



New York State Professional Fire Fighters Association, Inc.

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July 9, 2012

VIA REGULAR AND EMAIL

Mylan Denerstein
Counsel to the Governor
Executive Chamber
New York State Capitol
Albany, NY 12224

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CHAPLAIN

REV. GERALD J. BUCKLEY
68 Seminary Avenue
Binghamton, NY 13905
607-771-6207

Re: S.7458 (Skelos) / A.10046 (Weisenberg) Fallen FireFighters Memorial

LETTER IN OPPOSITION

Dear Ms. Denerstein

The New York State Professional Fire Fighters Association (NYSPPFA), I.A.F.F. AFL-CIO, a not-for-profit association representing approximately 18,000 paid fire fighters in 103 Locals in various cities, villages and towns across New York State, strongly opposes the above referenced bill being signed into law.

Specifically, this bill would fundamentally alter the established standards of the New York State Fallen Firefighters Memorial Committee used to determine whether a fire fighter is included on New York State's Fallen Firefighters Memorial Wall.

Inexplicably, as discussed below, this bill represents a veiled attempt to circumvent the criteria adopted by the New York State Fallen Firefighters Memorial Committee as the determinative factors for inclusion on the Memorial Wall. In fact, if signed into law, this bill would strip the Memorial Committee of its decision making authority in favor of an unlimited number of "authoritative agencies."

For instance, as drafted, the bill would require the Memorial Committee to "rubber stamp" any application for inclusion if an authoritative agency "including but not limited to, the Workers' Compensation Board, the Federal Department of Justice, or the Office of Fire Prevention and Control deem that such applicant died from services performed in the line of duty.

History of the Fallen Firefighters Memorial

On October 5, 1999 New York State created a memorial to honor the memory and heroism of New York State's firefighters who died in the line of duty. The Memorial stands as an enduring tribute to the fire service of New York State.

As such, the inclusion of names on the Memorial Wall are seriously considered and held to specific standards by a Selection Committee. A Nominee must be a firefighter, as defined by the Selection Committee's criteria, and the Nominee's death must meet the definition of Line-of-

Duty Death. The Selection Committee makes a determination with regard to all nominations and such decisions are subject to an established appeals procedure.

The Memorial Wall is maintained by the New York State Department of Homeland Security and Emergency Services, Office of Fire Prevention and Control.

This Bill Disregards the Existing Duties and Expertise of the Selection Committee

The New York State Firefighters Memorial Selection Committee is comprised of 11 members including:

- The Deputy State Fire Administrator;
- 2 representatives of the New York State Professional Firefighters Association;
- 1 representative of the New York City Uniformed Firefighters Association;
- 1 representative of the New York City Uniformed Fire Officers Association;
- 1 representative of the Albany Fire Department;
- 1 representative of the Firemen's Association of the State of New York;¹
- 1 representative of the New York State Association of Fire Chiefs;
- 1 representative of the New York State Association of Fire Districts;
- 1 representative of New York State County Fire Coordinators Association; and
- 1 member designated by the State Fire Administrator.

The Selection Committee meets annually, as well as at other necessary times, to carry out their responsibility of determining the names to be inscribed on the Memorial Wall and to revise the selection criteria for inclusion on the Memorial Wall. Each of the above representatives has voting rights. The selection criteria, nomination procedures and appeals procedures were last revised by the Selection Committee in January 2011 and have been annexed to this letter.

Should this bill be signed into law, the expertise of the aforementioned representatives would be inappropriately replaced with that of an unlimited number of "authoritative agencies", without justification or explanation.

This Bill Seeks to Fundamentally Alter the Existing Criteria for "Line of Duty Death" for the Fallen Firefighters Memorial

Among other standards, the Selection Committee has defined "Line of Duty Death" to mean a death attributable to any action which is required, authorized or recognized in law, rule, regulation, condition of employment, or by virtue of association in a duty to act and that is directly related to: the response to, operation at, or return from an emergency incident; conducting authorized fire prevention or fire investigation activities directly related to an emergency incident; or participating in hands on training for the suppression of fires and explosions or the control of emergencies.

If signed into law, this bill would fundamentally alter what constitutes a "Line of Duty Death." Specifically, the bill seeks to replace the existing standard created by the Selection Committee with an overly broad standard. Indeed, the bill states:

¹ The Firemen's Association of the State of New York is the leading Association representing the State's volunteer firemen.

“in the case of a death of a firefighter, regardless of whether such death occurred before, on or after the effective date of this subdivision, that results from services performed in the line of duty, as determined by an authoritative agency including, but not limited to, the workers’ compensation board, the Federal Department of Justice, the office of fire prevention and control or pursuant to this chapter...”

This standard put forth by this bill is troubling. First, this bill fails to define the term “authoritative agency.” As such, if signed into law this bill would potentially allow any agency authorized by law to make determinations with regard to the inclusion of names on the Fallen Firefighters Memorial Wall regardless of its relationship to either the Memorial Committee or the State’s fire prevention services.

Second, the standard put forth by this bill seeks to automatically include firefighters who have been determined to have a line-of-duty injury by the New York State Workers’ Compensation Board or the Federal Department of Justice on the Memorial Wall without any further evaluation or nomination pursuant to the Selection Committee’s criteria. This automatic inclusion has never been contemplated and lacks sufficient oversight.

It is respectfully submitted that such an alteration of the existing standard is both unwarranted and an attempt to circumvent the established, respected and long standing procedures set up by the Memorial Committee to preserve the honor, integrity, and purpose of the Fallen Firefighters Memorial Wall.

