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Nonprofit Fire Departments as Public Agents

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Abstract

Although essential, a great number of jurisdictions have delegated emergency services to organizations within the private sector. This inadvertently creates a dilemma for these organizations as funding wanes, expenses grow, and volunteer commitments decline. As private, nonprofit corporations, there are limitations to what can be done to address these problems. The tax exempt status of these private entities and inclusion with public agencies for state or federal purchasing agreements has assisted with expenses. However, the labor cost required to supplement paid employees for declining volunteer staffing has prevented many organizations from providing needed service levels. This research considers the issue of labor cost in a comparison between private, nonprofit organizations and public agencies under the Fair Labor Standards Act with a focus on overtime exemptions. Additionally, this research shows how these regulations are limited to municipal organizations and defines the impact of including private, nonprofit providers as public agents.

Introduction

The fire service has been a component of our society since colonial times. Originally organized as volunteer responders, this fraternity quickly grew as the need for such services were recognized by communities as a fundamental resource which should be provided by the local government. To understand the magnitude of this research it is important to first clarify the basic structure of the fire service. The entire United States fire service can be broken into two primary groups, public and private departments. Generally, public departments are organized, financed, and managed by a local government body such as a city or county for public benefit. Conversely, private departments are organized and managed by members of the community. These organizations must be created in accordance with local and state laws to exist in a defined structure of a for-profit or nonprofit corporation. By their nature, nonprofit groups exist for the public benefit while for-profit companies focus more on income from services provided. These distinctions provide the basic divisions of the organization as a public, private, or nonprofit organization. Next, one must consider those who work for these organizations. General categories of employees can include career, part-time, paid on call, or volunteer members. Career staff members function as full time, paid employees, while part-time staff are paid and serve a reduced number of hours or on a seasonal basis. A variation of a part-time employee is one that is paid on call or paid per call. These employees will be paid only for their time when responding to an incident, or be paid a stipend for reimbursement of personal expenses while volunteering their time. These classifications have very strict labor laws and may only be allowed if the organization is a public agency. Employees that receive no pay or compensation of any kind are volunteers. Combinations of all of these employee types may be found in fire departments throughout the United States. Therefore, when considering the application of labor laws to a particular situation, one must evaluate the type of organization as well as the type of employee.

Regardless of the type of organization, or the staffing model it uses, the principal purpose of fire departments across the country is to deliver immediate response to emergency incidents where they provide fire suppression, incident stabilization, and pre-hospital emergency care. Although many of the agencies that deliver this public service are municipal/government departments, the majority of fire departments are private,

nonprofit organizations that predominantly depend on unpaid volunteers. These dedicated men and women typically work other jobs during the business day and provide standby manpower for their fire department whenever possible. This often leads to complications of delayed emergency responses or the inability to provide services during typical weekday business hours or overnight.

In an effort to eliminate this service deficiency, many departments have attempted to transition from an all-volunteer staff into a classification known as a combination department. Combination departments use a mixture of paid employees and volunteer staff to achieve the needed manpower throughout all periods of the day and week. Because these are private organizations, making this transition to a combination structure is very difficult when funding is limited primarily to donation and grant-based systems, and not guaranteed through tax-based systems. One combination department officer in this research stated,

Currently we fall under state labor laws which do not provide for a firefighter overtime exemption. In order to manage overtime, we pay our firefighters a salary and half time for any hours over 40. They have to deduct sleep time to help with managing overtime hours however they do not lose money because they are salaried. This is very confusing to our firefighters who talk to other firefighters from departments who are municipal/county departments and calculate time on a 56 hour work week. There is the perception in and out of our department that we are doing something wrong or cheating firefighters out of pay.

This officer's statement shows that the organization has a higher cost for staffing as well as conflict with their employees because they must operate by the private agency rules in lieu of the ones that reduce labor costs for public agencies. These rules are restricted to use by public agencies in the FLSA. The reference to the "56 hour work week" is a part of the FLSA known as the 7(k) exemption. This provides a partial exemption to the employer for the payment of overtime. As a generalization, fire fighters work an average of 56 hours per week. As a private organization, the employer is obligated to pay 16 hours of overtime compensation. However, if they were accepted as a public agency and chose to use the 7(k) rules, only 3 hours of overtime would be due the employee.

Fire departments provide essential services to the communities they serve. These services have expanded through the years to include much more than fire protection. In recent years, the reactive nature of fire

protection has transitioned into a proactive approach through prevention and code enforcement. In spite of this shift, the mission of the fire service remains unchanged; to provide protection services to their communities. In 2013, there were 1.14 million fire fighters protecting the United States with 69% of them being volunteers. Departments that are run by local governments (i.e. public agencies) are afforded cost saving measures, commonly known as the Fair Labor Standards Act (FLSA) 7(k) and 13(b) exemptions which reduce the monetary impact of these services. While these exemptions provide critical financial support for municipal/government fire fighters, the private, volunteer departments are not covered by the 7(k) exemption of the FLSA. The defining feature that restricts the use of these measures is public, municipal, versus private, non-municipal. The FLSA makes a clear distinction between these organizations. However, it will soon be clear that private, nonprofit departments parallel public agencies in nearly every way. Areas outside of municipal jurisdictions that have private, nonprofit corporations providing the public services of fire, police, or emergency medical services should be permitted these cost saving measures. This will allow organizations to afford the citizens of their communities the greatest opportunity to receive consistent service delivery during all hours of the day and night.

