular meetings is required. A director's only meeting will be held once (1) each quarter (January, April, July, & October) and will be included in the scheduling process.

Section 6. Special Meetings. Special meeting of the members may be call by the President or by a majority of the Board of Directors then in office. The purpose of each special meeting shall be stated in the notice and may include purposes, which are lawful and proper for members to consider.

Section 7. Notice of Special Meetings. Notice stating the place, day and hour of the meeting shall be communicated to the Voting Members of the Corporation via-email, association web page or server, social media in use by the association, radio or telephone communications of the Cumberland County Emergency Communication Center. Notice shall be given by or at the direction of the President or the Secretary, or the person call the meeting, to each Voting Member of record.

Section 8. Waiver of Notice. A written waiver of notice signed by a member, whether before or after the meeting, shall be equivalent to the giving of such notice. Attendance of a member of a meeting shall constitute a waiver of notice of such meeting, except when the member attends for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Section 9. Action without Meeting. Any action of the members may be taken without a meeting, without prior notice and without a vote, if consent in writing setting forth the action so taken is signed by all members of the corporation entitled to vote. Such action shall be filed with the Secretary of the Corporation as part of the Corporate Records, whether done before or after the action so taken.

Section 10. Voting Record. A record will be maintained by the Secretary of all the members eligible to vote. A show of hands or a roll vote at the discretion of the President shall be had on all matters of corporate business and duly recorded in the Minutes of the Corporation. In the absence of a Voting Member of the Corporation, a Regular Member of the Corporation, who is a Deputy or Assistant Chief/Director/Commander at the voting members Fire/EMS or Rescue department, may, with or without further notification or proxy, vote in the stead of said voting member. Any representative of a voting member's fire department, regardless of membership in the corporation, shall upon presentation of a written proxy signed by the fire Chief or Assistant, Deputy Chief / Director or Commander of that department, be eligible to vote in the stead of the department's voting member.

Section 11. Member Quorum and Voting. Unless otherwise required in the Articles of Corporation, fifty percent (50%) of the members appearing in person or by proxy shall constitute

a quorum at a meeting of members. After a quorum has been established at a members meeting, the subsequent withdrawal of members so as to reduce the number of members entitled to vote at the meeting below the number required for a quorum, shall not affect the validity of any action taken at the meeting or any adjournment thereof. If a quorum is not present when a meeting starts, then a majority of the members at the meeting may adjourn the meeting from time to time without further notice until a quorum is present.

Section 12. Votes. Each voting member shall be entitled to one (1) vote on each matter submitted to a vote at a meeting of members.

Section 13. Termination of Membership. Any voting member who resigns or his position as Fire Chief/Director and Commander of a volunteer, municipal or federal fire / EMS or Rescue Department within Cumberland County is terminated, is automatically deleted as a Voting Member of the Corporation, however his/her replacement at the Fire / EMS or Rescue Department shall automatically become a Voting member of the Corporation, upon request, for such period of as the prior the Voting Member's dues are paid if applicable at the time. Any Voting Associate Member, whose dues are in arrears for 180 or more days from the due date of the membership dues, shall be dropped from the membership of the Corporation and will no longer be entitled to the rights and privileges of membership. Three (3) consecutive absences from regular meetings by both the Voting and Regular Members of the Corporation form a department shall automatically terminate said Voting Member's membership, rights and privileges, unless and until, such membership is reinstated by a two thirds (2/3) vote of the Voting Members of the Corporation at the meeting next following said former members request for re-instatement.

ARTICLE 3

BOARD OF DIRECTORS

Section 1. General Powers. Subject to the limitation of the Articles of Incorporation, these By-Laws and the Non-Profit Corporation Status concerning corporate action that must be authorized or approved by the Members of the Corporation, all corporate powers shall be exercised by or under the authority of the Board of Directors, and the management and affairs of the Corporation shall be controlled by the Board of Directors.

Section 2. Number, Qualification, Election and Tenure. The Number of Directors shall be the same number of Voting Members of the Corporation. Any person who becomes a Voting Member of the Corporation automatically becomes a Director of the Corporation, unless upon vote of two thirds (2/3) of the Voting Members of the Corporation, said Voting Member is denied a seat on the Board of Directors.

