

**Proceedings of the Big Bend Vernon Fire Commission Meeting
Fire Station #3
October 9, 2006 - 6:00 PM
STH 164 & I-43**

These minutes are considered unofficial until approved by the Big Bend Vernon Fire Commission at their next regular meeting.

CALL MEETING TO ORDER

Acting Fire Commission Chair Long called the meeting to order at 6:05 PM.

ROLL CALL & PUBLIC NOTICE

Present: Shirley Goff, Terri Long and Dave Nowicki. Absent: Debby Staszak, Gary Wilde

Also Present: Attorney Paul E. Alexy, Fire Chief Phil Buchholtz, Assistant Chief Brian Peterson, Deputy Chief John Kubacki, Deputy Chief Pat Hays, Attorney Joel Aziere, Attorney Doug Carroll Jr., and EMT-P/FF Sherry Jacobi

This meeting was noticed and posted pursuant to Open Meeting law.

Continuation of Hearing concerning Charges filed by Chief Phillip B. Buchholtz against Firefighter Sherry A. Jacobi, EMT-P/FF pursuant to Wis. Stat. 62.13(5). Motions may be made from time-to-time during the course of the Hearing pursuant to Wis. Stat. 19.85(1) (a) and/or 19.85(1) (g) to allow the Police and Fire Commission to deliberate on a particular matter before it and/or to consult with legal counsel concerning a matter that the Fire Commission is, or is likely to become involved, in litigation. Upon conclusion of any such closed session, the Commission will reconvene into open session for action on matters discussed in closed session and to resume the Hearing.

An Introduction was made by Attorney Paul E. Alexy counsel for the Big Bend Vernon Fire Commission, who stated that the Fire Commission had been informed by counsel for the parties prior to the commencement of the Hearing that the parties have been in discussion and that there is a motion that will be brought for a brief recess to allow the parties to continue this talk. Attorney Doug Carroll for Sherry Jacobi stated that is correct. Whereupon a Motion was made by Goff and seconded by Nowicki to take a recess until 6:25 PM to permit the parties to explore the potential for a resolution. Motion carried unanimously.

Meeting resumed at 6:38 PM

Appearances of Attorney Doug Carroll Jr., Cross Law Firm appearing on behalf of Sherry Jacobi who is present and on behalf of the Fire Chief, Joel Aziere from Davis & Kuelthau and the Fire Chief who is present as well. Attorney Alexy stated his understanding that no resolution had yet been reached and he would like to ensure at this point that everyone has received proper notice of the Hearing this evening. Attorney Carroll and Attorney Aziere responded that this is correct.

Attorney Alexy inquired whether there are any procedural issues to date that either party would like to address raise with the Fire Commission. In response, Attorney Carroll stated that the Statute provides that the Hearing shall be scheduled 30 days after Ms. Jacobi was served with the Charges. Attorney Carroll further stated that Ms. Jacobi was served with Charges on June 16th and the Hearing wasn't scheduled until August 14th of 2006. She appealed on June 21st and that the Hearing wasn't scheduled within 30 days.

In response, Attorney Aziere stated that the Hearing was repeatedly delayed at the request of Ms. Jacobi in her attempts to secure counsel for this matter. In reply, Attorney Carroll stated that this was after that August 14th Hearing was already scheduled.

Attorney Alexy stated so this would be a factual issue that could be raised in the course of the Hearing since it raised factual issues, such as whether or not there was any actual request for a continuance and no facts regarding any requests for continuances are yet in evidence before the Commission. In

response to Attorney Alexy's question as to whether there were any other procedural issues to be raised, Attorney Carroll stated that there was an interview that took place on February 23rd of 2006 that Ms. Jacobi was not given her Garrity warning prior to that and was not allowed to have counsel or other representation at that meeting and he would like to raise that objection now. However, in response to further inquiry by Attorney Alexy, Attorney Carroll agreed this would be a matter involving factual issues that would be brought up during the course of the Hearing.

With regard to Attorney Carroll's procedural objections, Attorney Aziere inquired whether the argument is that the Hearing was not conducted in a timely matter and as a result the Hearing must then be dismissed.

Attorney Carroll stated that is the argument whereupon Attorney Aziere stated he would agree that the Hearing should be dismissed because the only reason for the Hearing is Ms. Jacobi's appeal of discipline by the Chief. Further discussion ensued as to the effect of dismissal with respect to any discipline that has been imposed to date and any discipline ordered but not served. In response to Attorney Alexy's inquiry, counsel for both parties stipulated that issues with respect to this issue will be considered by the Commission as part of the entire Hearing process and briefs that are submitted by the parties will be submitted subsequent to the rules of the evidentiary portion of the Hearing. In response to inquiry from Attorney Alexy as to whether there were any issues to be raised with respect to the Charges; Attorney Carroll stated his belief that the Charges are vague, since there is no rule cited in the Charges that Ms. Jacobi has been accused of violating. Attorney Carroll argued that Ms. Jacobi has been accused of not following an order, but there are no rules in place to turn to whether or not she has violated those rules. Attorney Alexy inquired whether the argument is that there has to be a specific reference to a member rule in order for Charges to be sufficient, to which Attorney Carroll responded "yes".

In response, Attorney Aziere stated that the case law in the State of Wisconsin is clear on this point, and there do not have to be specific rules in place for every violation. Attorney Aziere cited examples where specific rules are not necessary and argued that there is no case law that requires in every situation that a specific rule be delineated in the Charges.

Attorney Carroll replied that there are additional factors present in this case due to the allegation that Ms. Jacobi "froze" rather than refused to perform a duty or follow an order. Therefore, Mr. Carroll submitted that there is a question as to how you know whether or not she didn't follow the order in the absence of a rule.

