

AGENDA FIRE MERIT COMMISSION

Monday, May 8, 2023

3:30 P.M.

Council Chambers

Municipal Building, 229 S. Second Street, Elkhart, IN 46516

<https://coei.webex.com/coei/j.php?MTID=m762f2324e43339febe189560c62f5a6f>

MEETING NUMBER (Access Code): 2301 963 1402

MEETING PASSWORD: Fire23

JOIN BY PHONE: 1-415-655-0001

- 1. Call to Order**
- 2. Roll call**
- 3. Approve Agenda**
- 4. Approve Minutes- Regular Meeting April 10, 2023**
- 5. Fire Department**
 - Disciplinary Notice- FF Holly Reed**
 - Request for Hearing**
- 6. IAFF Local 338**
- 7. Public Participation**
- 8. Adjournment**

FIRE MERIT COMMISSION
Monday, April 24, 2023

President Mandy Leazenby called a regular meeting of the Fire Merit Commission (FMC) to order at 3:30 p.m., Monday, April 24, 2023. Nancy Wilson called the role. Commissioners Mandy Leazenby, Bunita Fields-Buggs, and Jim Rodino were present. Doug Bowlby was absent. There is one vacancy on the FMC.

1. AGENDA

On motion by Jim Rodino, seconded by Bunita Fields-Buggs and carried 3-0, the agenda was approved as presented.

2. Approve Minutes Regular Meeting April 10, 2023

On motion by Jim Rodino, seconded by Bunita Fields-Buggs and carried 3-0, the minutes from April 10, 2023 were approved.

3. FIRE DEPARTMENT

Promotions

Chief Shaun Edgerton presented a promotion for FF Zach Burrington to the rank of Driver/Operator. On motion by Bunita Fields-Buggs, seconded by Jim Rodino and carried 3-0, FF Zach Burrington was promoted to Driver/Operator effective today.

Chief Shaun Edgerton presented a promotion for FF Aaron Lechlitner to the rank of Driver/Operator. On motion by Jim Rodino, seconded by Bunita Fields-Buggs and carried 3-0, FF Aaron Lechlitner was promoted to Driver/Operator effective today.

Chief Shaun Edgerton presented a promotion for FF Matt Greulich to the rank of Driver/Operator. On motion by Jim Rodino, seconded by Bunita Fields-Buggs and carried 3-0, FF Matt Greulich was promoted to Driver/Operator effective today.

Chief Shaun Edgerton presented a promotion for FF Kevin Clarke to the rank of Driver/Operator. On motion by Bunita Fields-Buggs, seconded by Jim Rodino and carried 3-0, FF Kevin Clarke was promoted to Driver/Operator effective today.

Chief Shaun Edgerton presented a promotion for FF Vincenzo Siciliano to the rank of Lieutenant. On motion by Jim Rodino, seconded by Bunita Fields-Buggs and carried 3-0, FF Vincenzo Siciliano was promoted to Lieutenant effective today.

Chief Shaun Edgerton presented a promotion for FF Zach Lail to the rank of Lieutenant. On motion by Jim Rodino, seconded by Bunita Fields-Buggs and carried 3-0, FF Zach Lail was promoted to Lieutenant effective today.

Chief Shaun Edgerton presented a promotion for FF Gene Sanders to the rank of Lieutenant. On motion by Bunita Field-Buggs, seconded by Jim Rodino and carried 3-0, FF Gene Sanders was promoted to Lieutenant effective today.

4. IAFF LOCAL 338

Jason Gour said on behalf of Local 338, thank you Commissioners for validating the process, and thanks to the administration for putting on the process. He also thanked the families for coming. To the newly promoted he said, you were all promoted off your merit. Now it's on you to be the best Driver/Operators and Lieutenants you can be. I look forward to serving with you. Thank you.

