

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

JAMES E. SWEENEY, F. WARREN BENTON,
SAM ORANS, BRIAN PAYNE, RAY
MALDONADO, DAN HEUBEL, PAUL J.
ABRAHAMSEN, CHRISTOPHER MACDONALD
and MICHAEL WEINER,

Plaintiffs,

-against-

ELIZABETH N. FELD, Mayor, MARLENE
KOLBERT, Trustee, ANNE McANDREWS, Trustee,
JIM MILLSTEIN, Trustee, RICHARD WARD,
Trustee, constituting the Village of Larchmont Board
of Trustees and RICHARD HEINE, "Chief" of the
Fire Department of the Village of Larchmont,

Defendants.

Index No.: 9480/07

**SUPPLEMENTAL AFFIDAVIT
OF RICHARD HEINE IN
FURTHER OPPOSITION
TO APPLICATION FOR
PRELIMINARY INJUNCTION**

STATE OF NEW YORK)
) ss:
COUNTY OF WESTCHESTER)

RICHARD HEINE, being duly sworn, deposes and says:

1. I am the Chief of the Fire Department of the Village of Larchmont (the "Village") and one of the named defendants in this action. As such, I have personal knowledge of the facts contained herein.

2. I submit this Supplemental Affidavit in further opposition to plaintiffs' application seeking to enjoin the Village from implementing the two resolutions adopted by Village Board of Trustees on May 16, 2007 which, among other things, provisionally appointed me as the paid Fire Chief of the Village Fire Department, and provided me with the authority over all Fire Department personnel, both paid and volunteer, and over all apparatus and equipment of the Village Fire Department. More specifically, I submit this affidavit to rebut

some of the misstatements and mischaracterizations contained in the reply affidavits submitted to the Court by plaintiffs in connection with this motion.

3. As I noted in my previous affidavit submitted in opposition to plaintiffs' motion, I was raised in the Village and joined the Fire Department as a volunteer when I was fourteen years old. I was a volunteer for 6 years, from 1983 through 1989. In 1989 I became a member of the firefighters' union and paid professional fireman for the Village and I served in that capacity for 17 years, most recently as a Lieutenant. Because of my experience both as a volunteer and as a career firefighter, I am intimately familiar with both the operations and the politics of this combined paid and volunteer department.

4. Based on my experiences within the Fire Department, I am personally aware of the conflicts and animosities that for many years have existed between the career firefighters and the volunteers. More recently the tension between these two groups has become more severe. I believe that the position of paid independent Chief of the Fire Department -- neither volunteer nor union -- is necessary to bring these two factions together for the benefit of the Village. Moreover, I believe that my years of experience within the Department, both as a volunteer and as a member of the union, provide me with the unique qualifications necessary to bring these two groups together into a single Fire Department.

5. It is simply no longer reasonable for the Chief of this combined Department to be a part-time volunteer. Rather, the position requires a full-time professional commitment to provide accountability to the Village, to coordinate with the Chief of Police and emergency service providers in neighboring communities, and to properly organize, train and manage the combined paid and volunteer staff. Indeed, recent volunteer chiefs have been ineffective in managing the Department, coordinating with the Village and other emergency departments and controlling or disciplining either the volunteer or career firefighters.

6. For example, previous chiefs have failed to track and monitor the turnout gear and radios that each volunteer receives at a cost to the Village of approximately \$3,000 per firefighter. In addition, despite repeated requests from the Mayor, the Village Board and the Police Chief, previous fire chiefs have failed and refused to collect and provide data and information. As another example, the Village requested that after-action meetings and debriefings be held with firefighters following significant events such as the recent flood and a substantial house fire, but the part-time volunteer chief was simply unable to comply with the Village's request.