Section 3. Bi-Annual Meetings. The Board of Directors shall hold its bi-annual meeting at the same place and immediately following each bi-annual meeting of members for the purpose of election of Officers and the transaction of such other business as may come before the meeting. (Bi-Annual Meetings are generally conducted during the month of January & during a Directors Meeting only) If the majority of the Directors are present at the bi-annual meeting of members, no prior notice of the annual meeting of the Board of Directors shall be

required. However, another place and time for such meeting may be fixed by written consent of all the directors.

Section 4. Regular Meetings. Regular meetings of the Board of Directors may be held without notice at such time and at such place as shall be determined from time to time by the President, who shall post and distribute a schedule of regular meeting to all Directors.

Section 5. Special Meetings. Special meetings of the Board of Directors may be called by the President of the corporation, or any three (3) directors. The person or persons authorized to call special meetings of the Board of Directors may fix a reasonable time and place for holding special meetings.

Section 6. Notice of Special Meetings. Notice of Special Meeting shall state the place, day and hour of the meeting and shall be communicated to each member of the Board of Directors of the Corporation via e-mail, association web page or server, social media in use by the association, radio or telephone communications of the Cumberland County Emergency or City of Fayetteville Emergency Communication Center. Notice shall be given by or at the direction of the President or the Secretary, or the person call the meeting, to each Voting Member of record.

Section 7. Telephone, Tele-Conference Meetings. Directors may participate in meetings of the board of directors by means of conference telephone, web-based teleconference or similar communications equipment by which all persons participating can hear each other at the same time, and participation by such means shall constitute presence in person at such meeting.

Section 8. Waiver of Notice. A written waiver of notice signed by a member, whether before or after a meeting, shall be equivalent to giving such notice. Attendance of a member at a meeting shall constitute a waiver of notice of such meeting, except when the member attends for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called of convened.

Section 9. Action without Meeting. Any action of the members may be taken without a meeting, without prior notice and without a vote, if consent in writing setting forth the action taken is signed by all members of the corporation entitled to vote. Such action shall be filed with the Secretary of the Corporation as a part of the Corporate Records, whether done before or after the action so taken. (This includes any verbal consent from the Directors solicited by the President to conduct corporate business that requires immediate attention and will be formalized by all Directors during the next regular scheduled meeting).

Section 10. Voting Record. A record will be maintained by the Secretary of all Members of the Board of Directors eligible to vote. Roll call votes shall be had on all financial and significant matters of corporate business and duly recorded in the minutes of the corporation. Insignificant matters can be voted on by a show of hands or voting in the affirmative "I" with the

outcome of the vote being recorded in the minutes of the corporation. In the absence of a member of the Board of Directors of the Corporation, a Regular Member of the Corporation, who is an Assistant Chief / Assistant Director / Commander of the Board of Directors fire department, ambulance or rescue squad, may, without further notification or proxy, vote in the stead of said member of the Board of Directors.

Section 11. Member Quorum and Voting. Unless otherwise required in the Articles of Incorporation, fifty percent (50%) of the Members appearing in person or by proxy shall constitute a quorum at a meeting of members. After a quorum has been established at a members meeting, the subsequent withdrawal of members so as to reduce the number of members entitled to vote at the meeting below the number required for a quorum, shall not affect the validity of any action taken at the meeting or any adjournment thereof. If a quorum is not present when a meeting starts, then a majority of the members at the meeting may adjourn the meeting from time to time without further notice until a quorum is present.

ARTICLE 4

OFFICERS

Section 1. Officers. The Officers of the Corporation shall be a President, Vice President, Secretary and Treasurer, each of whom shall be elected by the Board of Directors.

Section 2. Election and Term of Office. The Officers of the Corporation shall be elected Bi-Annually by the Board of Directors at its meeting after each Bi-Annual Meeting of Members. If the election of Officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be. Each Officer shall hold office until his/her successor shall have been duly elected and shall have qualified, or until his/her death, or until he/she shall resign or shall have been removed in the manner hereinafter provided.

Section 3. Removal. Any Officer may be removed from office at any time, with or without cause on the affirmative vote of a majority of the Board of Directors whenever, in its judgment, the best interest of the Corporation will be served thereby. Removal shall be without prejudice to any contract rights of the person so removed, but election of an Officer shall not of itself create contract rights.

