

*Fire Comm. approved 7-6-09
Sent - 7-8-09 Julie B*

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State of Wisconsin
Big Bend-Vernon Fire Commission Hearing

FEBRUARY 24, 2009

In re the charges filed by:

Fire Chief Phillip B. Buchholtz
against Lieutenant Charles Diehn;

and

In re the charges filed by:

Lieutenant Charles Diehn
against Chief Phillip B. Buchholtz;

and

In re the charges filed by:

Lieutenant Charles Diehn
against Deputy Chief Hays;

and

In re the charges filed by:

Lieutenant Charles Diehn
against Deputy Chief Kubacki;

and

In re the charges filed by:

Lieutenant Charles Diehn
against Chief Brian Peterson;

and

In re the charges filed by:

Lieutenant Charles Diehn
against Captain Alex Felde.

Barbara Dassow Court Reporter 262-367-5205
Post Office Box 180411 Delafield, Wisconsin 53018

1 February 24, 2009

2 6:30 p.m. to 6:49 p.m.

3
4 Taken at:

5 Fire Station No. 3
6 W233 S7475 Woodland Lane
7 Big Bend, Wisconsin 53103

8 APPEARANCES

9 Fire Commission
10 Gary Wilde, Chairman
11 Terry Long
12 David Nowicki
13 Shirley Goff

14 Paul Alexy, Esq.
15 Arenz, Molter, Macy & Riffle
16 720 N. East Avenue
17 Waukesha, Wisconsin 53187

18 Daniel G. Vliet, Esq.
19 Davis & Kuelthau, S.C.
20 111 East Kilbourn Avenue
21 Suite 1400
22 Milwaukee, Wisconsin 53202

23 Lieutenant Charles Diehn
24 Fire Chief Phillip B. Buchholtz

25 Deputy Chief Hays

Deputy Chief Kubacki

Assistant Chief Brian Peterson

Captain Alex Felde

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1 TRANSCRIPT OF PROCEEDINGS

2 MR. WILDE: We will call this to order.
3 We will proceed with some of the preliminary
4 stuff. Roll call, Commissioner Goff?

5 COMMISSIONER GOFF: Here.

6 Commissioner WILDE: Commissioner Long?

7 COMMISSIONER LONG: Here.

8 COMMISSIONER WILDE: Commissioner
9 Nowicki?

10 COMMISSIONER NOWICKI: Here.

11 COMMISSIONER WILDE: Commissioner Wilde.
12 Commissioner Staszak is absent this evening
13 because of work conditions. She may be coming in
14 later on. The agenda, the notice by the chair of
15 possible closed sessions. Motions may be made
16 from time to time during the course of this
17 hearing pursuant to Wisconsin statutes 19.85
18 (1)(a) for purpose of deliberations concerning
19 the quasi judicial hearing or case before it and
20 19.85(g) to consult with legal counsel for the
21 Commission who is rendering oral or written
22 advice concerning the matter that the Fire
23 Commission is or likely to become involved in
24 litigation. Upon conclusion of any such closed
25 session, the Commission will reconvene into open

1 session or action on matters discussed in closed
2 session and to resume the hearing.

3 Upon conclusion with the presentation of
4 evidence by the parties and the submission of any
5 arguments on behalf of Chief Buchholtz and
6 Lieutenant Diehn, the Commission will enter into
7 closed session pursuant to Wisconsin State
8 Statute 19.85(1)(a) for the purpose of
9 deliberating concerning the quasi judicial
10 hearing or the case before it.

11 So with the reading of that I am going
12 to defer right now to legal counsel for an
13 explanation of what's going to transpire.