5. ADJOURNMENT

On motion by Jim Rodino, seconded by Bunita Fields-Buggs and carried 3-0,

FIRE MERIT COMMISSION
Monday, April 24, 2023

the City of Elkhart, Indiana Fire Merit Commission was adjourned 3:39 p.m.

_____ Mandy Leazenby, President

Attest: _____ Doug Bowlby, Secretary



05/03/2023

Rod Roberson
Mayor

Shaun Edgerton
Fire Chief

Rodney Dale
Assistant Fire Chief

Kristi Sommer
Assistant Fire Chief

Fire Department
500 East Street
Elkhart, Indiana 46516

Phone: (574) 293-8931
Fax: (574) 522-1023

Email:
fire@elkhartfire.org

Fire Merit Commission
229 S, Second Street
Elkhart, IN 46516

RE: Disciplinary Notice Fire Fighter Holly Reed

Fire Firefighter Holly Reed:
The following is a summary of the case and its resolution:

FACTS: An external complaint was generated on December 10, 2022. On December 10, 2022, the Elkhart Fire Department received a civilian complaint regarding your actions earlier in the morning. The complaint alleged that on December 10, 2022 at approximately 5:30 AM, you appeared at the home of a St. Joseph County resident accusing her minor son of joy riding in your vehicle. The complainant stated you told her and her son that you were a police officer and that they could be charged with a felony. You continued to breach the peace even though the complainants informed you they could not resolve your issue. You called her son a racial epithet "dumb little nigger." You then proceeded to remove a firearm from your vehicle and pointed it at the complainant's minor son.

A St. Joseph County grand jury found probable cause to charge you with violation of I.C. 35-47-4-3(b) for pointing a firearm at the minor son. The grand jury also charged you with two violations of I.C. 35-44.1-2-6(a) & (b) for falsely representing that you were a law enforcement officer with the intent to deceive or induce compliance with your instructions, order or requests.

Because of your actions on December 10, 2022 and the subsequent grand jury findings, I find that you have violated the following Rules and Regulations of the Elkhart Fire Department:

1204.2 (F) Immoral Conduct
 (G) Conduct Injurious to the Public Peace
 (H) Conduct Unbecoming a Fire Fighter

I am recommending to the Fire Merit Commission that you be terminated for these violations.

Shaun Edgerton
Fire Chief

Elkhart City Employee Disciplinary Notice

Employee Name	<u>Holly Reed</u>	Position <u>D/O</u>
Department Division	<u>Suppression</u>	Shift <u>A</u>
Date of Notice	<u>4/28/2023</u>	Time <u>920</u>
Date of Alleged Incident	<u>12/10/2022</u>	Time <u>500</u>

ALLEGED VIOLATION

<input type="checkbox"/> Attendance	<input type="checkbox"/> Carelessness	<input type="checkbox"/> Insubordination
<input type="checkbox"/> Tardiness	<input type="checkbox"/> Failure to Follow Orders	<input type="checkbox"/> Safety Violation
<input type="checkbox"/> Rudeness to Employees or Customers	<input type="checkbox"/> Willful Damage to Materials or Equipment	<input checked="" type="checkbox"/> Non-Job Related Activities
<input type="checkbox"/> Unsatisfactory Work Quality	<input checked="" type="checkbox"/> Policy/Procedure Violation	<input type="checkbox"/> Other

SUPERVISOR STATEMENT

*Use attachment if necessary.

Facts and Work Rule(s) Violated:

On or about 10 December, it is alleged that FF Reed was involved in an altercation with a member of the public that resulted in the brandishing of a weapon (gun) and said weapon was pointed at a minor child in a threatening manner. It is also alleged that she unlawfully identified herself as law enforcement during this incident as well as another incident earlier in the morning. It is also alleged that during said altercation with said minor and his mother, FF Reed used disparaging racial language when referring to the minor mentioned above. As a result of these actions, FF Reed was taken before the Grand Jury of St. Joseph County, IN. and has been duly and lawfully charged with three (3) felony counts as outlined by Indiana code VIOLATIONS: 1204.2 (F) Immoral Conduct, (G) Conduct Injurious to public peace and welfare, (H) Conduct Unbecoming a Firefighter, (D) Incapacity

