

FIRE COMMISSION UPDATE

NEW TRICKS FOR OLD DOGS
NORTHERN ILLINOIS ALLIANCE OF
PROTECTION DISTRICTS

January 28, 2023

HIRING

WHAT ARE YOU DOING IN THIS MARKET?

- ▶ What is your experience with numbers of candidates?
- ▶ What is your experience with quality of candidates?
- ▶ TIME TO SHARE WITH THE GROUP

HIRING

WHAT CAN WE DO DIFFERENTLY ?

- ▶ Lateral hiring
 - not allowed by the Fire Hiring Act, 70 ILCS 705/16.06b
- ▶ Waive paramedic, firefighter, residency or education requirements
 - What are the pros?
 - What are the cons?
- ▶ National or group testing processes
- ▶ City of Springfield had 300 applicants for their recent test. Is this the start of a trend or just an anomaly?

PREFERENCE POINTS AND THEIR USE

- ▶ Look at your preference point structure. Law, § 16.06b(h), allows 7 different categories of preference points. A maximum of 5 points per category to a maximum total of 30 points. The Commission must allow at least 10 points.
 - veteran's preference points
 - fire cadet
 - education
 - paramedic
 - experience
 - residence
 - additional preferences based on Commission determination

INCENTIVES

- ▶ Many agencies have discussed, and some have implemented, incentives.
- ▶ Many different formulas - lump sum, payment over 2 or 3 years, advanced salary positioning
- ▶ In a bargaining unit environment, these types of incentives may have to be negotiated
- ▶ What is your experience?

RECENT COURT CASES

► *Fulkerson v. City of Belleville* 22 WL 3681383

-Commission sued based on allegations of sex discrimination and retaliation in a police lieutenant promotional test. Candidate made an allegation of a hostile work environment which was investigated and found to be unsupported by the evidence. When the City eliminated the lieutenant's position Fulkerson would have been entitled to based on finances, she claimed it was only based on her complaint. Court found that because Fulkerson did not score as well as other candidates and there was objective evidence corroborating the financial issues, that the City did not discriminate against Fulkerson.

LESSONS: Be aware of opportunities to challenge the promotional process based on department issues.

► *Bohannon v. City of Indianapolis* 46 F. 4 th 669 (7th Cir. 2022)

-Federal court found the City was not liable for the actions of off-duty officers who brutally beat a man in a bar. The court found that the City did not have an express policy that caused the plaintiff's injuries.

LESSON: Department policies do matter. To the extent that the Commission has any say on policy, you should provide that input. This could include hiring and promotion policies.

► *Schatchell v. Board of Fire and Police Commissioners of the Village of Melrose Park*, 2022 IL. App (1st) 201361 (9/30/22)

-Commission decision to fire police officer who violated Village sick leave policy by activities inconsistent with his claimed inability to work.

-Significant discussion of the due process rights inherent in the commission hearing process.

LESSONS: Department members even on sick leave or disability are still members of the department and subject to the rules. Commission rules and processes do mean something and must be followed at the risk of a court reversing commission action.

- ▶ *Barnes v. Dart and Cook County Sheriff's Merit Board*, 2023 Ill App (1st) 210472-U

-Defendant Cook County Sheriff's Office Merit Board did not take final administrative action where it failed to conduct a public vote on its decision to terminate plaintiff's employment. Plaintiff's termination reversed.

- ▶ **LESSON:** Compliance with the Open Meetings Act matters. Follow the Act, particularly if you are making decisions that can impact someone.

THE LEGISLATURE AT WORK

- ▶ Open Meetings Act virtual meeting status
- ▶ Public Act 102-1102 The CROWN Act (Create a Respectful and Open Workplace for Natural Hair Act)
 - Act designed to protect the ability to wear hairstyles associated with race.
 - May necessitate changes in your hiring standards.
- ▶ Criminal conviction disqualification process
- ▶ Credit history checks and disqualification; FCRA waiver and notice