



INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS®

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May 24, 2010

Mathew T. Doyle
Mayor
City of Texas City
1801 9th Avenue North
Texas City, Texas 77592

Dear Mayor Doyle:

The Texas City Fire Department is to be commended for adopting the Fire Service Joint Labor Management Wellness/Fitness Initiative (WFI), a progressive model for delivering a preventive and occupational health care services program for today's fire fighters and emergency medical workers. There are some areas of the Texas City Fire Department program that are not in compliance with the WFI.

The Job Simulation Physical Ability Test being implemented by the Texas City Fire Department appears to be substantially similar to the IAFF/IAFC Candidate Physical Ability Test (CPAT). I will address two problems with this part of the program. First is the use of CPAT for incumbent testing is a violation of the CPAT copyright. The CPAT program is a complete program for the recruiting and testing of physically qualified individuals for employment into the fire service. The individual parts are interdependent and shall not be taken out of context. Furthermore, the CPAT was designed as a valid and reproducible entry-level test for fire-fighter candidates. Any use of this test with incumbents could potentially invalidate this test for its intended use.

The IAFF has copyrighted the CPAT in order to prevent unauthorized use of this program. This copyright is registered with the United States Copyright Office, and may be enforced through a lawsuit. The IAFF owns the exclusive right to reproduce copies of the CPAT; to prepare derivative works from the CPAT; to distribute the CPAT to the public; and to publicly display this work.

Any use of the CPAT is only allowed within the terms and conditions spelled out in a licensing agreement, which must be strictly adhered to by all licensees. This agreement states that the licensee may only use the CPAT in its entirety. This copyright protection does extend to any derivative physical ability test that is "substantially similar" to the CPAT test.

The IAFF is entitled to, and will, institute legal action against any infringement of its exclusive rights or its licensing agreement. The remedies for copyright infringement include obtaining an injunction to prevent further infringement and to ensure the destruction of unauthorized copies. They also include the recovery of any damages suffered by the IAFF and the Task Force; recovery of the profits of the infringer; and the recovery of attorneys' fees and costs of the litigation.

Initial Performance Mission Statement

Since the release of the WFI, the Task Force continues to address the performance issues as a component of the wellness/fitness initiative.

The IAFF/IAFC Joint Labor Management Wellness/Fitness Task Force spent considerable time and resources addressing incumbent performance issues. The following provides a historical

perspective of their efforts and the rationale for the decision to develop a Candidate Physical Ability Test (CPAT) and defer developing incumbent performance evaluations. The Task Force specifically addressed incumbent performance issues and the following initial mission statement on performance was established.

- The Task Force was committed to developing a performance evaluation for incumbents first, then for candidates.
- The objectives of the Task Force performance evaluation were:
 - to develop an instrument to assess the ability and skills of uniformed personnel to successfully accomplish defined fire ground/emergency tasks;
 - to define sequential fire ground/emergency tasks typically occurring as part of the first response of fire companies;
 - to define evaluation criteria that emphasize safety and utilize practical effectiveness and efficiency (time); and,
 - to develop evaluation criteria that would be used as part of the assessment of the team and the team member in company assignments.

The Task Force addressed designing legally defensible, valid (scientifically sound), and appropriate (practical) performance evaluations for incumbent uniformed personnel. The Task Force addressed each facet of designing such an evaluation, including validation issues, legal parameters and logistical implementation. Other performance issues addressed by the Task Force included fire department training; knowledge, skills, abilities, and other characteristics; impact (rank, race, gender, age); selection of subject matter experts; conduct of a job analysis; work simulation; medical standards, and; fitness considerations.

The Task Force unanimously agreed that an incumbent performance evaluation can demonstrate the fire department's inability to prepare or maintain uniformed personnel's training skills and/or conditioning to perform the minimum individual job-specific baseline functions required for fire department operations.

It was also agreed that any such performance testing programs will maintain the position of the Task Force that testing be non-punitive, which was defined as no loss of pay and a guided opportunity for remediation.

The technical representatives of the Task Force to define and establish a performance evaluation established a stair step system approach. It was also agreed that fire departments must establish the Wellness/Fitness program prior to any performance testing, including adoption within the fire department environment and infrastructure (e.g., operations and training programs).