Under section 203(y) of the FLSA, an ‘employee in fire protection activities’ means: an employee, including a fire fighter, paramedic, emergency medical technician, rescue worker, ambulance personnel, or hazardous materials worker, who— (1) is trained in fire suppression, has the legal authority and responsibility to engage in fire suppression, and is employed by a fire department of a municipality, county, fire district, or state; and (2) is engaged in the prevention, control, and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk (Robinson, Jr., 2006a).

This definition clearly specifies that the FLSA exemptions can only be used for employees of agencies which have been established by a municipal, county, or state legislative body. However, these laws also refer to employees of a fire district. A fire district is a special tax district that is established by the local government to provide funding for the provision of fire protection of that community. Although these districts are allowed by statute, and may involve paid, combination, or volunteer departments, they must still be established by the county legislature. This method of funding is an available option for some fire departments around the country to establish individual tax districts for each department in order to provide

appropriate funding for their location. With nearly 800,000 fire fighters in more than 25,000 existing volunteer and combination departments, this type of funding, through special tax districts, would not be an ideal option since it would require local governments to individually adopt each area. Consequently, it is obvious to see that the preferred choice will be to update section 203(y) of the FLSA to include private, nonprofit corporations that provide these public services in lieu of any other agency having jurisdiction to do so.

In 2013, there were 1.2 million fires resulting in over 3000 civilian deaths, \$11.5 billion in property damage, and nearly 16,000 civilian injuries. In addition, the personnel needed to extinguish these fires suffered nearly 66,000 injuries (National Fire Protection Association, 2015). The National Fire Protection Association (NFPA) has clearly defined the standards for minimum staffing of fire apparatus in NFPA 1710. With this standard, which was established through quantitative testing and research, the safety and effectiveness of suppression personnel is shown to be directly related to the staffing level of the engine companies. The suggested change of including private, nonprofit providers in the 29 U.S.C. §203(y) definition would deliver a significant positive impact to the United States Fire Service. This solution will empower many fire departments with the opportunity to hire employees and minimize staffing deficiencies.

The services provided by fire and police departments play a significant role in the safety of our communities. There are several basic organizational models that are used to define fire service organizations. Public agencies, municipalities, are controlled by the local and state laws that provide legal authority to the agency to have jurisdiction with both operational and financial oversight. Private agencies operate with autonomy from the governing body and resemble a subcontractor, conducting work for the governing body. The control of how the service is provided and in what manner the organizational funds are used is generally under the full choice of the fire department. This private designation includes both nonprofit and for-profit groups.

Within the public and private definitions there is some ambiguity which also results in confusion of the group's rights and responsibilities. Based on the function of the organization, both public and private agencies can purchase equipment and supplies from state or federal contracts negotiated for public agencies. This includes technology infrastructure, appa-

tus, personal protective equipment, or accessory equipment such as hydraulic, extrication tools. In Tennessee, both fire departments will be given government service license plates for their apparatus. Each has also been given a response area in which they are expected to provide service. However, when hiring employees the FLSA allows only the public agencies the partial overtime exemption cost savings. These issues are sometimes handled at a state or local level but more often go unanswered, causing an unclear guideline for the department administration. Jurisdictions, particularly in the fire service, have delegated these protective responsibilities to private organizations that are independent of the agency having jurisdiction. In each of these cases, these organizations accept this governmental duty to provide for the safety of the community. As an increasing number of local governments reconsider their fiduciary effectiveness, so must those who have been delegated the duties of community protection.

As communities grow, the demand on the fire departments providing these services proportionately grows. The typical progression for these jurisdictions begins with fully donation-based funding and all-volunteer labor. Although funding streams may vary greatly, labor needs are more predictable. Once the demands for service increase beyond the capabilities of the available staff, new staffing options must be considered to meet the service demands. The second stage is a combination of paid staff minority while the majority staff continues to be volunteers. This balance transitions over time to become a majority of paid staff and a minority of volunteers to supplement shortfalls. The final level of service provided is a fully paid organization that has limited or no volunteers. At this stage of development, the agency may be funded by the local government, by private organizations, individual donations, federal grants, or some combination of these. Without the necessary financial support, these progressive steps become exponentially more difficult. Funding for these groups continues to be a concern, as does staffing. It is not unusual for volunteer fire departments to be empty when an incident occurs. In such cases, fire fighters must first travel to the station in order to man the apparatus with which they will respond to the emergency. This delay can be removed if a single employee is on duty at a station with the apparatus. The barriers in acquiring this staff are difficult to overcome. However, with a revision to the Fair Labor Standards Act to include private, nonprofit corporations who provide fire or police protection to a community in lieu of the area having jurisdiction, the labor cost to have full-time employees can be minimized

for the benefit of the community. Additionally, with the current wording, it may be possible for some fire departments to claim this cost savings through establishing the proper oversight and reporting to qualify as public agencies.

Background and Literature Review

It has long been established that the provision of fire protection is a governmental responsibility. Throughout the country, this function has been delegated by the local government to private organizations. Over time, many of these have found that fully donation-based funding has become insufficient. Even public, municipal departments have seen a decrease in available funding to replace aging apparatus and personal protective equipment (Trench et al., 2012, p. 1).

A multitude of source material was reviewed for this study. State and federal laws dealing with fire departments or labor law have been referenced throughout the document. These sources provide the documentation for comparing characteristics of public agency fire departments with the private, nonprofit corporations that also fulfill this governmental function. These sources show that these establishments have significant similarities of purpose and application. The legal references provide a basis to show that all fire departments are created and, to some extent, governed in comparable ways. Local and state laws provide the authority to all fire departments which defines the jurisdiction which they are directed to protect, and requires they take action when an emergency is reported. The case law provides insight of how federal regulations are integrated with local laws and applied to the defined departments. Although the fire service identifies departments as career, combination, or volunteer organizations, it seldom identifies with the public or private associations. However, these classifications are regularly used in association with case law and found in the Department of Labor opinion letters. These literature and law resources show that public and private fire departments primarily differ in the requirements defined and applied by FLSA labor laws.

