



RISK MANAGEMENT INFORMATION
SELECTION VS. ELECTION
The Choice Is Clear

The business of municipal fire fighting has seen a multitude of changes in recent years. There are technical advances in rescue and emergency equipment and a dwindling pool of potential applicants who are willing to commit the time and dedication necessary to serve their community, to the increased emphasis on skills and training for departments of every shape and size. Commendably, though faced with declining applicant interest, increased citizen expectations, and stressed city budgets, volunteer fire departments have continued to operate and provide the most essential of city services.

Given today's difficult environment, most departments now appreciate first-hand that running a tight and efficient operation is at the center of their success. The social and fraternal fire organizations of the past have been taken over by professional fire operations that are true arms or departments of city government. However, membership elections, a tradition held over from the social group philosophy of the past, continue to exist in varying forms in fire departments across the state. Using election, or rule by majority vote, to make membership and promotional decisions creates risks every department should be aware of and, in my opinion, no city should take.

Selecting the most qualified candidates

Many departments have established specific membership criteria including published minimum qualifications and written job/position descriptions. Often times the process for membership will require a formal application and the ability to pass both written and physical examinations. The days when a resident can become a volunteer firefighter by simply walking into the fire station and meeting the minimum age requirements are long gone. This is because every fire administrator knows that performing firefighting duties is serious, dangerous business that requires certain measurable skills and abilities. The best way to determine if someone meets the minimum requirements is through an objective selection process involving applications and testing.

Learn More

Read more about response distance requirements, selection and election, job duties, codes of conduct, and more in:

HR Reference Manual

It's available at www.lmc.org.

While some departments have adopted what they feel is a thorough and objective selection procedure, if there is any element of voting by the department membership, it is no longer truly

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Consult your attorney for advice concerning specific situations.

“objective,” and if the vote can reverse the results of the preliminary selection process (i.e., the objective part), the legitimacy of the entire process is subject to attack. For example, if Applicant A not only meets but exceeds all of the “objective” skills and training criteria, but due to unfamiliarity with the members is voted down, and Applicant B who just barely passes the skills tests is voted in because everyone knows and trusts him, the department is not making the best selection choice.

This is not to ignore the real motivations behind a membership vote. Fire departments are still a place where everyday heroes put their lives on the line; and, in doing so, they need to trust those who are working beside them doing the same. And, when the fire is out, volunteer firefighters should be able to unwind and celebrate their victories with those they can call their friends. These concerns and desires are understandable; but voting does not guarantee these bonds between firefighters. If anything, making sure only the best, most qualified individuals are performing the high-risk duties of firefighter, will move a fire department closer to the goals of security and compatibility within their ranks.

Election of department officers may be even more ingrained than in elections for initial membership. The ideas expressed above, regarding making decisions based on qualifications, applies equally to promotional/leadership positions. However, an additional emphasis is often placed on a membership vote for officers because of the need for “respect” among the rank and file. A well-drafted promotional process can encompass leadership skills and other criteria that will help a department find the candidate most likely to succeed in an officer position.

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Read more about membership numbers, officer roles, discipline, and more in:

Fire Department Bylaws: Who's In Charge?

It's available at www.lmc.org.

In addition, a popularity vote for officer positions can result in a contentious political process where individuals are voted into leadership roles not based on qualifications, but because of the personalities of those in the running. The Minnesota Supreme Court artfully identified the potential impact on the community when politics are allowed to take over a fire department. In a case in which several volunteer firefighters alleged they were the victims of retaliation for, among other things, supporting the wrong candidate in a fire chief election, the Court stated:

*It is unfortunate the members of the ***** fire department allowed this situation to escalate to the point where it likely reduced the effectiveness of fire protection in the ***** area and is now consuming judicial resources in order to be resolved.*

Reducing Legal Liability

When membership and promotional decisions are made on the basis of a majority vote, legal issues are automatically created. Foremost of which is the potential for discrimination claims. State and federal law prohibit cities from making employment and public service decisions based on an individual's protected status. The most commonly asserted protected classes are: gender, disability,

age, race, national origin, sexual orientation, and marital status. Minnesota fire departments have been subjected to discrimination claims in all of these areas.

A fire department charged with discrimination can successfully defend itself if it can show that the membership or promotional decision was based on legitimate business reasons, not because of discrimination. An extremely difficult situation is created when the decision being challenged was the result of a popular vote. Because it is not possible to read the minds and prove the motivations behind each individual vote, a city is prevented from clearly articulating legitimate, non-discriminatory business reasons for its decisions.

In a case in which a female applicant was rejected by membership vote, even though she met all the qualifications required for a firefighter position, a New York court succinctly set forth the legal standard that applies:

The Court recognizes the right of a volunteer organization to exercise a degree of control over those who apply to enter its service. A fire company is entitled to reject certain applicants, even those who are members of a protected class, but such rejection must be done in accordance with the law.

In addition to the difficulties created in defending membership and promotional decisions in discrimination claims, voting creates additional legal issues with respect to compliance standards for public appointments under the Veterans Preference laws. Minnesota law requires all cities to offer preference to veterans when hiring or appointing for most positions. In order to comply with statutory requirements, a fire department must have a rating scale in place that allows for the allotment of additional (preference) points to qualified veterans. Membership procedures that include a vote as one step in the process may run afoul of the requirement to set up an objective 100-point system under Veterans Preference. The consequences of failing to meet the statutory requirements for Veterans Preference include civil penalties and injunctive relief such as a “redo” of the hiring or membership process.

Learn More

Read more about veterans preference laws in:

Veterans Preference In Hiring

It's available at www.lmc.org.

Conclusion

Doing away with all membership elections in your fire department is not going to be easy or happen over night. It may take intense planning and policy development, as well as structured discussion with current members who have strong feelings in support of the existing system. However, as time goes on, more and more fire departments have and will see that elections are no longer feasible in the *professional* world of *volunteer* fire fighting. As one Minnesota fire chief recently commented when asked about the proposed transition from election to selection in his fire department: “*It’s long overdue.*”