Section 4. Vacancies. Vacancies in officers, however occasioned, may be filled at any time by election by the Board of Directors for the unexpired terms of such offices.

Section 5. Duties. The President shall preside at all meetings of the Board of Directors and of the Members. The President shall be Chief Executive Officer (CEO) of the Corporation. Subject to the foregoing, the Officers of the Corporation shall have such powers and duties as usually pertain to their respective offices and such additional powers and duties specifically conferred by law by the Articles of Incorporation, by these By-Laws or as may be assigned to them from time to time by the Board of Directors.

Section 6. Delegation of Duties. In the absence or disability of any Officer of the Corporation or for any other reason deemed sufficient by the Board of Directors, the Board may delegate his/her power or duties to any other Officer or to any other Director.

ARTICLE 5

EXECUTIVE AND OTHER COMMITTEES

Section 1. Creation of Committees. The Board of Directors may, by resolution, pass by a majority of the Board, create and designate various committees.

Section 2. Executive Committees. The Executive Committee shall consist of the Officers of the Corporation and the Cumberland County Emergency Services Director in a voting capacity. The Executive Committee may exercise the same powers as the Board of Directors in a bona-fide emergency situation. However, such action should be duly reported to the Board of Directors at its next regular or special meeting.

Section 3. Standing Committees. All standing committees, committee chairman, vice-chairman and committee members, be appointed by the President of the Corporation. The committee recommendation will be brought before the Board of Directors of the Corporation during the meeting next preceding the Bi-Annual Meeting at which the President is elected for approval by a vote of the Board of Directors. Associate Members can be selected to serve on committees. The Executive Committee is considered Ex-Officio of all Standing Committees. Special Project Committees shall be appointed at any regular meeting by the Presidnet and serve for the duration of the Project. The standing committees of the Corporation shall consist of:

- Nomination Committee
- Fire Prevention & Education
- Communications Committee
- Automatic Aid & Mutual Aid Committee
- Finance Committee
- Firehouse Committee
- Technology Committee
- Education & Training Committee
- Standards Committee
- Rescue Committee
- Planning & Research Committee
- Public Relation / Fire Liaison Committee

ARTICLE 6

BOOKS, RECORDS AND REPORTS

Section 1. Report to Members. The Corporation shall send an annual report to the Members of the Corporation not later than six (6) months after the close of each fiscal year of the Corporation. Such report shall include a balance sheet as of the close of the fiscal year of the Corporation and a revenue disbursement statement for the year ending on such closing date. Such financial statements shall be prepared from and in accordance with the books of the Corporation in conformity with generally accepted accounting principles applied on a consistent basis.

Section 2. Inspection of Corporate Records. Any person who is a voting member of the corporation shall have the right, for any purpose and at any reasonable time, on written demand stating the purpose thereof, to examine and make copies from the relevant books and records of accounts, minutes, and records of Members Corporation. Upon the written request of any Voting Member, the corporation shall mail to such member a copy of the most recent balance sheet and revenue disbursement statement. If such request is received by the corporation before such financial statements are available for its last fiscal year, the corporation shall mail such financial statements as soon as they become available. In any event, the financial statements must be mailed within a six (6) months after the close of the last fiscal year. Additionally, balance sheets and revenue and disbursement statements shall be filed in the registered office of the Corporation, shall be kept for at least five (5) years, and shall be subject to inspection during business hours by a voting member, in person or by agent. The Association Treasurer will provide complete financial updates to all Directors during the quarterly Directors only meetings.

ARTICLE 7

NON-PROFIT OPERATION

The Corporation will not have or issue shares of stock. No dividends will be paid. No part of the income or assets of the corporation will be distributed to its members, directors or officers without full consideration. No member of the corporation has any vested right, interest or privileges in or to the assets, property, function or activities of the corporation. The corporation may contract in due course with its members, directors and officers without violating this provision.

ARTICLE 8

FISCAL YEAR

The Fiscal Year of the Corporation shall be the same as that of the County of Cumberland consisting of July 1st of each Calendar Year through June 30th of the following Calendar Year.

