

Village of Campbellsport

Special Village Board Meeting
Thursday – 11/5/2015 – 6 pm
Fire House, 548 East Main Street, Campbellsport, WI 53010

PR Krebs called the meeting to order at 6 pm. Members present: Dave Krebs, Dave Schellhaass, Steve Schickert, Brandon Serwe, Gene Wenzlaff, Janet Hafemann, Joanne DelPonte.

PR Krebs announced that the Village Board appreciates all members of the Fire Department in this transition to becoming volunteers. Our positions isn't one way or the other, it's to make sure that everything is done right so that legally we don't get the Village in trouble.

Nancy Pirkey, an Employment Attorney, answered questions from Fire Department members.

Note: The information below is not verbatim, but is intended to get the question and responses summarized.

*It seems like this whole issue came about because we are receiving an hourly wage for fire calls. Since the Village Board has given the Fire Department the right to create bylaws and once voted on and accepted by the Fire Department members, and then presented to the Village Board for approval. If our department would just pay a flat stipend for fire calls, does this whole issue just go away? **No.** And why is that? **Because it's an individual decision, be each person. Resignation letters are needed.** But our bylaws state majority vote and previously something would be voted on and once passed by the Fire Department it was taken to the Village Board. **In this case, legally, it won't work. I am referring to the Fair Labor Standards Act (FLSA) which allows employees individual rights. A group can't waive rights for someone else – a person has to decide individually.***

*I believe the FLSA was implemented in 1948 and since 1951 members have been paid an hourly amount for fire calls. So, does that mean that everyone has been employees since 1951? **I don't know because there was a time when FLSA didn't apply to local government. I can tell you that as of today there is plenty of information available stating that if you are paid an hourly wage, you are an employee. You can call yourself the Campbellsport Volunteer Fire Department, but it doesn't make you volunteers according to law.***

*Say a private business decides to pay a salary, is that illegal? **I would need more information.** Let's say they were paid \$20/hour and then the employer makes the decision to pay them a salary instead of hourly wage. The employer is making the decision, not the employee. **Right, but that's an employee being compensated as an employee. We're talking about whether you're being compensated as an employee or as a volunteer.***

*Ok, but I guess, as I'm going through the laws – both Federal and State – there's some confusion. When we first started getting compensation and with social security and medicare were taken out, I assumed we were employees. From the research I've been doing, apparently Federal and State laws recognize the need for volunteers because of the costs to the municipality. And, then they made exceptions and defined what volunteers are and that they could receive compensation for expenses [a nominal fee]. A nominal fee is different than expenses. A nominal fee was 20% of what it would cost to have a fulltime firefighter. The IRS says you still have to take taxes out. **Even for volunteers, right.** So, you're not an employee but you're still receiving a W2. **Correct. The agencies are not consistent. What the Department of Labor says is one thing and what IRS says is another thing.** Ok, so what would happen, say if, 49 members say they want to be volunteers and 1 doesn't, what happens? **The 1 remains an employee. You can have both. It's odd, but there's nothing saying you can't.** A quote was then read from one of Nancy's emails, "I think it would be a much safer and legally defensible position if any individuals who remain employees could be assigned to different functions, duties or job titles than the volunteers." **Right.** According to your statement it seems appropriate to say the people that remain employees could have different*

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*functions; possibly, they could not be an officer, that they could not go to fires – they just maybe stay behind and wash trucks, workers comp rules would be different for them, and the LOSA program could be affected for them. When we brought these items up, apparently people were complaining that we were coercing these people to sign. My feeling is that I'm not going to sign anything without knowing the ramifications one way or another. And, that's what we were presenting – that there might be a possibility that these things could happen. If a person still didn't want to sign, that's fine. We want to settle this as expediently as possible. No matter which way we proceed, we're told it's wrong. **The issue for me is that each individual has to make their own decision and it can't be coerced. If it's stated that LOSA benefits will be received if I'm a volunteer but not an employee, that could be influencing a decision and that could be taken as being coerced.***