ACTION CONTEMPLATED:

<input type="checkbox"/> Written Warning	<input type="checkbox"/> Suspension
<input type="checkbox"/> Probation	<input checked="" type="checkbox"/> Dismissal
<input type="checkbox"/> Verbal warning	

**I HAVE READ THIS EMPLOYEE DISCIPLINARY NOTICE AND UNDERSTAND IT.
I ALSO AGREE TO DISCUSS AND RESPOND TO THE ALLEGED VIOLATION ON:**

TIME: _____

Holly Reed
Signature of Employee

DATE: 5/3/23

TIME: 0911

[Signature]
Signature of Supervisor

DATE: 5/3/23

Employee Statement

*Use attachment if necessary.

I will respond with statement from my lawyer.

PREVIOUS DISCIPLINARY ACTION: Verbal Warning, Written Warning, Suspension

	TYPE	DATE	LENGTH	GIVEN BY WHOM
1			N/A	
2			N/A	
3			N/A	
4				
5				
6				

(All or portions of applicable progressive disciplinary records may be attached)

FINAL DETERMINATION:

Written Warning Suspension
 Probation Dismissal
 Other

Details:

(See Attachment, if applicable)

ACTION TO BE TAKEN IF CONDUCT OCCURS AGAIN:

Signature of Employee

Date

Signature of Union Steward (if applicable)

Date

Signature of Issuing Supervisor

Date

Signature of Department Head

Date

ROUTING:

FILE _____ Human Resources _____ Other _____

West's Annotated Indiana Code
Title 36. Local Government (Refs & Annos)
Article 8. Public Safety
Chapter 2.1. Rights of Police Officers

IC 36-8-2.1-5

36-8-2.1-5 Rights of officer who is subject of complaint or internal investigation

Effective: July 1, 2020

[Currentness](#)

Sec. 5. (a) This section applies to a public safety officer who is the subject of a complaint or an internal investigation.

(b) When a public safety officer is subjected to interview by the public safety officer's department, as described in subsection (a), the following procedures apply:

(1) The interview shall be conducted at a reasonable hour; preferably at a time when the public safety officer is on duty, unless, in the judgment of the interviewer, the seriousness of the investigation requires an immediate interview.

(2) The interview shall take place at the public safety officer's department or an equivalent office setting designated by the interviewer.

(3) The interviewer shall inform the public safety officer of the name, rank, and assignment of the officer or member of the fire department in charge of the investigation, the interviewer, and all other persons present during the interview.

(4) The interviewer shall present the public safety officer with a statement of rights to be signed by the interviewer and the public safety officer. The statement of rights must be in substantially the following form:

STATEMENT OF RIGHTS

I wish to advise you that you are being questioned as part of an official investigation of the _____ Department. You will be asked questions specifically, directly, and narrowly related to the performance of your official duties as a _____ or concerning your fitness for service as a _____. You have the constitutional right not to incriminate yourself.

Under no circumstances will your statement be used in any subsequent criminal court action against you. However, factual information contained in the internal affairs file on this investigation, including your statement, is generally discoverable in civil rights litigation filed in federal or state court and may be used to impeach your testimony. In addition, this factual information may be used in any criminal proceeding in which you are a witness.

I further wish to advise you that if you refuse to give a statement or answer questions relating to the performance of your official duties or fitness for duty, you will be subjected to departmental charges that could result in your dismissal from the ____ Department.

Signed _____ (Interviewer).

I have read the above and understand it fully. I sign this statement having been advised of the above rights before any questions have been asked of me.

Signed _____ (Police officer or Firefighter).

Date and time _____.