Qualification as a Public Agency

Qualification as public agency is sometimes unclear for nonprofits. Therefore, if a nonprofit mirrors a public agency to provide for the public welfare, is funded by the community they serve, employs fire fighters of equivalent training, and has been issued the authority and obligation to

respond to emergencies by the municipal government having jurisdiction, why, then, are they not allowed the status of a public agency? There are two defining factors which influence the designation outside of simple function or title. The financial oversight and reporting is one of two pivotal components that define a public agency. The second critical component is administrative oversight and responsibility. With some state and local requirements, this definitive line continues to gray. The local government having jurisdiction is a major contributor to meeting these requirements.

A Public-Nonprofit Partnership study conducted in 2009 concluded that “community-based nonprofit partners functioned as a much needed bridge into communities where there was a clear perception that the public agency lacked the capacity to act in the best interests of the citizens” (Alexander & Hawk, 2009, p. 382). In this regard, combination fire companies are ideal solutions for many communities. Since volunteer fire fighters are most often members of the community, the organization has a vested interest in those they serve and will be tailored to meet their needs. This intimate community involvement creates a relationship which propagates an increased desire in the agency to provide quality service their neighbors. Other public agencies, such as county-wide services, may lack this level of involvement because managing officers are often remote from the smaller communities. This affects both the community as well as the employees. “A crucial element of service quality, therefore, is continually meeting or exceeding the demands of the customer. Nowhere is this truer than in the area of service quality” (Gowan et al., 2001, p. 277). Community governance is therefore a pivotal component for the local volunteer or combination fire department. Through its partnership with both its customers and the agency having jurisdiction the organizational oversight is maintained through transparent accountability.

For a fire department to exist in Tennessee, it must first be recognized by the state as a fire department. This is accomplished through The Fire Department Recognition Act (TCA § 68-102 part 3). These laws require state certification that an agency is qualified to act as such a service. Without certification, the department will not be allowed to protect a designated area of responsibility which is defined by the city or county in which the agency is located. Hence, it is clear that in Tennessee there is an extent of governance at state, county, and local levels. In Washington State, a public agency is in part defined as “Any subagency of a public

agency which is created by or pursuant to statute, ordinance, or other legislative act, including but not limited to planning commissions, library or park boards, commissions, and agencies” (RCW § 42.30.020). The combination of this definition in conjunction with The Fire Department Recognition Act could qualify all fire departments within the state as public agencies. However, this is not the case in more than just Tennessee.

Even though private corporations do not meet the FLSA public agency definition, they are considered public in other aspects. For example, financial accountability is considered to be a characteristic of public agencies. In 2010, the State of Tennessee Comptroller of the Treasury performed an audit on the Halletown Volunteer Fire Department (Arnette, 2010). This report provided the county information on the financial activities of the organization and provided recommendations for oversight and policy changes due to irregularities in the records. This transparency and community service accountability is an integral aspect of public agencies. Additionally, nonprofit agencies that operate as fire departments are issued government service license plates when registering fire apparatus with the Tennessee Department of Transportation. This again, produces ambiguity in whether an organization is considered public or private. Since these agencies have been given areas of responsibility, allowed to purchase under public agency contracts, and have obligations of accountability and transparency, the perception of a quasi-public agency exists and causes agencies confusion and conflicts about which organizational rules they must follow. This creates an inefficient environment for the nonprofit. As a result of litigation, the Florida Supreme Court established a set of nine indicators to determine if an organization met criteria to be identified as a public agency. They referred to it as a “totality of factors” by which a determination could be made (*News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 1992). Therefore, one can see the need exists to clarify this definition at, or above, the state level. In doing so, clear guidance can be given to help maximize the public benefit and service quality of these groups.

FLSA Exemptions

The Fair Labor Standards Act provides the employment law which protects the rights of all employees in both public and private organizations. In some states, collective bargaining agreements between the organization and an employment union will be used in place of the general rules. Ten-

nessee does not recognize the collective bargaining agreements and uses the general rules and exemptions defined by the FLSA. As written in the Tennessee Code Annotated, this status is known as the Right to Work and prevents anyone from being adversely affected due to a refusal to join a labor union or entry into any labor union contract with an employer (TCA § 50-1-206 (2015)). In states such as this, it is therefore important to understand the Fair Labor Standards Act (FLSA) and the exemptions which are dedicated to these career fields. The FLSA was first signed into law in 1938 by President Roosevelt. This legislation provides the basic guidelines for the treatment of employees by employers. It was not until 1974 that state and local government employees became subject to these rules which was quickly overturned by the Supreme Court in the case *National League of Cities v. Usery*, 1976 (Hogan, 2000). Before and after this two year period, public agency workers were excluded from these protections. Following additional litigation, in 1985 the U.S. Supreme Court ruled that state and federal workers were again granted coverage under the FLSA protections (*Garcia v. San Antonio Metropolitan Transit Authority*, 1985). FLSA revisions made in 1987 further supported the inclusion of public sector employees under the protections of this act. In 1999, this decision was overturned for states but was upheld for county and local government (*Alden v. Maine*, 1999). Today, all emergency services workers, both public and private, are protected by these rules and the associated exemptions.