14 MR. ALEX: Good evening, ladies and
15 gentlemen. We are here on the resumption of a
16 hearing that was commenced on January 19, 2009
17 that was with regard to charges filed by Chief
18 Buchholtz against Lieutenant Charles Diehn. That
19 hearing was adjourned initially from January 26,
20 2009 at the request of Lieutenant Diehn due to
21 work commitments. At that time the Commission
22 determined that the matter would proceed to
23 hearing. It was originally scheduled for
24 February 9, 2009. Prior to that hearing however
25 the parties had requested an adjournment to

1 pursue settlement discussions. I am of the
2 understanding that those discussions have been
3 unable to result in an agreement however and so
4 we are here this evening on the resumption of the
5 hearing on the charges pursuant to Section 62.13
6 of the Wisconsin Statutes. Before we begin this
7 evening, I want to inquire of the parties,
8 Lieutenant Diehn, we are here at your appeal of
9 the discipline imposed by Chief Buchholtz. You
10 have received copies of the charges filed by
11 Chief Buchholtz with the Commission; is that
12 correct?

13 LIEUTENANT DIEHN: Yes.

14 MR. ALEXY: And as I understand it there
15 is no question from you with regard to the timely
16 commencement of the proceedings on January 19; is
17 that correct?

18 LIEUTENANT DIEHN: That is correct.

19 MR. ALEXY: Do you have any objection to
20 the members of the Commission that are present
21 this evening hearing the case in the charges
22 against you?

23 LIEUTENANT DIEHN: No, I do not.

24 MR. ALEXY: Counselor, Mr. Vliet, you
25 are here appearing as counsel for Chief

1 Buchholtz; correct?

2 MR. VLIET: That is correct.

3 MR. ALEXY: On behalf of the chief, do
4 you have any objection to the members of the
5 commission that are present during this evening
6 hearing the charges brought against Lieutenant
7 Diehn?

8 MR. VLIET: No.

9 MR. ALEXY: Are there any preliminary
10 matters that need to be brought before the
11 Commission before we go to opening statements?

12 MR. VLIET: I think I have one that you
13 may want to consider.

14 MR. ALEXY: Yes, sir.

15 MR. VLIET: The chief has decided that
16 it's in the best interest of the department to
17 withdraw the charges that he filed against
18 Lieutenant Diehn. The result of this is that the
19 suspension will be converted to a written warning
20 and Lieutenant Diehn will be brought back to the
21 department. There was also an issue with regard
22 to his status upon his return. He will be
23 returning as a captain. Since Captain Diehn
24 would be coming back with only a written warning
25 and not a suspension, I believe that this removes

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this from the Commission's jurisdiction. We are sorry that it was necessary to bring everybody here today. The parties made considerable efforts to attempt to resolve this. In the end the Chief believes that this is the best result of an unfortunate situation.

COMMISSIONER WILDE: Thank you.

MR. ALEXY: Just so I am clear as to your intentions, Mr. Vliet, you indicated that the Chief has decided that it is in the best interest. Is he at this time withdrawing those charges?

MR. VLIET: That is correct.

MR. ALEXY: Mr. Chairman, based on that withdrawal, the charges in the matter that is here before the Commission based on charges filed, it would be my opinion that the withdrawal of those charges would leave the matter to the Commission without jurisdiction. I would recommend that the chair entertain a motion to adjourn.

COMMISSIONER WILDE: I believe Mr. Alexy has stated it properly. For all intents and purposes, the Commission has no jurisdiction in this matter any longer and I would entertain a

1 motion in regard to adjournment of this hearing.

2 COMMISSIONER NOWICKI: Motion to
3 adjourn.

4 COMMISSIONER WILDE: Is there support?

5 COMMISSIONER LONG: I second.

6 COMMISSIONER WILDE: A motion has been
7 made and seconded to adjourn this hearing. Is
8 there any further discussion? Being those all in
9 favor say aye.

10 (All say aye.)

11 COMMISSIONER WILDE: This motion is
12 carried. The meeting of this Commission is
13 adjourned. Thank you ladies and gentleman.

14 (Whereupon, the above proceedings were
15 adjourned at 6:37 o'clock in the afternoon.)

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