Purpose of the Bill

While not contained in this bill’s text or the Sponsors’ memoranda, the legislative history of this proposal reveals the true purpose of this legislation.

Specifically, similar legislation vetoed last year by the same the Sponsors’ discussed a single volunteer firefighter, Paul Brady, and his six years service to the Malverne Volunteer Fire Department. According to last year’s Sponsors’ memoranda Mr. Brady had an unfortunate injury which resulted in death while conducting routine maintenance on Fire Department equipment.

The NYSPFFA and the Memorial Selection Committee do not wish to in anyway tarnish or disregard Mr. Brady’s fire service. Nevertheless, Mr. Brady’s nomination through the established Memorial Selection Committee criteria was denied.

However, on June 27, 2012 the New York State Appellate Division, Second Department decided *Matter of Malverne Volunteer Fire Department, et al. v. New York State Office of Fire Prevention Control, et al.*, 2012 NY Slip Op 05174 (copy enclosed), which overturned the decision of the Memorial Selection Committee with regard to Mr. Brady and directed that Mr. Brady’s name be added to the Memorial Wall.

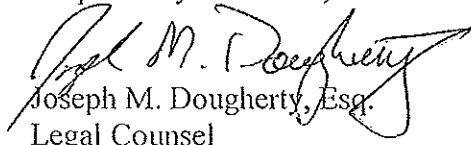
As such, the NYSPFFA respectfully submits that given the addition of Mr. Brady’s name to the Memorial Wall, the fundamental alteration of the established procedures of the New York State Fallen Firefighters Memorial Committee which would result if this bill were signed into law is

unwarranted and would significantly devalue the experience, expertise, and dedicated service of those who serve on the New York State Fallen Firefighters Memorial Committee.

Therefore, we respectfully request that this proposal be vetoed.

We would be happy to discuss this bill with you further. Please contact me directly with any questions or concerns.

Respectfully submitted,



Joseph M. Dougherty, Esq.

Legal Counsel

New York State Professional Fire Fighters Association, I.A.F.F. AFL-CIO

cc: Robin Forshaw, Esq.

4833-0933-7616. v. 1

Matter of Matter of Malverne Volunteer Fire Dept. v New York State Off. of Fire Prevention & Control
2012 NY Slip Op 05174
Decided on June 27, 2012
Appellate Division, Second Department
Published by <u>New York State Law Reporting Bureau</u> pursuant to Judiciary Law § 431.
This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on June 27, 2012

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT
PETER B. SKELOS, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
SHERI S. ROMAN, JJ.

2011-03517
(Index No. 14821/10)

[*1]In the Matter of Malverne Volunteer Fire Department, et al., appellants,

v

New York State Office of Fire Prevention and Control, et al., respondents.

Sokoloff Stern, LLP, Westbury, N.Y. (Adam I. Kleinberg of
counsel), for appellants.
Eric T. Schneiderman, Attorney General, New York, N.Y.
(Steven C. Wu and Sudarsana Srinivasan of counsel), for respondents.

DECISION & ORDER

In a proceeding pursuant to CPLR article 78, inter alia, to review a determination of the

New York State Fallen Firefighters Memorial Appeals Committee dated August 9, 2010, denying a request to include Paul Ryan Brady's name on the New York State Fallen Firefighters' Memorial Wall, the petitioners appeal from a judgment of the Supreme Court, Nassau County (Woodard, J.), entered March 9, 2011, which, without a hearing, denied the petition and dismissed the proceeding.

ORDERED that the judgment is reversed, on the law, with costs, the petition is granted, the determination of the New York State Fallen Firefighters Memorial Appeals Committee dated August 9, 2010, is annulled, and the matter is remitted to the Supreme Court, Nassau County, to direct the New York State Fallen Firefighters Memorial Appeals Committee to include Paul Ryan Brady's name on the New York State Fallen Firefighters' Memorial Wall.

In this proceeding in which the petitioner challenges an agency determination that was not made after a quasi-judicial hearing, we must consider whether the determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion (*see* CPLR 7803[3]; *Matter of Halperin v City of New Rochelle*, 24 AD3d 768, 770). In such a proceeding, courts "examine whether the action taken by the agency has a rational basis" and will overturn that action only "where it is taken without sound basis in reason' or regard to the facts" (*Matter of Wooley v New York State Dept. of Correctional Servs.*, 15 NY3d 275, 280, quoting *Matter of Peckham v Calogero*, 12 NY3d 424, 431; *see Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 232), or where it is "arbitrary and capricious" (*Matter of Deerpark Farms, LLC v Agricultural & Farmland Protection Bd. of Orange County*, 70 AD3d 1037, 1038).

Here, the determination of the New York State Fallen Firefighters Memorial Appeals Committee (hereinafter the appeals committee) that the death of firefighter Paul Ryan Brady was not a "line of duty death" within the selection criteria for inclusion on the New York State Fallen Firefighters Memorial Wall is arbitrary and capricious, and did not have a rational basis in the record. The record demonstrates that, under the applicable selection criteria, Paul Ryan Brady died [*2]while engaged in an action that was "required, authorized or recognized by law, rule, regulation, [or] condition of employment." Accordingly, the Supreme Court should have granted the petition, annulled the determination of the appeals committee, and directed the appeals committee to include Paul Ryan Brady's name on the New York State Fallen Firefighters' Memorial Wall

SKELOS, J.P., BALKIN, LEVENTHAL and ROMAN, JJ., concur.

ENTER:

Aprilanne Agostino

Clerk of the Court

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