Within the FLSA, there are several exemptions provided to public agency fire service employers that allow them to cut costs – many of which relate to providing overtime pay. The law also defines compensable time as any hours spent working as directed by the employer or waiting for work where the individual's movements and activities are restricted by the employer (29 CFR§785). Since there can be extensive amounts of time engaged to wait, there are provisions which allow employers to opt out of compensating employees for overtime hours, time spent on meals or sleep, and variations in work periods that exceed the standard seven days that most people are familiar with (29 CFR§553 Part C). For each of these rules, there are specific guidelines given in the code which allow the employer to enact these cost saving measures. For the purpose of this research, we will be focused on the work period and overtime exemptions found in 29 CFR§553. To understand the overtime exemptions, one must first consider the definition of the work period. Typical workers have a work period of seven days. If, during this work period, an employee per-

forms more than forty hours of work the FLSA requires that the additional hours be compensated at a rate of one and one-half that of the regular rate. Employers can choose a different work period under the 7(k) exemption rules. The period must be a minimum of 7 and not more than 28 days. The employer reduces labor costs by using the alternate work period and the associated adjusted overtime threshold limits allowed under the 7(k) rules (Passantino, 2009). Consequently, the employer will reduce labor costs by an estimated 5%. These work period adjustments deliver a cost effective alternative when calculating overtime compensation due to the nature of the work and the extended hours during which fire fighters are often simply waiting until they are needed.

When considering the overtime hours that require compensation, the 7(k) exemption allows the agency a partial exclusion of overtime. Although the allowance will extend the standard 7 day work period, or work week, up to 28 days, this discussion will maintain the common 7 day period most employees are accustomed to. For normal employees, any hours worked in excess of the 40 hour threshold will require overtime. For a private sector fire fighter who normally works a 56 hour week, this would require 16 hours of overtime pay. When the 7(k) exemption is applied, this overtime obligation is reduced to 3 hours with 53 hours remaining at the standard pay rate (County Technical Assistance Service, 2015). The second exemption which affects overtime is known as the 13(b) exemption. This works in the same manner as the one previously discussed, except it provides a complete exemption of overtime obligation to employers (CFR 29§213(b)(20)). This, however, is limited to agencies that have five or fewer paid employees who provide this job function (Robinson, Jr., 2006b). With each of these exemptions, the organization and employee have a fair and equitable balance of compensation and work performed for the organization.

Method

To accurately compare the positions of public and private fire departments, data was needed regarding multiple elements of each agency. A survey was created through Survey Monkey (<http://www.surveymonkey.com>) which requested general information about the department, community demographics, and personnel staffing indicators. Specific questions regarding the FLSA 7(k) exemptions were included to quantify understanding and participation under these rules. The questions additionally

helped to determine the attitudes of volunteer, combination, and career fire service groups as they relate to the cost-saving measures provided by the FLSA exemptions to public agencies. Several open-ended questions were included in the survey as well, to allow the participants the opportunity to share unstructured thoughts and provide the researcher insight into participants' level of understanding and support of the proposed change to include private, nonprofit organizations as public agencies under FLSA rules. The planned survey was then submitted and approved for use by the University of Memphis Institutional Review Board. With the assistance of the International Association of Fire Chiefs Volunteer and Combination Officer's Section and the Western Fire Chief's Association, the survey was broadly distributed through email in order to obtain the opinions of a random population of chief officers. Because of the delivery method, it is presumed that the distribution was limited by technological interference associated with email server filters and firewall rules. However, the results provide insights into the attitudes of the fire service community toward the inclusion of private, nonprofit organizations as public agencies under FLSA rules.

Participating Fire Departments

During the survey distribution, approximately 700 requests for participation were circulated. From these, 86 fire departments from a total of 26 states provided survey responses. These included career, combination, and volunteer departments.

Results

With the many responses received, it was paramount to have accurate analytics of the data. Therefore, the Survey Monkey data analysis tools were employed to tally the results and prepare the following graphs to represent the information collected.

When asked to classify their department type, 80% specified career, and the remaining 20% were private, nonprofit establishments. All of these departments serve municipal or county jurisdictions. By allowing departments the use of the existing FLSA pay exemptions, one respondent observed that "Fire fighters working to protect the general public would be treated equally, regardless of the organizational structure that employs their services." Volunteer departments are sometimes overshadowed by

Figure 1: Please classify your organization.

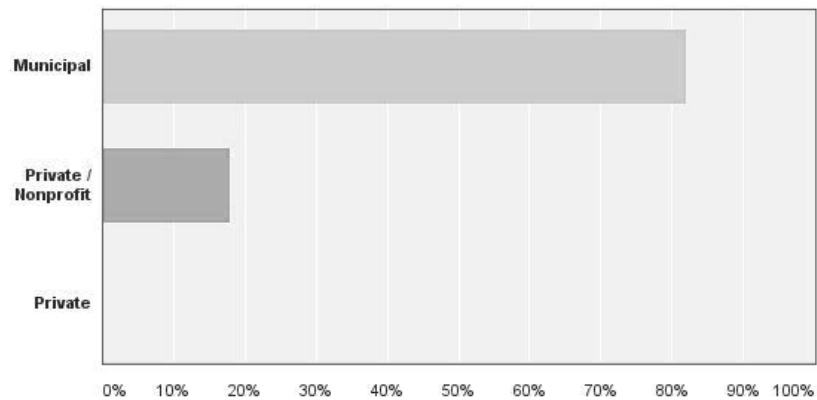
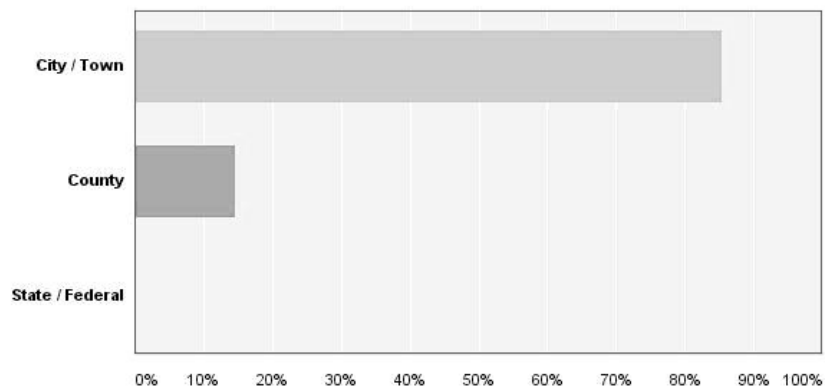