*I contacted the Horton Group [about LOSA] and didn't get a response but I did get information from VFIS. The response sent from Tina Carpenter and stated that if a member were to change from a volunteer firefighter to an employee, the member would then be considered an inactive member until they reached age 60 – at which time they would be eligible for the vested benefit. The non-vested portion would be forfeited. There was also mention of other research that could be a problem with LOSA. **Except Becky received info from the Horton Group that said it didn't matter; nothing needed to change.** And I got an answer from the approved vendor – VFIS – saying otherwise. *If the LOSA Program states that it is for volunteers, how did we start it to begin with? We've been employees and volunteers for a very long time. It has been reiterated over and over during my 18-years on the department. Workers comp doesn't care how I'm getting paid – I went through it with them twice. I didn't want them to pay me for when I blew out my knee, all I wanted them to do was pay for the medical. But, because the Village has us [Fire Department members] listed as volunteers, I got financially compensated as if I was a fulltime firefighter in Fond du Lac. I tried to express to them in great detail that I didn't want that. I felt that it was a detriment to the community, to the Fire Department, and Village. I told them that I was an employee and could prove it. Their response was, with 2 attorneys present, that the Village has you listed as a volunteer and we must follow this guideline. Way back when we originally were thinking about applying for the LOSA program, I made the calls because the question came up about being employees and volunteers. I got the same response the Village Board just got – it isn't going to matter because the Village has you listed as a volunteer so that is what we are going to go off of. I asked what would happen if I eventually went to fulltime – what happens to my fund and the response was that the monies remain and can be transferred over to a different fund; similar to any other pension in that we are an employee being recognized as a volunteer. Our current system has been working for a very long time and nothing has ever come up. I would hate for an ex-employee to come in here and sue for some labor law thing. If we change anything we are saying that from this point forward we are going to be legal, but going back we weren't. The other thing is that if we say we are all volunteers, it will end up costing the Village more for all the time, effort, and legal fees. This Village has to look to the future – I've been preaching it for several years and am laughed at – but plan for it, because it's going to happen.**

President Krebs indicated that that is exactly what this meeting is about; trying to do things right.

*The committee took your advice to have individuals sign the letter however, I don't recall ever having a meeting where we had 100% of members attend. By your responses, we took it that employees could "possibly" lose some benefits and worker's comp is paid out differently. **The question that I was asked is if there's workers comp coverage for employees and volunteers and that answer is yes, it's different but there is coverage for both.***

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President Krebs interjected and said that the Fire Department does have the Provident Insurance plan as a supplement. Sometimes workers comp can deny a claim if they find it to be a preexisting condition and that is when Provident would assist to defray costs. The Provident Insurance is to make people whole because of the fact workers comp will not make you whole based on your fulltime job. President Krebs stated that if you do have a worker's comp injury, Provident Insurance pays on top of worker's comp as part of making you whole.

The 1st Report of Injury form for a worker's comp claim requires an individual to be categorized as an employee or volunteer – year's ago this was not needed for a claim so fire department members were paid benefits as if they were volunteers.

We have 62 members on the department (not including fulltime) of which 11 people decided they didn't want to be volunteers. So, we could leave the 11 members as employees? **I can't find anything saying you can't.** If at a later date, they want to become a volunteer they can. New people must be joining the fire department as volunteers.

So if you continue to be an employee, would time spent working at the picnic or supporting other fire departments [golf or bowling outings], does the time have to be paid? **The question here is for the Fire Department where does one "job" start and stop – that's the issue. And again, there isn't any clear guideline in the law. It's going to depend on whether something is mandated or if the person can choose to participate or not participate without penalties. For an employee, there can't be any repercussions if someone says they don't want to be in the parade or work at the picnic; if there is, then the time needs to be paid because they are mandated to be there. The duties have to be completely unrelated to their regular duties – there can be no crossover.**

So is that something that we would regulate internally by adopted bylaws and the Village Board approves? **You could but I'm more worried about being careful because I don't want to have an issue later where someone files a claim. I want to be careful that we don't deny somebody wages or overtime or deny them a volunteer opportunity. The law looks at it like the employer wants people to work off the clock – that's why these laws are so rigid, to protect employees. That's also why there are rules stating the work has to be different capacity; so there is a break in duties.**

