



Fire and Police Commission

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Executive Director

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Chair

Nelson Soler
Vice-Chair

Ann Wilson
Fred Crouther
Angela McKenzie
Everett Cocroft
Raymond Robakowski
Commissioners

Memorandum

To: Griselda Aldrete, Executive Director
Nelson Soler, Vice-Chair

From: Dave Gelting, Research and Policy Analyst

Date: 2/26/2020

RE: Proposed change to FPC Rule XI, Appointments, Section 12(c)

On October 29, 2019 Milwaukee Fire Department (MFD) Chief Rohlfing sent a letter to the board of fire and police commissioners requesting a modification to FPC Rule XI, Appointments, Section 12(c) (Appendix A).

The current FPC Rule XI, Appointments, Section 12(c) reads:

If a vacancy exists in the office of Assistant Fire Chief, the Fire Chief shall nominate and, with the approval of the Board, shall appoint a person to a term of office coinciding with the term of the Chief making the appointment, subject thereafter to reinstatement to the last previously held non-exempt position in the Fire Department. (Rev. 12/4/08)

The 2008 revision to that rule is immaterial to the subject at hand, but the previous revision to that rule was its creation on September 5, 2002. Thus this rule has been in effect in its current form since 2002. Section 12(d) is the parallel rule for the Police Department, which reads:

If a vacancy exists in the office of Assistant Chief of Police, the Chief of Police shall, pursuant to Section 62.50 (7) Wis. Stats., nominate and, with the approval of the Board, shall appoint a person to a term of office coinciding with the term of the Chief making the appointment, subject thereafter to reinstatement to the last previously held non-exempt position in the Police Department. (Rev. 12/4/08)

As Chief Rohlfing states in his October letter, at the time of the adoption of the rule the position of Battalion Chief was exempt from competitive examination, or in his words “civil service”. The position of Battalion Chief was not exempt from competitive examination until July 10, 2003. This change from non-exempt to exempt for the Battalion Chief position began with a January 2003 request from then-Chief Wentland and was adopted after numerous discussions during both regular and committee meetings.

Chief Rohlfing further states that he considers a Battalion Chief in the MFD to be equal in rank to a Captain in the MPD. However, he is mistaken when he describes the position of Captain of Police as a “civil service rank in the MPD”. The position of Captain of Police is defined in FPC Rule V Section 3 as exempt from competitive examination. The position of Captain of Police has been exempt from competitive examination throughout the existence of the current iteration of the FPC Rules, adopted on July 26, 2001.

Given that in both cases the current process is such that an Assistant Chief is reinstated to the last previously held non-exempt position in the respective department, the current process causes an Assistant Fire Chief to be reinstated to Fire Captain and an Assistant Chief of Police to be reinstated to Police Lieutenant.

According to oral history provided by long time FPC staff member Renee Keinert, when the board adopted the reinstatement language for Assistant Chiefs in 2002 it was viewed as an improvement because before that time Assistant Chiefs would not have any reinstatement privileges at all, and when a Chief would separate from employment so would the Assistants. Part of that reasoning that the reinstatement was to the last held non-exempt position was because it need not be a permanent situation; with the appointment of a new Chief these individuals are free to apply for any vacant exempt positions under the new Chief.

Though Chief Rohlfing brings up a compelling issue when he discusses the difficult situation with the Firefighter’s Union, one might wonder if the issue has been discussed with the union directly and if a similar situation might exist with the Milwaukee Police Supervisor’s Organization (MPSO).

Rule Change History

12/4/08

This appears to be a renumbering due to other changes in adjacent sections.

9/5/02

Create new Section 13 (c) as follows: “If a vacancy exists in the office of Assistant Fire Chief, the Fire Chief shall nominate and, with the approval of the Board, shall appoint a person to a term of office coinciding with the term of the Chief making the appointment, subject thereafter to reinstatement to the last previously held non-exempt position in the Fire Department.”

7/10/03

Add “(E)” after the position title “Battalion Chief, Fire”.

Minutes

July 25, 2002

Item 1b: New Business

The Director presented a proposed modification to Fire and Police Commission Rule XI, which would mandate that the term of office of an Assistant Chief in either the Police or Fire Departments would coincide with the term of the Chief making the appointment. The Director recommended laying the matter over for final adoption at the next meeting and not referring it to committee. Copies of the proposed rule will be distributed to interested parties, with written comments due no later than August 29, 2002. The Chair so ordered.