Figure 2: What type of area do you serve?



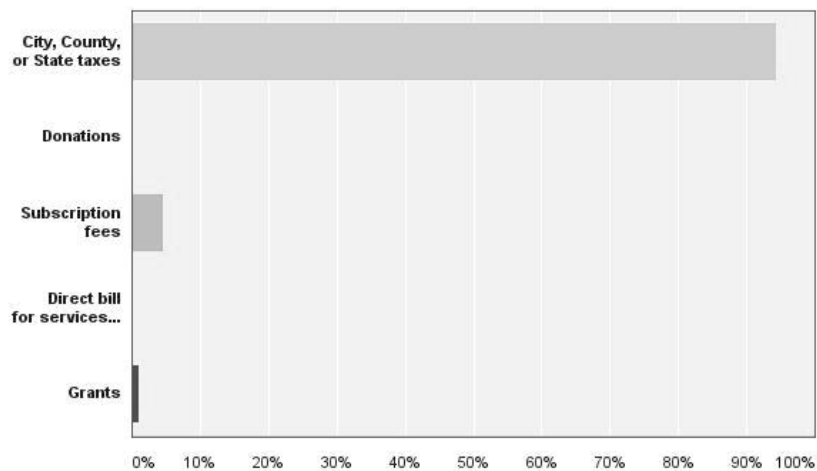
the impression that they are inferior or less professional than municipal departments. Such assumptions are made by both fire fighters and the communities. Uniformity of rules creates standardization so that organizations that exist for public benefit will have equivalent labor laws within the profession and acknowledge these fire fighters' professionalism.

The results were not limited by department size or demographics of a select type of community. The service areas range in size from 1 to 76 square miles and community populations from 600 to 600,000.

Table 1: Sizes of fire department service areas.

	Q4: Population	Q5: Service Area (square miles)
Minimum	600	1
Maximum	600,000	1100
Median	21,500	33
Mean	44,739	76

Figure 3: What is your primary funding source?



The average population protected per department is nearly 45,000 residents. These departments included public and private agencies with a variety of funding strategies. Approximately 90% of these agencies are primarily funded by municipal or state taxes with none of them being funded primarily from donations.

Although the majority of these departments employ paid fire fighters, less than half use the 7(k) or 13(b) exemptions allowed in the FLSA rules. One of the chief officers stated, “I think smaller nonprofit agencies could potentially hire exempt employees and provide better services.”

Figure 4: Does your organization have full time paid responders?

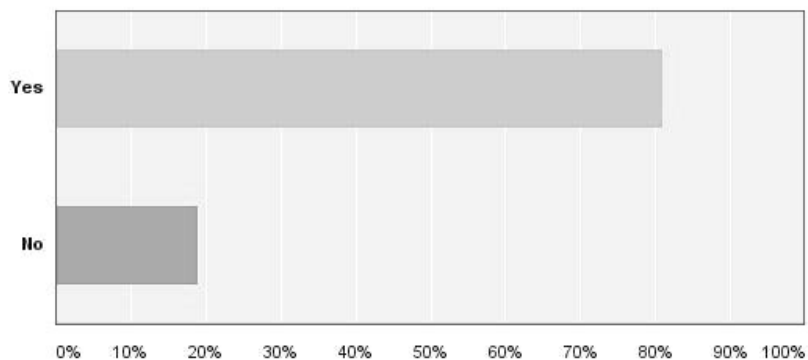
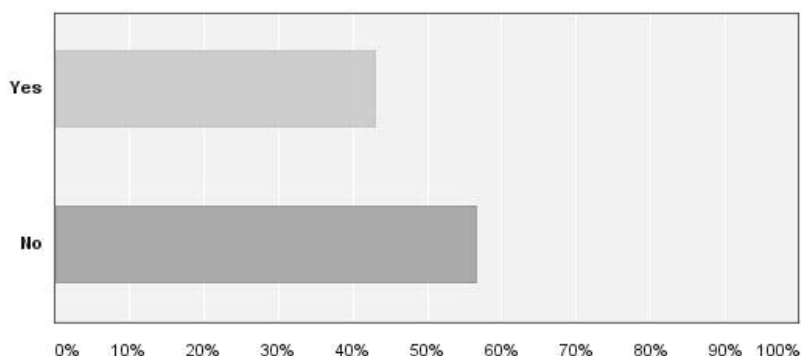


Figure 5: Does your organization use the 7(k) or 13(b) exemptions for payroll calculations?



