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Firefighter Unions In Colorado: A Primer

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Firefighter Unions

- Pueblo firefighters established first firefighter union in Colorado in 1912 through American Federation of Labor.
- International Association of Fire Fighters (IAFF) formed in February of 1918.
 - Pueblo IAFF Chapter Local 3.
 - Colorado Springs IAFF Chapter Local 5.

The IAFF

- Over 292,000 full-time firefighters & paramedics protecting 85% of population.
- Over 3,100 affiliates & their members protect communities in all States & Canada.
- One of the most active lobbying organizations in Washington; its Political Action Committee, FIREPAC, is among the top 1% of over 4,000 PACs in the country.

Firefighter Union Rights

- Firefighters can join existing IAFF chapter.
- Firefighters can establish new IAFF chapter.
- Creating an IAFF chapter does not change firefighters' status with the fire department.
- Without fire department recognition, the IAFF chapter has same legal status as other outside organizations.

The Legal Landscape (For Now...)

- Governmental Fire Departments Are Not Required to Recognize a Union:
 - National Labor Relations Act Does Not Apply
 - Colorado Labor Peace Act Does Not Apply
 - Colorado Constitution Does Not Require It
 - No Common Law Right to Recognition

Recognition

- Fire Department's actual or implied recognition of union as exclusive bargaining representative of Collective Bargaining Unit.
- Collective Bargaining Unit is the group of firefighters covered by the collective bargaining – may or may not be union members.
- Limited vs. Unlimited Recognition.

Collective Bargaining

- Process whereby union representatives & management negotiate over agreed upon work conditions.

- Scope of Recognition
- Wages
- Discretionary Benefits
- Dues Collection
- Work Schedules
- Just Cause Discipline

- Progressive Discipline
- Evergreen Clause
- Negotiation Procedures
- Dispute Resolution
- Other Terms

Collective Bargaining Agreement

- Written contract containing terms & conditions agreed to during collective bargaining.
- Typically must be ratified by Union membership & Fire Dept.'s governing body.
- Overrides conflicting Fire Department Personnel Handbook & SOG/SOP provisions.

Weingarten Rights

- 1975 US Supreme Court held employee has right under NLRA to union representation at an investigatory interview that employee reasonably believes may result in discipline.
- “Reasonable belief” measured by objective standards (not firefighter's subjective motivations) based upon reasonable evaluation of totality of circumstances.

Weingarten Rights (Cont'd.)

- Not required to advise firefighter of Weingarten Rights (unless required by CBA).
- If firefighter asks for union rep, must either grant request or offer firefighter choice between continuing interview without union rep or no interview.

Weingarten Rights (Cont'd.)

- No duty to hold interview once union rep. is requested. Don't have to justify refusal & can continue investigation without interviewing firefighter. Firefighter foregoes any benefits that may be derived from participating in interview.

Weingarten Rights (Cont'd.)

- Union rep's role is to assist firefighter by attempting to clarify facts or suggest other employees who may have knowledge of the facts.
- Union rep cannot instruct firefighter not to answer a question or otherwise interfere with interview
- Can remove interfering union rep. from interview

1st Amendment Protections

- Union related activities are not, by themselves, First Amendment protected activities.
- The activity must touch on a matter of public concern.
- Courts closely scrutinize employer interactions on union-related activities.

Disciplinary Actions

- Being in a union or engaging in union-related activities does not give an employee the right to engage in misconduct.
- Courts support a Fire Department's compelling need to maintain effective & efficient operation.
- Disciplinary actions that touch on union-related activities must be justified under the Fire Department's policies & procedures.

No Unguarded Comments!

- Unguarded Board or Chief Staff comments will be used against them.
 - No “bantering” or other unguarded union-related comments with anyone.
 - No negative comments on union-related activities under any circumstances.
 - Comments made in jest will never be seen as funny when retold to a jury or judge a year later.

Union Political Activities Are Off Limits

- When a union activity is linked with a political activity, Courts almost always find the action a matter of public concern.
- No comments about a union's political activities or the political activities of its members.

No Solicitation Rules

- Can impose a non-solicitation rule against a union if:
 - Rule is uniformly enforced against all other types of solicitations.
 - Actual past practice must be carefully & thoroughly analyzed.
 - If other organization solicitations have been permitted, even on an occasional basis, the union can engage in similar solicitation activities.

General Guidelines

- General principles developed under NLRA & Peace Act through Court decisions provide useful guidance.
- Cannot prohibit employees from distributing union literature in nonworking areas during nonworking times unless Fire Department can show ban necessary to maintain discipline & production.

General Guidelines (Cont'd.)

- Policy denying access to off-duty employees is unlawful unless:
 - Limits access only with respect to interior and working areas;
 - It is clearly disseminated to all employees; and
 - Applies to off-duty employees seeking access to the fire station interior for any purpose.

General Guidelines (Cont'd.)

- Cannot deny off-duty employees access to outside nonworking areas (e.g., parking lots) unless justified by business reasons.
- Cannot interrogate union supporters about Fire Department's concerns with unionization if questioning is coercive under "totality of the circumstances."
- Cannot hold gripe sessions to remedy employee grievances, concurrently with unionization activities, if never held them before.

Federal Legislation

- The Public Safety Employer-Employee Cooperation Act - (HR 413) January 1, 2009
- Referred to the House Committee on Education and Labor.
- IAFF says Senate version will be introduced.

Federal Legislation

- Grants firefighters collective bargaining rights in states that do not have them.
- Establishes minimum standards for state collective bargaining laws, including:
 - firefighters' right to bargain over wages, hours & working conditions.
 - dispute resolution mechanism, such as fact finding, mediation or arbitration.
 - Court enforcement.

State Legislation

- Firefighter Collective Bargaining Act (SB09-180).
- Awaiting Governor signature.
- Applies to Fire Departments with 50 firefighters
- Mandatory collective bargaining on all terms & conditions of employment.

State Legislation

- Does not include EMS personnel who do not perform Fire Protection Services.
- “Supervisor” means Chief & Officers immediately below the Chief.
- Collective bargaining period:
 - Notice given by March 1
 - Negotiations completed by April 15.
 - Will be in middle of Fire District May elections.

State Legislation

- Impasse Resolution – Advisory Fact Finder
- If Advisory Fact Finder's recommendations not accepted, special election held
 - Fire Department restricted by Fair Campaign Practices Act.
 - Union & firefighters not restricted.

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QUESTIONS?

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