7. Yet another example of the need for a full-time independent chief is the issue of Mutual Aid. The Village Fire Department provides and receives "Mutual Aid" on an as called for basis from neighboring fire departments. Indeed, Mutual Aid is and has been an essential component of the Village's fire protection plan for many years and, in that regard, the volunteers have established an order in which neighboring communities are called to provide Mutual Aid. Remarkably, the City of New Rochelle, which is one of the Village's closest neighbors, has a full professional staff and a three to four minute response time, is among the last to be called to supply Mutual Aid. The sole reason for this is that the volunteers do not want to work with New Rochelle's professional department.

8. This issue between the volunteers and the New Rochelle Fire Department rose to an extremely dangerous situation last year when, having arrived first on scene of a fire on the top floor of a five-story building, and having assessed the situation, the career firefighters called for Mutual Aid from both the Town of Mamaroneck and the City of New Rochelle. The volunteer Deputy Chief cancelled the call for mutual aid to New Rochelle, however, even before he had acquainted himself with the severity of the situation.

9. The unwillingness on the part of the volunteers to work with the New Rochelle Fire Department is a significant issue that must be corrected. I have already taken the step of moving the New Rochelle Fire Department to the second position on our Mutual Aid ladder and Fire Commissioner Raymond Kiernan of the New Rochelle Fire Department personally has confirmed to me his commitment to providing Mutual Aid response and support.

10. Another example of discord between the volunteer and career firefighters involves the way alarms are dispatched. Several months ago, the volunteers asked the Village Board to switch from the present system to "60 Control," a dispatch service provided by Westchester County. The career firefighters objected to the change. The Village Board heard presentations for and against and concluded that that it was not ready to make the change. Nevertheless, and without advising the Village Board or the Chief of Police (who also acts as the Village Emergency Coordinator), the volunteer chief contacted 60 Control to advise that the Village was changing its dispatch system to 60 Control. To prevent this sort of irresponsible conduct in the future, an independent Fire Chief is necessary to coordinate emergency services with the Village Emergency Coordinator.

11. As to the issue of the safety of the Village, as Chief of the Fire Department I am responsible for emergency fire services within the Village, the safety of the members of my department, and the safety of the public during a fire emergency. Rest assured that I take this responsibility very seriously and that notwithstanding the plaintiffs' threats to resign, I am confident that the Village remains adequately protected.

12. At least ten current volunteers have personally told me that they intend to remain members of the Fire Department and will not resign. Moreover, I have received an application for a new volunteer, and two former volunteers have expressed their intention to return to the Fire Department to work with me. Indeed, these two former volunteers advised me that they had

previously resigned because of the discord between the volunteers and the career members and that they were hopeful that my leadership would bridge these two groups and create a more cohesive Department.

13. The fact that other volunteers have threatened to resign should not be a factor in the Court's decision. Only two of the nine plaintiffs have responded to fire calls since I became Chief on May 17. Moreover, I have been advised by more than one volunteer who have responded to fire calls and have participated in training events that they have received harassing phone calls and e-mails from other volunteers in which the participating volunteers were told that their attendance was causing the absent volunteers to look bad and ruining the effect of their stop-work action. Indeed, beyond the fact that these volunteers are creating the very situation that they are deeming unsafe, the Court cannot sanction what is in essence a strike by Village safety personnel to protest a decision of the Village Board. The Taylor Laws prohibits this conduct by union employees and the Court should not reward the volunteers for their inappropriate conduct.

14. In any event, I am confident that notwithstanding these resignations, the provision of emergency fire services to the Village will not change and that there will be no additional risk to the community.

15. In this regard, it must be noted that although at least three career firefighters respond to every fire alarm, there is never a guarantee that any volunteers will answer a call and the Fire Department must be prepared to handle that situation. Indeed, during the six month period from October 2006 through March 2007, there were at least 10 fire calls where not a single volunteer showed up. During that same period, the average number of volunteers to

respond to a fire call on weekdays from 8 a.m to 6 p.m. was only 4. The fact is that the Village respects and appreciate its volunteers, but it does not depend exclusively on them for fire safety.¹

16. When volunteers are not available, which is more common during weekdays when many volunteers are at work outside of the Village, the Fire Department relies on the assistance of the Village Police. This will continue regardless of whether volunteers resign. Moreover, the Village Fire Department handles first alarm emergencies; for second alarms and higher, larger fires and high life hazard situations, we always rely on Mutual Aid. Again, this will not change, regardless of whether volunteers resign.