The intent of these exemptions is to create cost effective and fair labor practices when providing for community protection and risk reduction. When any department is able to add paid fire fighters to the protective force, it has a direct impact on the ability to mitigate the situation and increase the potential for a positive outcome. The incident stabilization and mitigation becomes more efficient for the community members and the incident scene hazards are reduced. The National Institute of Standards and Technology has provided a great deal of field research focused on community risk reduction which relates to the response times and crew size. In 2010 a NIST study found the “Results presented in this report quantify the effectiveness of crew size, first-due engine arrival time, and apparatus arrival stagger on the duration and time to completion of key fire ground tasks” (Averill, et al., 2010).

Approximately 30% of the jurisdictions represented by a fire department responding to the survey indicated they would elect to use the FLSA exemptions if they were allowed to do so. In addition, nearly 80% of all departments surveyed supported the inclusion of private, nonprofits as public agencies.

Figure 6: If private, nonprofit organizations were allowed to use this exemption, would your department implement it?

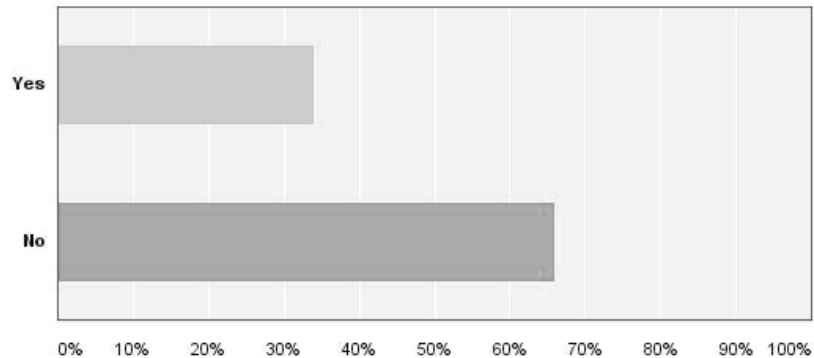
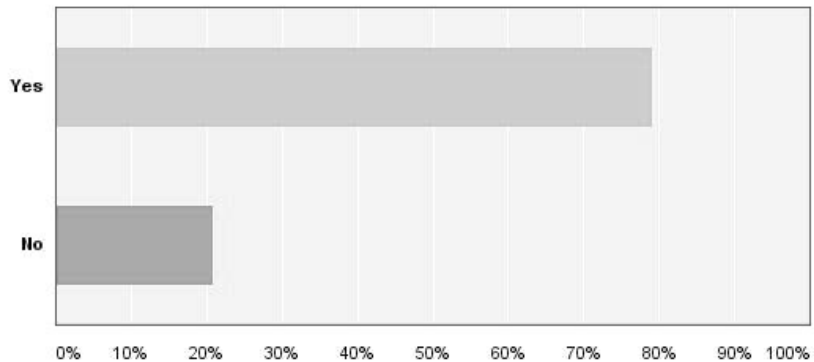


Figure 7: Do you believe the FLSA definition of 'Public Agency' should include nonprofit organizations that provide the services?



Furthermore, the results of the survey indicate that an overwhelming majority of the respondents were in favor of updating the public agency definition (29 USC § 203) to include private, nonprofit corporations that provide fire protection services. Moreover, they indicated that if this change were implemented, each department would add an average of 0.337 new or additional employees per department.

Figure 8: In your opinion, would qualifying for these exemptions allow you to hire or add full time employees?

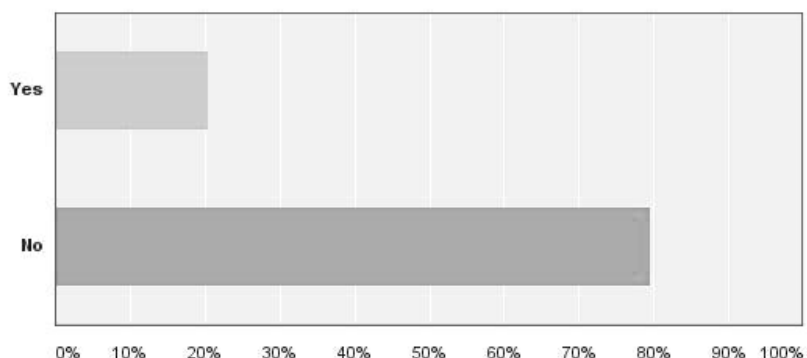


Table 2: Estimated new employees.

Q12: Estimated New Employees	
Average per hiring department	4.29
Average for all departments	0.337
Estimated new fire service jobs (assuming average is representative of national results)	10,110

This equates to over 10,000 new fire fighter jobs created nationwide. As one officer said, “It would make it attractive to hire additional personnel to reduce overtime costs to the employer.” Another respondent theorized that the “definition change may make the employees eligible for additional benefits such as defined benefit pensions.” As volunteer departments develop into combination organizations, they rarely are able to provide much in the way of benefits. In states such as Tennessee, the inclusion of volunteer fire departments as public agents may allow fire fighters the option to participate in the state retirement system, similar to municipalities. NIST research has proven that adding fire fighters for emergency response creates a work environment for the fire fighters as well as creates safer communities. If the FLSA definition of Public Agency is changed, the survey results indicate the change will add fire fighters in some communities. Furthermore, there is no cost to the federal, state, or local government with

this change since it is a modification of a definition to include private, non-profit organizations. The exemptions are not mandates to the organizations but rather options that they can elect to use if they choose. This combination of survey results and existing NIST research provide strong evidence that it is possible to build safer communities, and create fire service jobs, without introducing unfunded mandates.

