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MEMORANDUM

To: Mayor David Alvey and Unified Government Commissioners
From: Doug Bach, County Administrator
Re: IAFF Local 64 Executive Officers Letter
Date: January 7, 2021

Introduction

This memorandum is in response to the letter from the IAFF Local 64 Executive Officers received on December 28, 2020. This memo provides clarifying information on the points raised, and actions taken to date related to COVID.

UG and Fire Leadership know first-hand the excellent work of EMS and Fire crews and have full confidence in the men and women of the Kansas City, Kansas Fire Department. We applaud their choice to serve our community and will continue to support investments to enhance the safety and performance of those who wear the uniform of the KCKFD.

As the Commission is aware, we are currently in contract negotiations with Local 64. On December 31, 2018, the previous IAFF Local 64 contract expired. Leading up to that date and since then, the UG and Fire Administration sought repeatedly to enter into negotiations with the Local 64 Executive Officers. It was not until a prohibited practices charge was filed by the UG for lack of representation that the Local 64 Executive Officers agreed to contract negotiations.

Contract negotiation sessions have been cordial and both sides have laid their initial offers on the table. Currently, we are awaiting a wage counteroffer from the Local 64 Executive Officers.

As the Commission also knows, the unfortunate reality is that municipal finances have been severely impacted by the COVID-19 pandemic. That was not something we anticipated or could control, but it has affected employees across the UG. For 2020 and 2021, most employees are not receiving a pay increase, and contracts negotiated since COVID have recognized this financial reality. It is not the position we desire but it is the position we find ourselves in, just like municipalities across the country and around the world.

Some of the allegations stated in the letter, insofar as they are unsubstantiated, have the potential to be counterproductive to the desire to have a more harmonious relationship with Local 64 Executive Officers. For example, the letter contained unsubstantiated allegations related to the personal character of employees. Such allegations can undermine the good faith contract negotiation process that we seek.

The following sections of this memo respond to areas of concern raised in the Local 64 Executive Officers letter. It provides additional information that the Commission may find useful in ascertaining the veracity of the claims. The response is organized by topic:

- COVID-19 Management
- Fire Safety and Performance
- Memorandum of Agreement and Grievances
- Governance and Department Culture
- Fire Chief Selection

COVID-19 Management

The Unified Government, its elected leaders, and the County Administration have all taken the COVID-19 pandemic extremely seriously. From the start of the pandemic, the Unified Government has taken steps to protect public health through Local Health Orders, robust multi-media communications outreach and collective action by the community. We have also sought to protect the health of all UG employees and their families, especially those who were on the front lines of the pandemic such as Fire/EMS, Police and Health Department employees.

The IAFF letter contains numerous allegations of mismanagement of the Fire Department's COVID response but did not provide any accompanying documentation to support the allegations. We recognize that there are always opportunities to improve, and the UG and Fire Administration welcome constructive ideas and input for ways to further the protections for personnel. These can be brought forward through the Fire Department Safety and Equipment Committee and Labor/Management Committee, which has Local 64 representation, or directly to the Fire Chief or UG Administration.

Recently, the County Administrator provided the Commission with the full set of communications and directives from the Fire Department to all KCKFD personnel. As those show, the Fire Department has taken steps throughout the pandemic to protect the health of personnel and the public. Below is a summary of the steps taken by the Fire Department to manage COVID, protect the health of employees, and continue to protect the life and property of KCK residents and businesses.

- Beginning in January, when the threat of COVID was just emerging, the Department began pre-ordering, pre-staging, and delivering PPE supplies before supply chains became disrupted.
- With the concurrence of IAFF 64, the Department was the first in the state of Kansas to place Firefighters who test positive on Injured-On-Duty (IOD) status. IOD provides them with maximum protection and assumes that the Firefighter contracted COVID on-duty, regardless of where the actual exposure may have taken place.
- The IAFF 64 Executive Board has raised legitimate concerns about firefighters, especially those new to the force, who may have exhausted their sick leave bank. With the expiration of the Families First Coronavirus Response Act (FFCRA), UG Administration is extending additional sick leave of up to 80 hours or 4 duty days to all employees, including Fire. The additional leave will be available on an as-needed basis and is designed to ensure that no employee is left in a position where they have to quarantine, and forfeit pay due to lack of sick leave.