The stair step process included:

- Adopt the Wellness/Fitness program;
- Establish a pre-employment standard;
- Establish job performance training (company operations) incorporating Wellness/Fitness program into fire department training;
- Develop and implement a job performance evaluation for either crews or individuals, but only after 24 months of implementation of the Wellness/Fitness Program);
- Provide medical/fitness/training clearance;

- Establish a rehabilitation program for training, fitness and medical rehabilitation;
- Provide for retest and return to duty or extended light duty or alternative duty; and
- Should multiple similar failures occur, implement program (operations, training, fitness and/or wellness) quality assurance review to identify potential program or evaluation deficiencies.

The Task Force agreed that, prior to implementation of incumbent individual or crew performance evaluations, a quality assurance program should be instituted. The quality assurance program should be utilized, in part, if a deficiency trend is apparent across individuals or crews. The evaluation should be used to determine program deficiencies, including wellness/fitness, training, equipment, hiring standards, or other deficiencies in the operation, policies or procedures of the fire department. The quality assurance program emphasizes that any failures or deficiencies found in individuals or crews in any performance evaluation reflect as a failure or deficiency among fire department partners. Consistent failure or deficiency trends are investigated to determine the effectiveness or need for fire department programs specifically addressing those areas where these trends are occurring.

The Task Force agreed that prior to implementation of incumbent performance evaluations, each fire department must review its training programs to ensure that training addresses the necessary motor and cognitive skills needed to perform fire-fighting tasks. The Task Force recognized that such skills are obtained and reinforced by consistent and constant training and are important variables in any performance testing program.

Training programs must be reviewed to determine how incumbent performance issues interact with functional training at candidate, probationary employee and incumbent levels. The quality of each training program and the training frequency (shift, monthly, quarterly, annually) must be addressed through a quality assurance review.

THE CANDIDATE PHYSICAL ABILITY TEST (CPAT):

After considerable effort, the Task Force recognized that performance evaluations must begin at the hiring stage for fire fighters. By hiring individuals with acceptable levels of performance, such physical capabilities will be a part of the incumbent pool with positive implications for the whole system. By requiring applicants to pass this comprehensive, validated performance evaluation, departments enhance the quality of candidates hired. To meet this challenge, the IAFF, the IAFC and the ten involved jurisdictions developed, with the participation of over 200 experts including the US Department of Justice, a new Candidate Physical Abilities Test. This project was formally released by the IAFF and the IAFC in August 1999 and the second edition of this program was released in 2007.

I'd also like to address incumbent skills/ability testing in general. Many departments throughout the US and Canada have instituted these tests as a purchased package or home developed variety. We do not have an incumbent physical performance test available in the office as we have yet to find a truly valid one.

These tests have become widespread. With recent pressures to comply with the ADA and the ADEA, departments are looking for easy solutions to their obligation to certify every member as fit for duty and able to perform the essential functions of the job. Prior to instituting any performance type test many issues need to be considered.

Is physical performance testing the best avenue for your department to travel? The IAFF would like to stress physical fitness as opposed to physical performance or agility. The lifestyle changes realized from mandatory participation in a regularly supervised physical fitness program is a better investment in the department's resources and we applaud their efforts in that area.

If used, city and local physical performance agreements should be non-punitive towards the fire fighters. Extensive rehabilitation and training should be provided to those individuals unable to achieve the validated level of ability. Prior to administering the physical performance program, it is prudent to have all fire fighters screened for medical problems that may make their participation unsafe. During the administration of the performance test, medical personnel must be available on scene to attend to any resultant health problems and injuries.

The IAFF believes that setting pass/fail criterion for tests is inappropriate for several reasons. At a minimum, the following questions should be asked about any proposed fitness assessment test:

Is it safe to administer?

Does it give reliable quantitative information?

Is it related to specific job requirements?

Is it practical?

Does it predict the risk of future injury?

The selection of the fitness tests and the defining of a "satisfactory" fitness score are critical issues, since failure to achieve the minimum score will likely be interpreted as indicating that the fire fighter is not physically fit, resulting in duty restriction.

Currently, there are no universally acceptable performance standards for incumbents. In fairness, it must be admitted that it is very difficult to design an appropriate standard. For example, many of the physical fitness/performance/agility standards in use today specify an acceptable time for completion of a task or exercise. This assumes that the speed with which a particular test can be done is a predictor of successful job performance. Speed in completion of the Combat Challenge is a focal point of the objective of that athletic program. It is debatable that speed is an appropriate predictor of physical performance or fitness -- performing tasks too quickly may lead to injuries.