Important Concerns

Some participants in the survey believed that, “Having multiple standards creates safety, & legal problems.” More often however, the participants focused on a generalized concept that “The laws for first response agencies need to be the same across the board.” In many areas, career fire fighters that are employed by municipal fire departments will also work a second, part-time job as a volunteer fire fighter with a private, nonprofit agency. When the public and private agencies operate by differing rules for employees, it creates confusion and possible ambiguity in the private agency. Establishing consistency in the labor laws creates a standardization which minimizes the division and confusion between municipal and private entities. Another concern was that “There may be some question regarding other benefits or labor-related provisions.” One such concern was the use of these rules in states where labor unions participate in collective bargaining. This situation currently exists in many municipal departments. For example, several agencies in Tennessee operate their municipality under the 7(k) exemption rules and also have active labor unions. Since the application of the exemption rules are optional and not a requirement, collective bargaining agreements are generally unaffected by any change to the FLSA and those agreements would continue to function as they currently do. However, there are some genuine concerns. One possibility is, “...the employee is going to see their overtime payout reduced.” This is a valid issue to that needs to be considered. It will be the obligation of the employer to treat their employees in a fair and equitable manner when transitioning their organization to operate under the exemption rules. A participant stated, “As with the good; comes the bad. To what extent is allowed, is what extent the implications will have an effect.” The accuracy of this statement is made clear when we evaluate the level of understanding in other participant statements. One such participant stated, “If a non-exempt employee is required to work more than the 40 standard week, they should be compensated.” This compensation is a requirement of the FLSA whether operating

under the standard rules or the municipal exemptions. Furthermore, it was also stated that, "All employees should have protection under FLSA." The essential purpose of the act is to provide this protection for all employees. The confusion shown here indicates that some organizations will need training to clarify their understanding of the labor laws. In addition, when we read that a participant believes "Public safety should be handled through municipalities, not private organizations. This could weaken a system even more," we see, to some degree, a general lack of knowledge regarding the United States fire service profile. As communities grow and the service demands exceed existing capabilities, it is a natural progression of fully volunteer departments to work to become combination agencies. The deficiencies in the basic understanding of fire service composition will interfere with this progression and must be addressed by the organization. Without this basic knowledge, more advanced understanding, such as the FLSA exemptions, may not be possible.

Discussion

This research has been extremely revealing to identify the need for change. Some may debate that adding paid staff to volunteer fire departments could drive away volunteers or create problems with labor unions. On the contrary, the need for paid staff to augment volunteers is driven by the steady decline of volunteer members. "Many areas of the country that traditionally have relied on citizen volunteers to provide fire protection and emergency medical services are finding fewer people available, or willing, to carry on the honorable tradition. The demand for service grows and the number of providers declines." "It's an issue of considerable national and local importance" (Scott et al., 2005, p. 1). In addition, municipal fire departments that are not governed by collective bargaining and have labor unions function under these same FLSA exemptions that would be available to the combination and volunteer agencies. Therefore, legal provisions must be enacted to facilitate and support those departments that have this need outside the municipal arena. If the agency having jurisdiction does not have the financial capacity to support the provision of public services, then they will frequently allow private entities to assume this role. This is where the private, nonprofit fire departments provide the public service that was not provided by the public agency. To support this supplementation, laws must be structured to accommodate the use of private organizations to relieve the municipality of its requirement to provide

services while also reducing the financial burden of the private company who takes on this work.

Nonprofit Fire Service Fulfills Public Function

With the benefit of cost savings afforded by the FLSA rules, it would be expected that every organization would want to implement these policies. However, this is also addressed in the special rules and regulations under which employees operate. Before an organization can elect to operate under the 7(k) exemption rules, certain conditions must be met. The first test is on the individual fire fighters to determine if they actually function as and fulfill the duties of a fire fighter. In a Department of Labor opinion letter from 2006, acting administrator Alfred B. Robinson, Jr. stated that section 3(y) of the 7(k) exemption “clarifies the definition of ‘fire protection activities’ for section 7(k) partial overtime exemption purposes.” In summary, the individual must be trained in fire suppression and have the authority to engage in this activity to prevent, control, and extinguish fires as well as respond to other types of emergency situations that threaten life, property, or the environment (Robinson, Jr., 2006a). These requirements apply to nearly every fire fighter from every department throughout the country. However, the last criterion is the defining test of those who may claim the exemptions provided in these statutes. The fire fighter must be employed by a department that is a public agency (i.e. one that is part of a municipality, fire district, county, or state).

With this restrictive definition, it becomes clear that the intent of this law is to provide cost savings to organizations which provide for the public welfare and whose operation is financed by the community it serves. Since private, for-profit corporations who provide fire protection deliver these services for financial gain, they most certainly would not qualify as public agencies. Private, nonprofit fire departments, however, fulfill this public agency role in lieu of the agency having jurisdiction. In other words, the private, nonprofit fire department is used in place of a municipal fire department. “Nonprofit corporations are corporations that are formed for some charitable or benevolent purpose, not to make profits that benefit its owners” (Varone, 2008, p. 51-52). Therefore, the nonprofit agency fulfills a function of community benefit just as a public agency is intended to provide. Likewise, the nonprofit organizations are financially supported by the communities they serve. This has become increasingly difficult for these organizations as the cost of equipment, fuel, and other

supplies continue to escalate over time. In some cases, the classification of an organization is unclear and can be both a public and private sector organization based on what aspect is being questioned. These fire departments are allowed to purchase equipment based on state-wide contracts intended for municipalities and are exempt from sales taxes on all purchases. Although they continue to be nonprofit organizations, some of these agencies (e.g. the Karns Volunteer Fire Department (KVFD) located in the Karns community of Knoxville, Tennessee) have been forced to move to a primarily subscription based funding to support the services they provide (Trech, Wieder, Findle, Somers, & Roche, 2012).