- The Injured-On-Duty protections will continue in 2021, providing additional protection and security for Fire personnel.
- The Department has mandated mask wearing to reduce COVID exposure, along with stringent disinfection protocols.
- The Department has mandated temperature checks at the beginning of each shift.
- To maintain minimum staffing, the department has rehired over 350 IAFF members for overtime shifts exclusively related to COVID-19 absences at a cost of over \$300,000.
- To ensure that staffing levels remain adequate to protect life and property in KCK, the Department invoked the essential workers provision in the Critical Infrastructure Workers exemption from the Centers for Disease Control (CDC). This measure ensures that essential workers can remain operational, unless they are symptomatic.
 - This means, when an employee reports a positive COVID-19 test result to the Department's Infection Control Officers, that employee will be placed on IOD to recover. The other employees in the station will be required to wear the KN 95 mask while on duty. This is being done in an attempt to alleviate member fatigue due to recurrent shift duty, maintain our minimum staffing, and not brownout any station or company.
 - This approach is consistent with Fire Departments nationwide to ensure emergency personnel staffing levels. Critical personnel are not quarantined for an exposure, but if they are symptomatic or test positive then they do not work while convalescing. This approach is also consistent with that used by hospitals to ensure doctors and nursing staffing levels.
- Wyandotte County was the first county in Kansas to have a dedicated vaccination facility to provide COVID-19 vaccinations as rapidly and in as orderly a fashion as possible to the UG workforce and to the public.
- KCKFD EMS personnel, along with their counterparts in Edwardsville and Bonner Springs, were among the first people to be offered a COVID vaccine, in order to protect the health of our first responders and their families.
- KCKFD is adhering to CDC guidelines for first responders in all of its COVID-19 protocols.
- Utilizing funding provided by the Commission through the CARES Act, the Department made further investments in the safety and welfare of Fire personnel and the public, including ultraviolet decontamination units for fire stations, Papr's units, 3M Half Masks, Isolation Chambers for EMS/Haz-Mat, a Ambulance unit, and over \$300,000 in COVID related staffing costs.

In addition to other COVID-19 related claims, the IAFF letter contained an allegation about an unnamed Fire Official and potential exposure in a meeting. Health information privacy rules prohibit the UG from commenting on the health status of any individual person. In checking with the Health Department epidemiologist, the response to the inquiry from IAFF members was that the meeting as described did not represent an exposure based upon CDC and Health Department guidelines. The Fire Department protocol, to ensure adequate staffing, is that members should continue to work unless they are symptomatic or receive a confirmed positive test result. Nothing in the information provided suggests that this protocol was not followed. If Local 64 Executive Members have evidence that protocol was not followed and the

ways it was not followed, it should be submitted to UG Administration. If there are specific and credible allegations, I would ask that the IAFF submit that information.

Fire Safety and Performance

In addition to the COVID-19 safety measures, the Department has undertaken a number of safety initiatives to protect the life and health of the public and fire personnel:

- Fire Administration implemented a Firefighter Cancer Reduction Initiative, which involved the purchase and distribution of the following:
 - Two sets of bunker gear for all Firefighters;
 - Two protective hoods for all Firefighters;
 - A self-contained bunker gear carry bag for all Firefighters;
 - Ventilated bunker gear lockers for all Fire Stations;
 - Carcinogen extracting bunker gear washers for most Fire Stations; and
 - Plymovent Diesel Exhaust Systems for several Fire Stations.

- To improve the equipment for readiness and personnel safety, the Department purchased and implemented the following:
 - Opened the new Station 12 thereby providing 4 minute response service to more than 1,000 rooftops in western Wyandotte County;
 - Purchased 4 Pumpers, 4 Trucks, and 2 Ambulances;
 - Improved the Area of Response covered by 4-minute and 8-minute response times;
 - Initiated the first ever mutual/auto aid agreements with neighboring jurisdictions for supplemented response;
 - Initiated the first ever interdepartmental training with neighboring jurisdictions for collaborative instruction;
 - Equipped each Firefighter with an integrated, personal Thermal Imaging Camera (TIC);
 - Equipped all Truck Companies with e-DRAULIC extrication tools;
 - Delivered robust and recurrent training on emerging Fire Service trends; and
 - Increased the number of KCKFD personnel responding on every type of alarm

The IAFF letter also alleged that response times have increased for all emergency responses and for ambulances specifically. The allegations provided no supporting evidence or information. The Fire Department closely tracks response time for all stations. Dispatch time, turnout time, and travel time are all watched, and decisive action is taken when there appears to be an issue with response time.

The average response time for 2020, for all units (Fire/EMS and Ambulance), is faster than the average response time in 2019 and 2018. The average response in 2020 was 06:16, 2019 06:21; 2018 06:17.

The Fire Chief has personally conducted station inspections for each Fire Station in Kansas City, Kansas, meeting with Fire Personnel and Station Captains to review procedures and safety protocols and discuss any issues of concern.