Also, while fire fighters are on the job performing the duties required by the incident they are working in teams of two or more and sharing the metabolic load. These tests are measuring an individual's ability to perform the duties of the job safely by oneself, when in fact an individual does not perform all duties alone. In addition, such testing fails to measure other factors that affect job performance, such as recognition of hazards, training, and experience.

It is important to understand that until and unless the physical fitness tests for fire fighters can be shown to be valid predictors of the ability of the fire fighter to do his/her job successfully, pass/fail fitness criteria can be criticized as arbitrary and illegal.

Showing that a test is "valid" as a predictor of job performance is difficult. The Uniform Guidelines on Employee Selection Procedures issued in 1978 by the Equal Employment Opportunity Commission, the U.S. Department of Justice, and the U.S. Department of Labor allow three distinct ways of "validating" physical fitness tests. The three types of validity are:

- Content validity. A test is content-valid to the extent that the elements of the test are similar to elements of the job. In other words, the test duplicates the job. This is the most straightforward method.
- Criterion validity. This method uses advanced statistical techniques to show that the fitness tests can predict job performance. To do the statistics properly requires considerable sophistication, but if done properly, the method is legitimate.

- Construct validity. This describes the extent to which the test measures underlying theoretical concepts. The grip strength test, for example, measures a concept labeled "static strength." The trick, of course, is to decide which theoretical concepts are essential for the job, and which tests are good for measuring the theoretical concept. As might be expected, a panel of experts, who presumably have analyzed the fire fighters job and know which are the most taxing and critical aspects of the job, often makes these decisions. Obviously, this method is only as useful and fair, as the experts are knowledgeable.

Essential questions to ask about proposed performance standards include:

- Has the standard been validated to prove that it is a good predictor of job success?
- Which validation method was used?
- How long will current fire fighters have to meet the standard?
- What will happen to a fire fighter that fails to meet the standard?
- What will be the impact on women and older fire fighters?

Legal advice may prove helpful in the developmental stage; since there are legal issues related to physical fitness standards that must be addressed. Court cases have established that employers have the right to set physical fitness standards. However, these standards must be based on substantial and thorough validation, generally by one of the methods described above.

It should be noted that under traditional labor law, once standards are set, the employer can be required to bargain the impact such standards have on employees. In other words, the employer doesn't have to bargain the substance of standards, but would have to negotiate the effect of such standards on working conditions. Impact bargaining may include such issues as remedial help and alternate employment for those who fail to meet standards, duty time for fitness programs and membership fees to fitness facilities.

The department must also understand that any physical evaluation is a medical test and must be completed in a medically supervised environment, with all information and results kept confidential.

Further, the tests must be gender neutral. Legally, standards cannot differ based on the individual's age or sex. The 1991 Civil Rights Act states:

It shall be an unlawful employment practiced for a respondent in connection with the selection or referral of applicants to adjust the scores of, use different cut-off scores for, or otherwise alter the results of employment related test on the basis of race, color, religion, sex or national origin. [Title 42 US Code. section 2000e-2(L)]

We believe that this legal standard would apply for any condition of employment test, including return to duty testing.

Further, a physical standard that has a disparate impact on women or older employees would not be considered discriminatory if the employer can demonstrate that employees who cannot meet the standard would have difficulty performing work safely and efficiently. For many reasons, employers have not been able to demonstrate this through current timed, tasked based testing.

The IAFF recognizes that physical performance testing has been perceived as a job necessity for the future. While the issues surrounding this testing are unavoidable we will continue to look for better solutions to this issue. All too often we are informed of serious injury and permanent disabilities to our members from these tests.

The determination of a fire fighter's ability to return to work after an injury or illness should lie primarily in the hands of a board-certified, occupational health physician, who is knowledgeable of the physical requirements of fire fighting. Also, all fitness testing should be completed by an individual with at least a bachelor's degree in exercise physiology, kinesiology, biomechanics, or a related field and be certified by a respected organization such as the American Council on Exercise (ACE), the American College of Sports Medicine (ACSM), or the National Strength and Conditioning Association (NSCA). All fire fighters should be given equal access to the services of these professionals.

The selection of the fitness tests and the defining of a "good" fitness score are critical issues, since failure to achieve the minimum score will likely be interpreted as indicating that the fire fighter is not physically fit, resulting in duty restriction. The critical issue to consider in any normative data is the reference population. Most 'norms' are based on studies using the general U.S. population or college students as the reference population. Are these the norms that should determine duty restrictions for fire fighters? Many authors have attempted to quantify 'norms' for muscular strength, cardio-respiratory fitness, body composition and flexibility however none are currently universally accepted.