July 31, 2002 & August 2, 2002

The Board met in closed session pursuant to Section 19.85 (1)(c) Wis. Stats. to consider employment, promotion or performance evaluation data of any public employee over which the Board has jurisdiction or exercises responsibility, to wit: interviews of Fire Chief applicants.

September 5, 2002

Item 1a: Unfinished Business

The Director returned to the Board a proposed modification to Fire and Police Commission Rule XI, which would mandate that the term of office of an Assistant Chief in either the Police or Fire Departments would coincide with the term of the Chief making the appointment.

Commissioner Johnson moved approval of the following modification to Rule XI: Renumber the current Section 13 as Section 13 (a); Renumber the current Section 15 as Section 13 (b); Create a new Section 13 (c) to read as follows: "If a vacancy exists in the office of Assistant Fire Chief, the Fire Chief shall nominate and, with the approval of the Board, shall appoint a person to a term of office coinciding with the term of the Chief making the appointment, subject thereafter to reinstatement to the last previously held non-exempt position in the Fire Department."; and Create a new Section 13 (d) to read as follows: "If a vacancy exists in the office of Assistant Chief of Police, the Chief of Police shall, pursuant to Section 62.50 (7) Wis. Stats., nominate and, with the approval of the Board, shall appoint a person to a term of office coinciding with the term of the Chief making the appointment, subject thereafter to reinstatement to the last previously held non-exempt position in the Police Department." Commissioner Sobczak seconded the motion, which carried unanimously.

January 23, 2003

Item 5d: Fire Department

The Director presented a letter dated January 14, 2003, from Chief Wentland, wherein he requests the position of Battalion Chief become an exempt position. It was recommended that the matter be referred to staff for study and recommendation and report back to the Board for final action.

In the Chief's letter (Appendix B) he highlighted the parallel between the roles of a Battalion Chief with that of a Captain of Police, which is an exempt position. He also addressed the idea

that exempting the position would allow both the Chief and the Commission more discretion to achieve more diversity in management positions.

April 10, 2003

Item 1b: Unfinished Business

The Director returned to the Board a request dated January 14, 2003 from Chief Wentland to exempt the position of Battalion Chief from the competitive examination process. The Chair noted that staff has reviewed the request. He referred the matter to the Committee on Policy Review. Chief Wentland has submitted a letter dated March 24, 2003 outlining the process he would implement to determine who should be nominated for this position. The Chair thanked the Chief for establishing selection criteria.

In the Chief's letter (Appendix C) he detailed the criteria and procedure he would use to select candidates for Battalion Chief if the position were to be exempted.

July 10, 2003

Item 3b: Committee Reports

Commissioner Baca reported that the Committee on Policy Review met prior to this meeting and discussed the exempt status of the Battalion Chief position. After extensive discussion it was agreed that the Chief will work with the staff to make the list for requiring the nomination and subsequently bring that to the Board. At this time, the Committee made a recommendation to make the position of Battalion Chief exempt from competitive examination. Commissioner Baca so moved, seconded by Commissioner Johnson. The motion carried unanimously.

Appendix A



Fire Department

Mark Rohlfing
Chief

John Schwengel
Assistant Chief

David Votsis
Assistant Chief

Aaron Lipski
Assistant Chief

October 29, 2019

To the Honorable
The Board of Fire and Police Commissioners
200 East Wells Street, Room 706
Milwaukee, Wisconsin 53202

Dear Commissioners:

I respectfully request that your Rule XI, Appointments, Section 12 C, be modified. Currently, the Assistant Chiefs' terms are tied to the Fire Chief's term, and per the rule, when the Chief leaves the department's service, the Assistant Chiefs are "subject thereafter to reinstatement to the last previously held non-exempt position in the Fire Department," which would be Fire Captain. This mandatory reversion to Captain can be a deterrent for bright young officers to move up in rank.

The modification I am seeking, which would provide for a smoother management transition and better use of the Assistant Chiefs' abilities, would be to allow them to be reinstated to the rank of Battalion Chief, which is an exempt position, if the new Fire Chief does not wish them to continue to serve as Assistant Chiefs. Currently, the way the rules work, a reversion by the new Fire Chief is punitive and sends the Assistant Chiefs back to the firefighters' union. At the point the member asks to return to the union, the union membership must vote whether to take the member back, and the member must pay all back dues, or a "reasonable fine," per the union's Constitution and By-laws.