ARTICLE 9

SEAL

The Corporate Seal of the Corporation shall consist of two (2) concentric circles between which is the name of the Corporation and in the center of which is inscribed, "SEAL".

ARTICLE 10

INDEMNIFICATION

The Corporation may indemnify each Officer, and Director, including former Officers and Directors, to the full extent permitted by the state corporation laws.

ARTICLE 11

AMENDMENTS

These By-Laws may be altered, amended or replaced and new By-Laws may be adopted by the Board of Directors, provided that any By-Laws or amendments thereto as adopted by the Board of Directors may be altered, amended or repealed by vote of members, or a new By-Law in lieu of thereof may be adopted by the Members. No By-Laws which has been altered, amended, repealed or adopted by such vote of the members may be altered, amended or repealed by vote of the Board of Directors. By-Laws adopted by the Members may only be altered, amended or repealed by members.

These By-Laws were adopted by the Board of Directors on the **18th Day of June 2013**

FREDDY L. JOHNSON SR.
President / Fire Chief

MARK A. MELVIN
Secretary / Fire Chief

SEAL

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 3

HOUSE BILL 27*
Committee Substitute Favorable 2/13/13
Committee Substitute #2 Favorable 5/14/13

Short Title: Workers' Comp Fund/Safety Workers Allocation. (Public)

Sponsors:

Referred to:

January 31, 2013

A BILL TO BE ENTITLED

AN ACT MODIFYING THE ALLOCATION OF THE PROCEEDS FROM THE GROSS PREMIUM TAX ON INSURANCE COMPANIES UNDER G.S. 105-228.5 TO INCLUDE DEDICATED FUNDING FOR THE WORKERS' COMPENSATION FUND FOR THE BENEFIT OF VOLUNTEER SAFETY WORKERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-228.5(d)(3) reads as rewritten:

"(d) Tax Rates; Disposition. –

...

(3) Additional Rate on Property Coverage Contracts. – An additional tax at the rate of seventy-four hundredths percent (0.74%) applies to gross premiums on insurance contracts for property coverage. The tax is imposed on ten percent (10%) of the gross premiums from insurance contracts for automobile physical damage coverage and on one hundred percent (100%) of the gross premiums from all other contracts for property coverage. ~~Thirty percent (30%)~~ Twenty-five percent (25%) of the net proceeds of this additional tax must be credited to the Volunteer Fire Department Fund established in Article 87 of Chapter 58 of the General Statutes. ~~Twenty-five percent (25%)~~ Twenty percent (20%) of the net proceeds must be credited to the Department of Insurance for disbursement pursuant to G.S. 58-84-25. ~~The remaining net proceeds must be credited to the General Fund.~~ Up to twenty percent (20%), as determined in accordance with G.S. 58-87-10(f), must be credited to the Workers' Compensation Fund. The remaining net proceeds must be credited to the General Fund.

The following definitions apply in this subdivision:

a. Automobile physical damage. – The following lines of business identified by the NAIC: private passenger automobile physical damage and commercial automobile physical damage.

b. Property coverage. – The following lines of business identified by the NAIC: fire, farm owners multiple peril, homeowners multiple peril, nonliability portion of commercial multiple peril, ocean marine, inland marine, earthquake, private passenger automobile physical damage, commercial automobile physical damage, aircraft, and boiler and machinery. The term also includes insurance contracts for wind damage.

c. NAIC. – National Association of Insurance Commissioners."

SECTION 2. G.S. 58-87-1(a) reads as rewritten:

"**§ 58-87-1. Volunteer Fire Department Fund.**

(a) Fund. – The Volunteer Fire Department Fund is created as an interest-bearing, nonreverting fund in the Department to provide matching grants to volunteer fire departments to purchase equipment and make capital improvements. The Commissioner shall administer the Fund. Up to ~~two percent (2%)~~one percent (1%) of the Fund may be used for additional staff and resources to administer the Fund in each fiscal year."