(5) In a noncriminal case, once a public safety officer is scheduled for an interview under this subsection, the officer in charge of the investigation must provide the public safety officer with a copy of the complaint, if one exists. In a criminal case, the officer in charge of the investigation must inform the public safety officer of the nature of the complaint. The officer in charge of the investigation is not required to disclose the name of the complainant to the public safety officer.

(6) An interview session shall be for a reasonable duration of time and must allow for personal necessities and rest periods as reasonably necessary.

(7) An interview of a public safety officer as described in this subsection shall be tape recorded at the request of either party. A written transcript must be provided to the public safety officer upon request, at no cost to the public safety officer.

(8) If at the time of the interview the public safety officer is under arrest or in custody, the interviewer must completely inform the public safety officer of the public safety officer's federal and state constitutional rights regarding self-incrimination prior to the commencement of the interview.

(9) A public safety officer may not be required to waive any immunities under federal or state law at any point in an investigation.

(10) A question posed to a public safety officer must specifically, directly, and narrowly relate to the performance of duties or fitness for service as a public safety officer.

(11) A public safety officer shall have the right to be represented by an attorney or other representative during an interview where the interview relates to the public safety officer's continued fitness for law enforcement service (in the case of a police officer) or fire service (in the case of a firefighter). The public safety officer shall be provided a reasonable period of time to obtain representation, which may not exceed seventy-two (72) hours from the time of request, unless agreed upon by both parties. The attorney or representative may not participate in the interview, except to advise the public safety officer.

Credits

As added by [P.L.271-2019, SEC.1](#), eff. July 1, 2019. Amended by [P.L.33-2020, SEC.7](#), eff. July 1, 2020.

I.C. 36-8-2.1-5, IN ST 36-8-2.1-5

The statutes and Constitution are current with all legislation of the 2023 First Regular Session of the 123rd General Assembly effective through March 22, 2023.

STANLEY, TUSZYNSKI & NEWMAN

ATTORNEYS AT LAW
110 S. TAYLOR STREET
SOUTH BEND, INDIANA 46601
PHONE: (574) 288-9447 | FAX: (574) 288-9446

MICHAEL J. TUSZYNSKI
DAVID W. NEWMAN

WILLIAM P. STANLEY (1947 – 2015)

May 2, 2023

Mr. Jason Gour
President,
Elkhart Firefighters Local 338
P.O. Box 1304
Elkhart, IN 46515

Re: State of Indiana v. Holly Reed
St. Joseph Superior Court
71D02-2303-F6-000290

RECEIVED
MAY 03 REC'D
2023 *Wilson*
FIRE MERIT COMMISSION

Dear Mr. Gour,

As a follow up to our recent telephone conversation, I write to confirm that there are pending criminal charges in the St. Joseph Superior Court referenced in the above matter.

An Indictment was returned by the Grand Jury on or about March 20, 2023. However, it is important to understand that this is merely an allegation. A grand jury does not determine guilt or innocence, rather they merely make a decision as to whether or not criminal charges should be filed. The grand jury process does not generally allow for cross examination of witnesses by opposing counsel. Despite the charges, Holly remains cloaked with a presumption of innocence.

An Initial Hearing remains set June 1, 2023 before J. Marnocha. At that time, the Court will set further hearing dates, including a trial. I have not yet received *any* discovery materials from the State of Indiana beyond the Indictment itself as those materials remain sealed until their release is authorized by the Court. I can tell you that Holly has been cooperative throughout the investigation and grand jury process. She emphatically maintains her innocence.

From experience, I can tell you that the veracity of alleged facts and statements of witnesses can change dramatically when a defendant has the opportunity to effectively exercise their constitutional right to confront and cross examine their accuser. Until such time, any conclusions drawn from mere accusations or unchallenged facts would be premature and baseless.

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MICHAEL J. TUSZYNSKI
DAVID W. NEWMAN

WILLIAM P. STANLEY (1947 – 2015)

Please contact this office should you have any questions.

Very truly yours,

Michael J. Tuszynski

Michael J. Tuszynski
Stanley, Tuszynski & Newman