17. I personally have spoken to Fire Chief Matt Peloso of the Town of Mamaroneck who has confirmed the continued Mutual Aid response and support of his Department. The Town of Mamaroneck is the closest fire department in proximity to the Village and, like New Rochelle, has a response time of approximately three to four minutes.

18. I have also spoken with the Chief of Police of the Village, Steven Rubeo, who has indicated that he is ready and willing to work with me as Chief (and has already done so) and has acknowledged that he is comfortable that the Village remains safe from a fire safety perspective, notwithstanding the volunteers' threats to resign.

19. I have also met with Westchester County Commissioner of Emergency Services Anthony Sutton, Deputy Commissioner of Emergency Services John Jackson and Chief of Communications and EMS Michael Volk. These County emergency officials acknowledge that I

¹ The plaintiffs' references to their attendance rates are extremely misleading. For example in the period from October 2006 through March 2007, the Fire Department received 406 calls. The volunteers, however, do not count calls for Emergency Medical Services or still alarms in their attendance rates, but they do count attendance at non-fire related events, such as training events, parades, meetings and social gatherings. Thus, plaintiff Benton, for example, who claims a much higher attendance record during this period, attended only 20 out of 195 fire calls (only 10%) and only 20 out of 406 total calls (5%). Similarly, plaintiff Maldonado responded to only 6 fire calls during this period or 3% of the total calls, and plaintiff Heubel responded to only 37 fire calls or 9% of the total calls. Again, the Village appreciates these volunteers, but is not relying on them for fire protection and safety.

am the Chief of the Village Fire Department and have agreed to work with me and the Fire Department in the event of an emergency.

20. In short, there is no confusion as to my status as Chief or any question over my authority over all personnel and equipment. Indeed, former Volunteer Chief MacDonald has returned the Chief's car and handed me the keys. Moreover, the Court should not be swayed by the plaintiffs' bullying tactics or threats of resignation because, as Chief of the Fire Department, I can assure the Court that the Village is as prepared as ever to respond to a fire or other emergency.

21. Finally, while I believe my military status to be irrelevant to the issues on this motion, I feel compelled to respond to the plaintiffs' misstatements in that regard. It is true that I have already served two tours of duty in Iraq and, notwithstanding the documents that plaintiffs have found on the internet, I have been notified by the Officer in Charge ("OIC") of my Unit that I have been listed on a Table of Organization and Equipment ("TOE") for a mobilization on June 26, 2007. I was further told by my OIC that I will be receiving orders shortly and that I will be expected to report no later than June 28, 2007. I have advised my OIC that I am the Chief of the Village Fire Department and it is now my understanding that based on my present position as Chief, I will be removed from the TOE and will not be required to report for active duty on June 28, 2007.



RICHARD HEINE

Sworn to before me this
6 day of June, 2007



Notary Public

EILEEN A. FINN
Notary Public, State of New York
No. 4987093
Qualified in Westchester County
Commission Expires Oct. 7, 2009

PLEASE take notice that the within is a (certified) true copy of duly entered in the office of the clerk of the within named court on.

Dated,

Yours, etc.

McCULLOUGH, GOLDBERGER & STAUDT, LLP
Attorneys for

Office and Post Office Address
1311 Mamaroneck Avenue, Suite 340
White Plains, New York 10605

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Defendants.

NOTICE OF SETTLEMENT
PLEASE take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on _____, 20____,

at _____ M.

Dated,

Yours, etc.

McCULLOUGH, GOLDBERGER & STAUDT, LLP
Attorneys for

Office and Post Office Address
1311 Mamaroneck Avenue, Suite 340
White Plains, New York 10605

**SUPPLEMENTAL
AFFIDAVIT OF RICHARD HEINE
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FOR PRELIMINARY INJUNCTION**

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(914) 949-6400

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for