Following further argument by counsel, Mr. Carroll began to read into the record from Charges served on June 15th, whereupon Attorney Aziere objected that Mr. Carroll was not reading from the Charges that were filed with the Commission. Discussion ensued as to whether Attorney Carroll was reading from the Charges filed with the Commission or from a notice of discipline provided to Ms. Jacobi.

Attorney Alexy clarified that the Charges filed with the Commission are as set forth in a letter from the Chief to Ms. Jacobi referring to "the disciplinary action against yourself as a result of a letter June 20, 2006." Attorney Aziere confirmed that these are the Charges and Attorney Carroll confirmed that they had been served on Ms. Jacobi.

Referring to the July 20th letter Attorney Carroll stated they (i.e. the Charges) also state misconduct. "I have determined the alleged conduct constitutes the following:

1. While attending to this patient as a trained emergency medical professional, Firefighter/Paramedic Jacobi did not execute specific assignments given to her by her company officer and the incident commander relative to the treatment of the patient.

In doing such, Firefighter/Paramedic Jacobi did not provide the appropriate level of care required for the patient's condition. As a result, other department personnel were required to provide the level of care needed."

Attorney Carroll argued there are two things here, the Charge is misconduct and there are no rules as to what misconduct is stated in the Charges and there is an allegation of failure to provide the appropriate level of care. Attorney Carroll also argued that the appropriate level of care that is not listed in the Charges as well.

Copies of the Charges read by Attorney Carroll were provided to the Commission.

In response to Attorney Carroll, Attorney Aziere stated that Ms. Jacobi is accused of not executing specific assignments given to her by the company officer and that this is a rule that does not need to be delineated in a written policy or rule. Attorney Aziere further argued that failure to follow orders of your superiors is a common sense rule that the Wisconsin courts have held; every employee knows that he/she must follow. Regarding the second argument regarding the appropriate level of care, Attorney Aziere argued that this is a factual allegation that can be argued for in the Hearing.

Following further discussion by counsel, Attorney Alexy stated his recommendation to the Commission to take these issues under advisement and make their determination concerning Attorney Carroll's arguments concerning the Charges as part of the Hearing. Attorney Alexy advised Attorney Carroll that he is free to reintroduce and argue this issue during the evidentiary course of the Hearing but, in Attorney Alexy's opinion without testimony, these issues would not preclude the Commission from moving forward. Attorney Carroll agreed.

Attorney Alexy then inquired whether there is an agreement that the Charges were properly served. The letter regarding the Charges is undated, and will raise an evidentiary question as to whether or not the Charges or the Hearing was commenced within 30 days. Attorney Alexy suggested that the Commission take this matter under advisement and address it as part of the Hearing for the prior agreement of the parties. In response to whether there is an agreement between the parties that the Charges were in fact properly served, counsel for both parties stated, "Yes".

In response to inquiry from Attorney Alexy as to whether there are any other issues or challenges to the Charges themselves that are pertinent this evening counsel for both parties responded there were none.

Attorney Alexy – as far as moving forward Attorney Aziere do you have an idea of how many witnesses you are going to call for the Hearing in this matter?

For purposes of scheduling the Hearing, Attorney Aziere stated that he will probably have four witnesses and Attorney Carroll stated he would have approximately five witnesses. Attorney Alexy recommended to the Commission that both parties exchange witness lists prior to the evidentiary portion of the Hearing on this matter.

In response to inquiry from Attorney Alexy regarding what types of documentary evidence is intended to be introduced, Attorney Aziere stated his plans to introduce the Charges, the statements, the interview statements and the matter of documents that the various officers that were witnesses to this incident or various firefighters and officers who were witnesses to this incidence applied to the Chief during the course of his investigation. Attorney Aziere indicated he would also provide any of the investigation notes that the Chief has or took during the course of his investigation. Attorney Aziere stated he is prepared to exchange these documents with Attorney Carroll.

Attorney Carroll indicated that he has not yet received any discovery on this matter from Attorney Aziere and does not have any documentary evidence that he is currently aware of.

Discussion ensued regarding available Hearing dates and the extent of Attorney Aziere's file that would be produced. In response to Attorney Carroll's request that the Commission order Attorney Aziere to turn over the entire investigation file, Attorney Alexy stated he was unaware of authority for the Commission to do so, but that Attorney Carroll was free to supply authority to support his request. Attorney Alexy also advised Attorney Carroll that he was not foreclosed from pursuing information under Wisconsin's Public Records Law and Wis. Stat. § 103.13.

Following further discussion as to the availability of the parties for scheduling purposes and counsel for both parties having stated that there are no other issues to present prior to the commencement of the evidentiary portion of the Hearing, on recommendation by Attorney Alexy – Motion made by Nowicki and seconded by Goff to schedule proceedings for this matter on November 20, 2006 beginning at 6:00 PM with a continuation date of November 27, 2006 beginning at 6:00 PM for the continuation of the evidentiary portion of this Hearing. Also, that the Commission forewarns counsel for the Chief to disclose not only his witness list but documents that he intends to use for evidence at Hearing to counsel for Ms. Jacobi on or before October 20, 2006 and that in turn, on or before November 10, 2006 counsel for

Ms. Jacobi is to provide a list of defense witnesses and exhibits to counsel for the Chief, and that copies in both instances be provided to the Commission. Motion carried unanimously.

Attorney Alexy then requested counsel for both parties to attempt to develop a list of undisputed facts to streamline the Hearing as much as possible, and clarify the issues for the Commission on November 20th.

There being no further matters before the Commission a motion was made by Long and seconded by Goff to adjourn. Motion carried unanimously at 7:15PM.

Julie Bauer

Fire Services Confidential Secretary/Treasurer

Approved on April 30, 2007 and distributed to Fire Commission members, Village of Big Bend and Town of Vernon on June 18, 2007.