Fire Administration remains open to ideas from Local 64 Members and Executive Officers on ways to improve safety and service. In September 2020, the Local 64 Executive Officers requested a meeting with the Department to discuss the possibility of relocating Quint 3 (420 Kansas Avenue) to Station 12 and relocating Pumper 12 to Quint 3's quarters. The Department and the Union met on September 24th to discuss this concept. The Department expressed a willingness to consider the proposal, initially for a three-month test period. The Department requested the Union to provide the metrics by which to assess the quantifiable success or failure of such a realignment prior to any actual relocations. To date, the Local 64 Executive Officers has not provided any input for developing the statistical barometer by which success or failure of the move could be measured.

In August, the Local 64 Executive Officers brought forward concerns about mask wearing within Firehouses. In a meeting with the Local 64 Executive Board, County Administration and Fire Administration, those concerns were aired and a draft order to address these concerns was presented. Subsequently, Fire Administration moved forward with an enhanced mask order for firehouses.

Memorandum of Agreement and Grievances

The IAFF letter asserts that the Fire Chief has knowingly violated the Memorandum of Agreement multiple times. However, they do not offer documentation to support this assertion. Moreover, the filing of a grievance does not establish the existence of a violation of the union contract.

The present Local 64 leadership has pursued grievances regarding matters that clearly lie within management rights and do not qualify as violations of the union contract. State law and the union contract reserves decisions as to identified "management rights" exclusively to Department management. Specifically, the management rights provision within the contract with the IAFF states:

"By entering into this Memorandum, the UG has agreed to certain specific limitations on its right to manage the Fire Department and direct the personnel. However, it is the intention of the parties hereto that UG retain each and every right and privilege it ever had except insofar as it has, by this Memorandum, agreed to specific limitations thereon.

"The exclusive rights of UG shall include its right to determine the existence or non-existence of facts; to establish or continue policies, practices and procedures for the conduct of the Department and to change or abolish such policies, practices or procedures; to introduce new or improved methods, equipment or facilities; to discontinue processes or operations, or to discontinue their performance by sworn employees; to select, determine and schedule the number or type of employees required; to assign work to such employees in accordance with the requirements determined by the Department; to determine the facts of lack of work; to direct the work of its employees; to hire, promote, demote, transfer, assign and retain employees in positions within the public agency; to suspend, discharge, or layoff employees for proper cause; to maintain

the efficiency of governmental operations; to determine employee qualifications; to take action as may be necessary to carry out the mission of the Department in emergencies; and to determine the methods, means and personnel by which operations are to be carried on; to develop reasonable Rules and Regulations for the Department not in conflict with this Memorandum; and all other prerogatives and responsibilities normally inherent in management of the UG or Fire Department that are not in conflict with the specific provisions of this Memorandum.”

Current Local 64 leadership has filed numerous grievances challenging the Chief’s valid exercise of the Department’s management rights. Three examples are provided below:

1. Grievance 454. Union challenged the Chief’s adoption of workplace rules of conduct incorporated into the Department’s Rules and Regulations and Code of Professional Conduct.
2. Grievance 455. Union challenged the Chief’s establishment of a “Floor Watch” which established a rotation for at least one fire fighter at a fire station to be *awake at all times* to respond to calls for service and any issues that arise.
3. Grievance 456. Union challenged the Chief’s revision of a Departmental General order relating to disciplinary procedures.

These three grievances were consolidated for purposes of arbitration. The independent, third-party arbitrator jointly selected by the parties found that the Union’s grievances were unfounded and that the Chief’s actions relative to these three grievances constituted the valid exercise of the Department’s management rights. As the resolution of these three grievances shows, the mere filing of a union grievance or the union’s allegation of contract violations in its December 28, 2020 correspondence falls far short of establishing the existence of a contract violation.

One issue raised within the IAFF correspondence relates to Court proceedings initiated to institute the Driver’s promotional process. The union contract does in fact require the administration of a Driver’s promotional process “*when reasonable and practical*” and “approximately every two (2) years.” Here is a timeline of events relative to this issue:

- October 31, 2019: the Union filed a grievance requesting that the Driver’s promotional process be initiated pursuant to the identified contractual language.
- November 6, 2019: the Department responded that it was agreeing to initiate the Driver promotional process.
 - The union contractual language requires that promotional testing is to be prepared and conducted by “an outside agency in compliance with all Federal Equal Opportunity Standards.”