SECTION 3. G.S. 58-84-25 reads as rewritten:

"**§ 58-84-25. Disbursement of funds by Insurance Commissioner.**

(a) Distribution. – The Insurance Commissioner shall deduct the sum of three percent (3%) from the tax proceeds credited to the Department pursuant to G.S. 105-228.5(d)(3) and pay the same over to the treasurer of the State Firemen's Association for general purposes. The Insurance Commissioner shall deduct the sum of ~~two percent (2%)~~one percent (1%) from the tax proceeds and retain the same in the budget of the Department of Insurance for the purpose of administering the disbursement of funds by the board of trustees in accordance with the provisions of G.S. 58-84-35. The Insurance Commissioner shall, pursuant to G.S. 58-84-50, credit the amount forfeited by nonmember fire districts to the North Carolina State Firemen's Association. The Insurance Commissioner shall distribute the remaining tax proceeds to the treasurer of each fire district as provided in subsections (b) and (c) of this section.

...."

SECTION 4. G.S. 58-87-10 reads as rewritten:

"**§ 58-87-10. Workers' Compensation Fund for the benefit of volunteer safety workers.**

(a) Definition. – As used in this section, the term "eligible unit" means a volunteer fire department or volunteer rescue/EMS unit that is not part of a unit of local government and is exempt from State income tax under G.S. 105-130.11.

(b) Creation. – The Workers' Compensation Fund is created in the Department of Insurance as an expendable trust fund. Accordingly, interest and other investment income earned by the Fund accrues to it, and revenue in the Fund at the end of a fiscal year remains in the Fund and does not revert.

(c) Use. – Revenue in the Workers' Compensation Fund shall be used to provide workers' compensation benefits to members of eligible units. Chapter 97 of the General Statutes governs the payment of benefits from the Fund. Benefits are payable for compensable injuries or deaths that occur on or after July 1, 1996.

(d) Administration. – The State Fire and Rescue Commission, established under G.S. 58-78-1, shall administer the Workers' Compensation Fund and shall perform this duty by contracting with a third-party administrator. The contracting procedure is not subject to Article 3C of Chapter 143 of the General Statutes. The reasonable and necessary expenses incurred by the Commission in administering the Fund shall be paid out of the Fund by the State Treasurer. The Commission may adopt rules to implement this section.

(e) Revenue Source. – Revenue is credited to the Workers' Compensation Fund from ~~appropriations made to the Department of Insurance for this purpose.~~ a portion of the proceeds of the tax levied under G.S. 105-228.5(d)(3) and from an assessment on local governments served by one or more eligible units as set forth in subsection (g) of this section. In addition, every eligible unit that elects to participate shall pay into the Fund an amount set annually by the State Fire and Rescue Commission to ensure that the Fund will be able to meet its payment obligations under this section. The amount shall be set as a per capita fixed dollar amount for each member of the roster of the eligible unit.

The payment shall be made to the State Fire and Rescue Commission on or before July 1 of each year. The Commission shall remit the payments it receives to the State Treasurer, who shall credit the payments to the Fund.

(f) Funding Study. – The Department of Insurance shall conduct a periodic actuarial study to calculate the amount required to meet the needs of the Fund. The study shall be based on premiums that are the greater of the premiums paid by members of the Fund for the fiscal year to which the study applies or the premiums paid by members of the Fund in fiscal year 2012-2013. The study shall be reviewed by the Office of State Budget and Management. On or before March 1 of each year, the Office of State Budget and Management, in consultation with the Department of Insurance, must notify the Secretary of Revenue of the amount required to meet the needs of the Fund, as determined by the study, for the upcoming fiscal year. The Secretary of Revenue shall remit that amount, subject to the twenty percent (20%) limitation in G.S. 105-228.5(d)(3), to the Fund.

(g) Assessment for Shortfall. – If the amount remitted to the Fund by the Secretary of Revenue under subsection (f) of this section is insufficient to meet the needs of the Fund, the Department of Insurance shall collect the remaining amount from units of local government by multiplying the remaining amount needed by a fraction, the numerator of which is the number of residents in the unit of government served by an eligible unit, and the denominator of which is the number of residents in the State served by all eligible units. The Department shall provide written notification to the units of local government of the amount of the assessment no later than April 1 of each year, and the unit of local government shall have 90 days to remit the assessment to the Department for deposit into the Fund."

SECTION 5. This act becomes effective July 1, 2013.

PLEASE JOIN US

FOR A

RETIREMENT CELEBRATION

HONORING

Chief Richard Bullard

SUNDAY, JUNE 2, 2013

3:00 - 6:00 P.M.