Until 2003, the Battalion Chief position was civil service, which allowed for the selected candidates to take leaves of absence, in effect, from the Battalion Chief position to accept an Assistant Chief position. Furthermore, a Milwaukee Fire Department (MFD) Battalion Chief is equal in rank to a Milwaukee Police Department (MPD) Captain, which is a civil service rank in the MPD.

I look forward to discussing my request with you and answering any questions or concerns you may have.

Respectfully,


MARK ROHLFING
Chief

MR/jlb
FPC/Rules/Rule XI Revision 1019



Appendix B

January 14, 2003

To the Honorable
The Board of Fire & Police Commissioners
809 North Broadway, Room 104
Milwaukee, Wisconsin 53202

Dear Commissioners:

I respectfully request the position of Battalion Chief to become an exempt position for the Milwaukee Fire Department. The following is a summary of this position.

A Battalion Chief has evolved into a managerial position that now is a stakeholder and contributor of policy development and implementation for the organization. Battalion Chiefs play an active role refining the culture to represent the managerial goals and objectives of the department. The Battalion Chief position has been woven more tightly into the management team. Battalion Chiefs now routinely operate in the management structure as leaders and committee members who shape the direction of the department.

Exempting the position would allow the Chief and the Commission more discretion to further the goal of our City to achieve diversity in the management level of departments.

In comparison to the Milwaukee Police Department, a Battalion Chief is parallel to the position of Police Captain. Although each position includes some operational responsibilities, the primary duties of both are managerial. Currently, only the Police Captain position is exempt.

A historical perspective reveals a downward trend in the percent of those eligible to take the promotional exam who opt to take it. In 1994, over 50% of those eligible participated, compared to only 29% in 2001. A summary report from the Office of

Appendix B

To the Honorable
The Board of Fire and Police Commissioners

January 14, 2003
Page 2

Budget and Management (2001) highlights a financial disincentive for Captains to naturally seek out the position of Battalion Chief in a competitive forum.

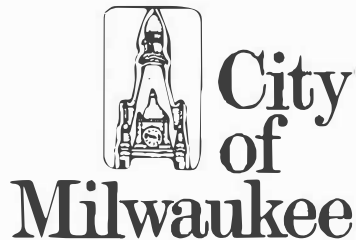
As I begin to evaluate opportunities to re-engineer the organization, I will be considering personnel in a Battalion Chief capacity filling an expanded role within the department. I look forward to your response to my request.

Sincerely,

WILLIAM WENTLANDT
Chief

WW/jb
F&P\Bcexemt

Appendix C



Fire Department

William Wentlandt
Chief

Mark A. Sain
Assistant Chief

March 24, 2003

To the Honorable
The Board of Fire & Police Commissioners
809 North Broadway, Room 104
Milwaukee, WI 53202

Dear Commissioners:

Recently, I submitted a request to consider exempting the position of Battalion Chief from the competitive exam process. In addition to analysis and arguments previously made, it is important to define the process that I envision leading up to the nomination of a candidate for Battalion Chief if the position is exempt.

The following criteria would be utilized:

- Three continuous years as a Fire Captain immediately prior to date of nomination letter.
- Consideration for leave of absence related to physical disability under Family Medical Leave Act.
- Consideration for leave of absence related to military leave.
- Consideration for completion of sixty or more academic credits from an accredited college or university.
- Must be licensed and certified as a State of Wisconsin EMT-D, and is required to maintain EMT-D status as a condition of service as a Battalion Chief.
- If appointed, may be assigned to a Battalion or Bureau to fulfill duties and responsibilities of position.

When a vacancy occurs, notice would be given via a Milwaukee Fire Department Temporary Notice, inviting eligible candidates to submit a letter of interest to the Chief. Additional materials as defined by the Chief relative to the vacant position may also be solicited.

Once nominated by the Chief, the candidate would be required to participate in an interview with the Milwaukee Fire and Police Commission. Action taken by the Commission would determine the promotion of the candidate.

I hope these additional comments assist the Commission in its deliberations.

Sincerely,

WILLIAM WENTLANDT
Chief

WW/cf

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