So, if we ask our employees to work at the Fireman's Picnic could they come back afterwards and request to be paid for those hours worked? **Yes. It's going to depend again if that person is volunteering and doing something different capacity. I think it would be effective if we put something in writing stating job duties and expectations. That way the employee would know that when they are working at the picnic, they are volunteering and doing something charitable to give back to the community. If someone doesn't agree with the policies, they just don't have to participate. But serving burgers is a lot different capacity then going on an EMT call. I agree. That's an easy one however if you have a person in uniform, in the parade, and riding on a fire truck it might be harder to determine that it can be volunteer time because there isn't a real separation of duties.**

Going back to having different job descriptions for volunteers versus municipal employees, according to what was said, If we're EMTs you're telling me that if I don't sign the contract [to become a volunteer] I can't go on ambulance calls? **No, I think what I said is being misunderstood. It raises a concern to have people working side-by-side and have one person be an employee and the other a volunteer. That looks "odd" to me. Brian I**

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have a question for you – you want to be a volunteer to help people, right? Yep. Or are you here for the money. Are you here for the money because if you're not how come the stipends went up? How come you're raising the stipends? The ideal situation would be to not have any payment at all. What we did was check with other departments to try to have a guideline to go with. If you're not here for the money then why won't you sign to be a volunteer?

If I don't sign this contract, why can't I be an officer and why don't I have the right to vote? We said that's a possibility. When did the bylaws change? NO No no ... I listened to the meeting and it was stated by Don Stoffel. I did and this is my reasoning – I did because when you have employees, the employees don't tell their bosses or set policies for their bosses; they might give suggestions but the boss still has the final word. Whereas, if you're a volunteer you're setting policies for volunteers.

Has the board gone back to the past administration and asked about the employee status? Joanne DelPonte did talk to Rick Heisler and at the time the firehouse was being built we needed liability insurance and it could not be through the Campbellsport Fire Department, it had to be through the Village of Campbellsport. As research continued, the opinions of three attorneys was received and stated that fire department members are employees of the Village. It seems that when it's beneficial to be employees, you're employee and when it's beneficial to be volunteers, you're volunteers. It's been mutually beneficial to all members for a very long time. Phil Hahn stated that the Village needed the borrowing power that the Fire Department gave to the Village and that's ALL. President Krebs stated that regardless of what happened, let's focus on what we need to do today.

In the past fire department members were paid \$2/hour for a clothing allowance because they fought fires in the clothes they were wearing. It was never meant to be payment for activity.

Nancy stated that she represented the Village of Kewaskum when they changed back to volunteers. The difference between what Kewaskum did and what this Fire Department is doing is that they went from being volunteers to being employees and back to volunteers again. Randy Zielieke stated that Kewaskum's Village Board took action to make them employees. This is where the definitions of volunteers and employees needs to be defined. But the Village Board is now very adamant to say that fire department members are now employees. Nancy explained that that is because of her because the law says that if you're paid an hourly rate for productivity, the law says you're an employee not a volunteer. The law doesn't look at whether productive work is being performed, it looks for an hourly rate. FLSA says if you're paid by the hour or paid off of productivity for the amount of time you spend, that is the deciding factor.

If there was never an ordinance making us employees we shouldn't be here in the first place. Let me just tell you quite simply that an ordinance can't trump what the law says.

So, right now, for what we have submitted, are we going about this the legal and proper way even though it is not clear cut because of having employees and volunteers? Is the way that we are going about this acceptable? I think this is the best you can do. So anyone that is choosing to stay an employee needs to be aware that their job description might be changing? I will tell you, you need to be careful on that. Again, you can't coerce someone. If you're changing job duties and saying that depending on what status a person is [employee or volunteer] this could be coercion.

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So can you vote if you're an employee – can you vote on your own boss? **That is going to be based on organizational issues.** President Krebs mentioned that the Village Board is volunteers and that anyone that works for the Village and lives within the municipality can vote for or against them.

Say I'm an employee and say I want to run for Chief and get elected in. At what point does an employee hit benefits. **WRS benefits if hired on/after 1/1/1990 started after working 600 hours and continued for as long as the person remained an employee. If hired 7/1/2011 or after, WRS benefits began after working 1200 hours. If an individual is hired knowing the 1200 hours will be met, benefits start 30 days after form submitted to Employee Trust Funds.** Our chief and secretary put in a lot of hours. Could they be told they need to cut back on hours? **Yes. The employer has the right to cut back the hours of employees.**

At this time the contract for employees to sign to become volunteers was read. OK, it meets all the criteria you need to have. Would the Village Board then be able to pass this on November 9th? Yes.