BEAVER DAM FIRE DEPARTMENT

10042 HIGHWAY 210 SOUTH

ROSEBORO, NORTH CAROLINA

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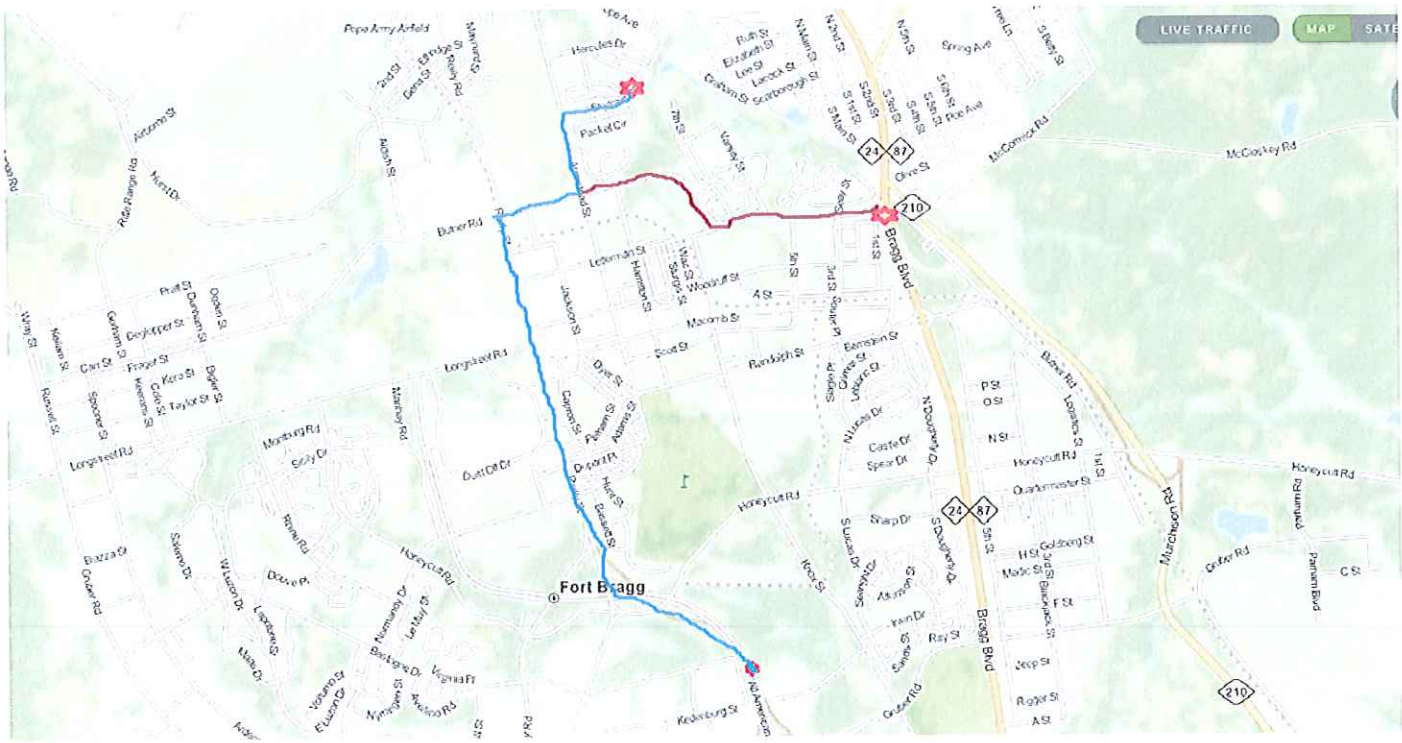
Directions to Fort Bragg's Family Community Center Located on Skytrain Drive on Pope Army Airfield.



From All American FWY:

Merge right onto Reilly St. (Second right turn)

Right Turn onto Butner Rd. (about Six stoplights)

Left Turn onto Armistead St. (First Stoplight)

Right Turn onto Skytrain Drive (second right).

Community Center will be on Right.

From Butner Road Gate (ACP)

Enter Installation and Stay on Butner rd.

Right Turn onto Armistead St. (Fourth Stoplight)

Right Turn onto Skytrain Drive (second right).

Community Center will be on Right.