- Accordingly, the Department advised that an RFI process was necessary for engagement of the identified consultant. The Department was in the process of obtaining necessary RFI information for the conduct of a new Driver promotional examination when the COVID-19 pandemic began in early 2020.
- Early 2020: Covid-19 and the attendant impacts on municipal operations, including emergency cost-cutting measures impacted the process of obtaining the necessary RFI information. The union was informed of this fact.
 - Neither the Unified Government, nor the Chief has ever disputed that a Driver's promotional process needed to be conducted.
 - However, when the COVID-19 pandemic began, the Department requested an accommodation from the union so that we could temporarily delay the promotional process.
 - The Department made this request because Department resources at that time needed to be committed to responding to this unprecedented public health emergency.
 - The union's response to the requested accommodation was to sue.
- The RFI process for the outside agency was completed and the Drivers test is currently underway.
 - The written part has been completed and the operational portion scheduled to take place within the next several weeks.
 - The test, administered by an outside testing agency, has been changed from years past. For the first time, the Driver exam includes an actual operational component to measure proficiency of applicants in operating a fire apparatus.
 - This test will better measure proficiency and enable the Department to make promotions for the most qualified applicants. The court has agreed with our remedy and approach.
- The Union sent a letter on December 10, 2020, five days prior to the date of the written exam, asking that the test be stopped, and that the test revert back to how it was done in the past. The Department moved forward with the test and the new testing protocol.

Governance and Department Culture

The delineation between management decisions and labor decisions affecting the Fire Department has been blurred in the past. One of the areas where Chief Callahan has brought clarity is in appropriately defining what decisions are the right of management to make in the best interest of operating and managing the Fire Department. Top among these areas are decisions about the operations of the department.

All department heads within the Unified Government are tasked with making management decisions about the best methodology to accomplish their respective missions. Department Heads are expected to lead and to provide responsive, efficient and effective service to the public. My supervision of Chief Callahan gives me confidence that he is leading the department in the right direction.

There are several “tried and true” avenues through which Local 64 Members and Executive Officers can bring forward ideas and concerns for the betterment of the Department. These avenues include:

- The Safety and Equipment Committee
- The Accident Review Board
- The EMS Committee
- The Labor Management Committee

In addition, IAFF employees and Executive Officers are welcome to bring input directly to the Chief and Command staff. Chief Callahan and his Command staff welcome constructive input and ideas.

UG and Fire Administration would request that Local 64 Executive Officers utilize the established processes and mechanisms for raising concerns, rather than going directly to elected officials and the media. This approach would provide a less disruptive and more productive process for the full airing of issues and ideas and provide a more effective way of working through questions or controversies.

County Administration has also sought to keep the Commission updated on Fire matters, with multiple informational sessions with Commissioners, special sessions, and most recently, one-on-one briefings with Commissioners and the distribution of Fire COVID communications.

Fire Chief Selection

The letter demands the removal of the Fire Chief, and going even further, suggests removing the County Administrator entirely from the hiring process for a Fire Chief. Such a change would politicize the selection of the Fire Chief and the operations of the Fire Department. The City/County Administrator form of government is designed to prevent such political influence in personnel and operations decisions.

The most recent hiring of the Fire Chief involved a rigorous selection process, directed by the County Administrator’s Office, that included input from the public, Commissioners, and Local 64 Executive Officers. The UG used an external search firm and conducted a national search for candidates. This extensive process and outreach provided a strong set of high-quality candidates, including a mix of internal and external candidates.

Chapter 3 of the Charter of the Unified Government is very clear that the County Administrator is empowered to “select/dismiss key divisions heads (cabinet level positions). All other department head selections/ dismissals and personnel actions will be in accordance with the personnel classification system under the sole jurisdiction of the County Administrator”. The County Administrator’s authority for personnel and operational decisions is further reflected in Section 2-61 of the Unified Government Charter, which reads as follows:

Neither the commission nor any of its individual members shall in any manner direct, supervise or require the appointment, promotion, transfer, assignment, demotion, discipline, suspension, discharge or removal of any

officers or employee that the mayor, county administrator or any of their subordinates are empowered to appoint.

This language removes any political considerations from hiring and management decisions. It is a foundational cornerstone for the UG and the County Manager form of government. Placing hiring authority with the County Administrator preserves the integrity of the selection process and protects the ethical reputation of the Unified Government and the Mayor and Commissioners.

The Fire Chief and the County Administrator have and will continue to make themselves available to meet with Local 64 Executive Leadership. We believe that many concerns can be addressed and resolved amicably if both sides come to the conversation in good faith. We look forward to working with Local 64 leadership to develop a more harmonious relationship.

It is my goal, and one I know is shared by Commissioners, to have a strong working relationship between the UG, Fire Administration and the Local 64 Executive Officers for the betterment of the community and employees.

I am available to discuss further with any Commissioner.