If we supposedly had this dual volunteer/employee situation going on for a long, long time, why is the Village Board trying to fine-tooth comb manage it? PR Krebs stated that we became aware that you were employees. I think that once you know something hasn't been done right, it is your duty to make sure it is done right going forward.

The big issue seems to be with Worker's Comp and how the form is filled out. In the past, the form didn't have the option to choose "Fire Department-Paid, Fire Department-Volunteer, EMT-Paid, EMT-Volunteer".

*This transition is going to take a bit on everyone's part. For those individuals that do not sign the document, we still need to compensate those employees because, yes, they do still have the same level of training as the other members have. The people that remain employees need to be justly compensated for the duties they are going to do. **But they also must be considered equals.***

*Does the Volunteer Committee determine stipends and can the committee also set hourly wages for employees? **The board [as the employer] would have to set the wage rates or delegate this to the Chief or a committee.***

*Does the Volunteer Committee come up with a stipend payment and then have Nancy review it? **Nancy agreed to look over information when the Volunteer Committee has it available. The stipends can be raised/lowered at the annual meeting in December.***

*Tom Miller asked for thoughts from the Village Board members who have not spoken on the matter. TR Schickert said he came to the meeting under the impression that all members wanted to become volunteers and now finds out differently. He also mentioned that he thinks it's sad that fire department members are fighting amongst themselves about something that should have been settled. Miller also said that a board member should just make a motion for the members to become volunteers and be done with the matter. **No, you cannot do that because each individual person needs to decide that.** I'd like to know what everyone else on the board thinks because no one is saying anything. **TR Hafemann said she is putting the ball in their court and if they want to become volunteers, Go for it!***

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*So, the paperwork with signatures is sufficient, then right? **Yes, but someone mentioned it earlier that if you're going to have employees and volunteers working together, you need to determine what duties are for an employee and duties are "volunteer" and you can say thanks, but no thanks.***

Brian Jungers made a comment for the media "Yes, there is division or whatever, but I'll tell you what, if there was an emergency call right now, whether you're a volunteer or an employee we would work together. I want the public to know that we're there for them. We'll get this settled but the public needs to know that we're here for them."

*If we do go to volunteer and we have the stipend program, is that individual allowed to say they don't want payment. **As a volunteer, you can deny any form of compensation but the IRS may say that's taxable income to you.** PR Krebs asked if we could create a different classification for those individuals. **Maybe this would need to be researched by a tax lawyer.***

*Would the bylaws cover employees and volunteers? **Yes, you may have to look at some issues because there may be some differences but one set of bylaws could cover a joint department.***

*How are we going to compensate employees when it comes to Worker's Compensation? **Making employees aware of how they will be compensated when it comes to Worker's Compensation, is fair. They won't be receiving "equal" benefits as someone who is a volunteer, but it is fair. By being members of the Wisconsin State Firefighters Association there may be a benefit available for employees. Provident Insurance claim forms should also be submitted for any work-related injury, also.***

*There are bylaws already in place. If an individual resigns, our bylaws state that an individual would have to start back at the probationary status. Does the document that we sign to become volunteers over-rule the bylaws? **This could be put in a resolution but how much do you want the board to regulate volunteer status?***

*PR Krebs would like to see all members treated equally as far as their job duties go. **Not that the employees get the jobs that are not fun. I would like to see them all have voting rights. So everything would remain as it is allowing for the only change to be that some people get paid differently.***

Motion to go into Closed Session made by TR Hafemann at 7:57, seconded by TR Schickert. Motion carried. (Aye-7, Nay-0)

Motion to return to Open Session made by TR DelPonte at 9:15 pm, seconded by TR Schickert. Motion carried. (Aye-7, Nay-0)

Motion to adjourn at 9:15 pm made by TR Schellhaass, seconded by TR Hafemann. Motion carried by voice vote.

Respectfully submitted,

Becky Tellier
Clerk-Treasurer
