

CAUSE NO. 10-01(R)

NAME: JERRY A. NULLINER

ADMINISTRATIVE LAW JUDGE: GARY W. BIPPUS

DATE: April 21, 2010

COMMISSION ACTION: AFFIRMED

AMENDMENT

This amended Report, Findings of Fact, Conclusions of Law and Nonfinal Order of the Administrative Law Judge is intended to, and does, supersede and replace the earlier Report, Findings of Fact, Conclusions of Law and Nonfinal Order of the Administrative Law Judge issued on April 20, 2010. The difference between this amended document and the earlier document is contained in the Decision and Order portions of the two documents. In all other regards the documents are identical.

FINDINGS OF FACT

1. Mr. Nulliner is a Division Chief for the Fishers Fire Department and a certified instructor of firefighters.
2. In his instructor capacity he undertook to be the Proctor and Lead Evaluator for a course of study which is mandatory for Indiana firefighters. The course was conducted over two weekends in November of 2009. The classroom course work and written testing for that course took place at Hamilton Southeastern High School and was supervised by Mr. Nulliner. The practical skills instruction and testing took place in Anderson, Indiana at a facility of the Anderson Fire Department. Mr. Nulliner was not present continuously throughout that training and testing process. Mr. Nulliner did not instruct nor test the practical skills of the students.
3. There were some deviations from the rules of this Board in the conduct of portions of the testing and reporting results of the testing to the Indiana Department of Homeland Security. Those discrepancies include:
 - a. certain items on some of the students' skills evaluation forms were not filled in suggesting that those items had not been evaluated; and
 - b. the evaluator who actually performed the evaluations did not actually sign the evaluation forms because of a problem with having the forms available at the right time; and
 - c. the application forms were not available at the right time and place in order to be signed by the respective Fire Chiefs for the students and were not provided to IDHS in a group from Mr. Nulliner; and
 - d. the skills evaluation forms were ultimately sent to IDHS when they should be kept in the possession of the firefighter being evaluated; and
 - e. some of the skills may have been evaluated by an individual who participated in instructing on those skills.

4. Any item which is denominated a Finding of Fact which should be considered a Conclusion of Law is hereby incorporated by reference into the Conclusions of Law.

CONCLUSIONS OF LAW

1. The Department of Homeland Security is an agency within the meaning of I.C. 4-21.5.
2. The Agency is the state entity charged with the responsibility of certifying Instructors for Firefighter Certification within the State of Indiana.
I.C. 4-21.5, I.C. 22-14-2 and 655 IAC apply to this proceeding.
3. Pursuant to 655 I.A.C.1-1-12(i)) provides, in pertinent part, as follows:

(7) The lead evaluator shall ensure that evaluation forms are:
(A) properly completed in ink by any evaluator; and
(B) returned to the lead evaluator immediately following the examination.

* * *

- (9) The lead evaluator shall:
(A) document, on a form, to be provide by the training division, the successful completion of all of the practical skills examinations for each applicant; and
(B) provide the form to each applicant at the completion of all of the practical skills examinations for the certification level being tested.

Mr. Nulliner did not follow these published rules and that caused this testing process to be compromised.

4. Firefighters and their superiors need to have the knowledge that the training and evaluation of the training received by them and their fellow firefighters is without any irregularity. In an emergency situation each fire officer and individual firefighter needs to know that each of his or her fellow firefighters has the knowledge to, at least, not create a greater danger than already exists.
5. The integrity of the subject course of training and evaluation has been compromised by the various lapses in following the rules of the Board of Firefighting Personnel Standards and Education. From the records which Mr. Nulliner submitted it is impossible to be sure that there was no chance of a student filling in his or her own evaluation with a passing grade. It is also impossible to confirm that all required training and testing took place at all, took place at the correct time and place, or that such testing was evaluated by a completely objective evaluator.

6. Some of the problems with this course of instruction may have been caused or aggravated by having the classroom work and written testing at a location in Fishers, Indiana and the practical skills instruction and testing in Anderson, Indiana. Some of the problems may have been caused or aggravated by the course instructors not having a full and complete understanding of their responsibilities for making sure that paperwork was available and completed at the right time and in the right manner. Nevertheless, Mr. Nulliner is responsible for the results of this particular training.
7. Mr. Nulliner's Instructor Certification was suspended by the Indiana Department of Homeland Security for a period of six months. Now that he has seen firsthand the difficulties caused by not following the Board's rules exactly, a six month suspension of his Instructor certification is not necessary.
8. Any item which is denominated a Conclusion of Law which should be considered a Finding of Fact is hereby incorporated by reference into the Findings of Fact.

DECISION AND ORDER

The decision and order of the Indiana Department of Homeland Security issued under date of January 12, 2010 suspending the certification of Mr. Nulliner should be, and is, affirmed in all regards except the sanction. Mr. Nulliner's Instructor certification is suspended for a period of three(3) months, instead of six(6), from January 12, 2010. That period of time having expired on April 12, 2010, Mr. Nulliner's Instructor certification is to be reinstated as soon as practicable.

The Board of Firefighting Personnel Standards and Education will consider this nonfinal order at their next regular meeting at 10:00 AM on June 17, 2010 at Honey Creek Middle School, Room D100, 6601 Carlisle Street, Terre Haute, IN 47802.

The administrative law judge has learned from an email sent from counsel for the Indiana Department of Homeland Security, and copied to Mr. Nulliner, that the Department suspended its own order at the time of issuance. The suspension of Mr. Nulliner's Instructor certification did not begin with the issuance of the

Department's order of January 12, 2010. Rather, the Department was waiting on the Administrative Law Judge's decision before imposing any sanction on Mr. Nulliner. The Administrative Law Judge, having already expressed the intent that the sanction to be imposed would be a three (3) month suspension of Mr. Nulliner's Instructor certification, continues that intent. The suspension of Mr. Nulliner's Instructor certification shall be for a period of three (3) months beginning June 18, 2010 and ending September 18, 2010.