Knowing that organizations such as KVFD are providing a governmental function, the FLSA exemptions could be extended to include such organizations to aid fiscal effectiveness and promote enhanced service to the community. These fire fighters meet all the required criteria of training, legal authority, and responsibility to provide service, but their employer lacks the designation of being a public agency. These groups exist for the public good and fulfill the public function of fire protection as a delegated agent assigned by the local county government having jurisdiction. Furthermore, under Tennessee Code, any person that is participating as a member of a fire, police, or emergency services entity is provided governmental tort liability protection as an employee of that jurisdiction (TCA § 29-20-107). Even though the Department of Transportation and state purchasing contracts grants these private companies public status, the fire departments are still classified as private due to differences in oversight and governance.

13(b) and 7(k) for the Private, Nonprofit Fire Service

The 13(b) and 7(k) exemptions are cost savings measures needed by private nonprofits. The exemptions defined by the FLSA are directed toward one of two classes of fire departments. As previously discussed, fire departments are no longer simply public or private entities. Those quasi-public agencies are suffering the effects of community growth and economic complications. Declines in donations and volunteerism have forced departments to stretch resources to the point of organizational collapse. The extension of FLSA exemptions to private nonprofit fire departments will have a lasting positive impact on the organizations, the fire fighters, and the communities they serve.

“To meet this critical need and serve its constituents regarding ef-

fective methods for obtaining funding, U.S. Fire Administration developed the publication, *Funding Alternatives for Fire and Emergency Services* in 1993 and completed an update and revision of this document in 1999” (Trench et al., 2012, p. 1). This report outlines many of the funding alternatives available for emergency service agencies. These funding issues have been compounded by the accountability requirements for training and professional qualification. The National Fire Protection Association publishes standards for fire fighter professional qualifications. These standards apply to all fire service personnel regardless of the organization with which they serve. This requires additional time and funding to achieve these training needs. With this combination of factors, new solutions are required to support private, nonprofit organizations with the needed assistance to continue to meet the growing needs in their communities.

The FLSA 13(b) and 7(k) exemptions can provide some relief of this financial burden. As seen in the survey results, this relief will facilitate the addition of new employees or the transition of some departments from all volunteer to combination organizations. Adding these employees increases the safety of the working environment for fire professionals as well as creates safer communities through enhanced staffing for incident mitigation.

Conclusions and Recommendations

The dilemma faced by modern, nonprofit fire departments is clear. Donations to support the services provided to the residents continue to decline. Additionally, volunteerism is falling as training requirements and competency standards are being applied to the volunteer and combination services. To provide such training is costly to the organization and the financial burdens may fall to the individual fire fighters in order to meet training requirements. In addition, the volunteers are often not compensated for their time or travel expenses required to attend needed educational events. This shortfall of financial support is where the fire service needs a change. This change can occur at the organizational and local level, state level, or federal level. By addressing this problem at the federal level any jurisdictional boundaries become irrelevant and a positive characterization can be established to provide direction to a great majority of the United States fire service. The financial and staffing deficits are compounded as capital improvement and operational cost continue to rise. One step that can help protect these communities is to include the private, nonprofit organiza-

tions as public agencies. Although this can be accomplished at the state level, the resolution which appears to have the broadest effect is to add or update the FLSA definitions at the federal level. To include the private, nonprofit organizations that provide emergency services as public agencies would have a significant, positive impact with no cost to the local, state, or federal budgets. These agencies mirror municipal departments in nearly every aspect of intent, function, funding, and accountability. Similarly, the training requirements and standards are consistent across all of the fire services. This would provide for safer communities, improve fire fighter safety, and create jobs nationwide. Nonprofits do not pay income taxes because they do not make a profit. In addition, they are also granted exemptions of other tax liabilities such as sales or property taxes. They are granted these because they meet the requirements that define them as an organization that exists “for public benefit.” These characteristics place them in the same category as a public agency. Because these groups are already tax exempt, there would be no loss of tax revenue. The labor law exemptions provided by the FLSA are the needed addition that can benefit many community fire departments. This change may also have indirect benefits that cannot be directly assessed. The research survey confirms that the volunteer and combination community strongly supports this proposed change. It also indicates an estimated number of jobs that could result from this change. One of the limitations of this study is that it focuses on reductions of labor cost that could result in the creation of new fire fighter jobs. This study, nor the associated survey, addresses other possible consequences due to a reduced cost of labor. These savings could result in capital improvements to an agency’s infrastructure or reduction in existing debt. Subsequent research is needed to determine if any department adopting the FLSA exemptions would use the funds for a purpose other than to provide for staffing deficits..

During this project, the extent of this problem became apparent. It is a national problem affecting every state to some level. By adding these agencies into the public sector, they will also be included in the oversight and financial reporting requirements of public agencies. Although, this oversight would also ensure that monies given for the benefit of the community would result in the expected return of providing for the public welfare. Additionally, there are concerns that have been raised that adding paid staff would drive away volunteers. These concerns are valid but also must be taken in context to the agency in question. In the IAFC’s (2005)

Lighting the Path of Evolution they discuss this transition from fully volunteer organizations to fully paid entities. This guide, the IAFC's *Lighting the Path of Evolution*, will assist any group that is already considering this type of transition regardless of any changes to labor law definitions. Additional concerns have been raised about how this change will affect employees of current combination departments. In these situations, it is the obligation of the company to safeguard the welfare of its employees if the allowed exemptions are adopted.

The goal of the fire service is to protect life and property within the community. By making the legislative change proposed, it will help to serve this goal and propagate the next evolution in the volunteer fire service and create safer communities on a national level.

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