The IAFF, through formal policy, recommends that physical fitness programs emphasize the general health benefits to the fire fighter as well as benefits to the fire department. The IAFF policy on physical fitness is:

"The IAFF will provide the necessary guidance and assistance in implementing physical fitness programs for any local and affiliate which requests such assistance. Such programs may be mandatory; however, agreement to initiate it must be mutual between the administration and its members represented by the local union. Any program of physical fitness must be at a minimum positive and not punitive in design; allow for age and position in the department; allow for on-duty time participation utilizing facilities provided or arranged for by the department; provide for rehabilitation and remedial support for those in need; and be reasonable and equitable to all participants."

An overall wellness/fitness system must be holistic, positive, rehabilitating and educational. Key issues of the initiative incorporate the following points:

- Overcome the historic fire service punitive mentality of physical fitness and wellness issues;
- Move beyond negative timed, task-based performance testing to progressive wellness improvement;
- Require a commitment by labor and management to a positive individualized fitness/wellness program; and
- Develop a holistic wellness approach that includes: medical, fitness, injury/fitness/medical rehabilitation and behavioral health.

Fire fighters must continue to respond to emergency incidents that require extreme physical output and often result in physiological and psychological outcomes. Such situations, over time, can and do affect the overall wellness of the fire fighting and emergency response system. Tomorrow's fire service requires that we face our destiny of keeping our fire fighters fit today.

The ultimate goal of the Fire Service Joint Labor Management Wellness/Fitness Initiative is to improve the quality of life for all fire fighters. The project seeks to prove the value of investing wellness resources over time to maintain a fit, healthy, and capable fire fighter throughout his/her 25-30 + year career and beyond. An effective program should realize significant cost savings in lost work time, workers compensation and disability.

CURRENET PERFORMANCE MISSION STATEMENT:

In September 2000, the Fire Service Joint Labor Management Wellness-Fitness Initiative Task Force debated at length on testing of incumbent fire fighters. At the conclusion of discussion the IAFF, the IAFC and the WFI Task Force issued the following statement:

“The mission of the IAFF and IAFC WFI Task Force is to enhance the medical, fitness, and behavioral health; medical and fitness rehabilitation; and wellness-fitness data collection of the fire service. At this time, the Task Force’s position is that incumbent performance testing is inappropriate for implementation within Task Force department’s and the fire service as a whole. Before any fire department makes a local decision to implement incumbent testing it must have an adequate support system in place to keep uniformed personnel capable of safely performing fire operation tasks during their entire career. The members of the WFI Task Force have concluded that before an incumbent physical ability test is developed and implemented the fire department must:

- Establish a policy that all incumbent evaluation be non-punitive
- Fully implement all components of the Wellness / Fitness Initiative. The full initiative shall be in place for a minimum of 24 months. The requisite components include:
 - Medical fitness
 - Physical fitness
 - Rehabilitation
 - Behavioral health
 - Data management
- Fully implement all components of the CPAT program. The requisite components include:
 - Recruitment
 - Mentoring
 - Pre-test orientation, training and education
 - Transportability study
 - Administration (proctor training, evaluation and data collection)
 - CPAT test
- Incorporate the Wellness / Fitness Initiative into company level training
- Provide medical / fitness / training clearance
- Establish a rehabilitation program for training, fitness, and medical rehabilitation
- Provide for reevaluation and return to duty or extended light duty or alternative duty of fire fighters during rehabilitation.
- Establish an internal quality assurance program to review fire department programs (operations, training, fitness and/or wellness) that may be deficient.

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Furthermore, the Task Force reiterates its position that the failure of an incumbent fire fighter demonstrates the fire department's (including labor, management and the individual) inability to prepare and/or maintain uniformed personnel's training skill and conditioning to perform the job-specific functions required for fire department operations.

Adoption of the Fire Service Joint Labor Management Wellness/Fitness Initiative by the Texas City Fire Department is a positive step that will improve the wellness and fitness of all participants while improving the department's ability to serve the community. The IAFF's Department of Occupational Health and Safety is available to assist the Texas City Fire Department and IAFF Local 1259 in implementing this vital program.

Sincerely,

A handwritten signature in blue ink that reads "Jim Brinkley". The signature is written in a cursive style with a long, sweeping underline.

Jim Brinkley
Director of Occupational Health and Safety

Cc: Roy L. McGhee III, IAFF 11th District Vice President
William Cooley, President, IAFF Local 1259