

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS
BEFORE THE COMMONWEALTH EMPLOYMENT RELATIONS BOARD

In the Matter of	*	
	*	
TOWN OF MONSON	*	Case No. MCR-14-3997
	*	
and	*	Date Issued:- August 28, 2015
	*	
MONSON CALL FIRE ORGANIZATION	*	
	*	

Board Members Participating:

Marjorie F. Wittner, Chair
Elizabeth Neumeier, Board Member
Harris Freeman, Board Member

Appearances:

Stanley L. Weinberg, Esq. - Representing the Town of Monson
Kevin Brown - Representing the Monson Call Fire Organization

DECISION

1 Summary

2 The issue in this case is whether the Town of Monson (Town) Fire Department
3 on-call (call) employees are eligible to vote in a representation election. The call
4 employees fall into four general groups: firefighter/EMTs, EMTs, firefighters, and non-
5 firefighter/non-EMTs. The Monson Call Fire Organization (Union) argues that the call
6 employees are regular part-time employees. The Town argues that the call employees
7 are casual employees because none of them has responded on a compensated basis
8 to at least 33% of the total number of alarms sounded in the past fiscal year. In this

1 case, however, the nature of the work that call firefighter/EMTs, EMTs, and non-
2 firefighter/nonEMTs perform extends beyond responding to alarms and includes
3 working regularly-scheduled weekday and weekend per diem shifts that are staffed only
4 by call employees. Under these circumstances, the CERB will not assess whether
5 these employees have sufficient continuity and regularity of employment to enjoy
6 collective bargaining rights solely on their alarm response rate. Rather, for reasons set
7 forth in more detail below, the CERB rules that call employees who, in the fiscal year
8 preceding this decision, have performed work for which they have been compensated at
9 an hourly rate for no less than 33%, i.e., 858 hours, of the 2600 hours a full-time
10 firefighter is scheduled to work per year, have a sufficient continuity of employment to
11 entitle them to collective bargaining rights and can vote in the representation election.

12 Statement of the Case

13 The Union filed a petition with the Department of Labor Relations (DLR) on
14 September 12, 2014 seeking to certify a bargaining unit of 53 employees employed by
15 the Town in the Fire Department. In its September 12, 2014 petition, the Union sought
16 to represent:

17 "Full-time, part-time, and call: Firefighters, EMTs, dispatchers,
18 Firefighter/EMTs, Fire Officers, Photographers, Chaplin, Auxiliary
19 Firefighters" [but excluding the] full-time Chief, full-time Deputy Chief, and
20 full-time administrative assistant."
21

22 Prior to the hearing in this case, the parties agreed to the following bargaining unit
23 description:

1 All full-time and regular part-time employees of the Monson Fire
 2 Department, but excluding the Chief, Assistant Chiefs, Deputy Fire Chief,
 3 and administrative assistant, and further excluding all managerial,
 4 confidential and casual employees, and all other employees of the Town
 5 of Monson.

6
 7 Despite reaching agreement on the unit description, the parties disagreed about
 8 whether call employees were regular part-time employees eligible to vote in the
 9 representation election. On November 19, 2014, a duly-designated DLR hearing officer
 10 (Hearing Officer) held a hearing at which both parties had the opportunity to be heard,
 11 to examine witnesses and to introduce evidence. The parties filed post-hearing briefs
 12 on December 11, 2014.

13 Stipulations of Fact¹

14 The Union and the Town stipulate to the following facts:

15 Overview

- 16
 17 1. The Town of Monson (Town) is a municipal corporation within the
 18 Commonwealth of Massachusetts and is a public employer within the meaning of
 19 Section 1 of M.G.L. c. 150E (the Law).
 20
 21 2. The Monson Call Fire Organization (Union) is an employee organization within
 22 the meaning of Section 1 of the Law.
 23
 24 3. On September 12, 2014, the Union filed a petition seeking certification as the
 25 exclusive representative of a bargaining unit comprised of: "Full time, Part-time,
 26 and Call: Firefighters, EMTs, Dispatchers, Firefighter/EMTs, Fire Officers,
 27 Photographers, Chaplain, Auxiliary Firefighters" and excluding the "Full-time
 28 Chief, Full-time Deputy Chief, and FT Administrative Assistant."
 29
 30 4. The parties stipulate to the following bargaining unit description: "All full-time and
 31 regular part-time employees of the Monson Fire Department, but excluding the
 32 Chief, Assistant Chiefs, Deputy Fire Chief, and administrative assistant, and
 33 further excluding all managerial, confidential and casual employees, and all other
 34 employees of the Town of Monson."
 35

¹ We have made minor technical edits for consistency throughout this decision.

1 Full-Time Positions and Employees

2 5. The Town's Fire Department currently has four full-time positions with five
3 employees:

4
5 a. Fire Chief
6 i. Laurent McDonald

7
8 b. Deputy Chief
9 i. Brian Harris

10
11 c. Firefighter/EMT-I
12 i. Todd LaCosse
13 ii. David Martin

14
15 d. Probationary Firefighter/EMT-P
16 i. Matthew Sterling

17
18 6. There is no dispute that the following positions are excluded from the above-
19 described stipulated bargaining unit: the Chief, Assistant Chiefs, Deputy Fire
20 Chief, and administrative assistant.

21
22 7. There is no dispute that full-time employees Todd LaCosse, David Martin, and
23 Matthew Sterling are eligible to vote in an election held for the purpose of
24 determining whether a majority of the employees in the above-described
25 stipulated bargaining unit desire to be represented by the Union.

26
27 Call Positions And Employees

28
29 8. In addition to the above-listed full-time positions, the Town's Fire Department
30 currently has [20]² call positions with 46 employees:

31
32 a. Auxiliary Firefighter
33 i. Benjamin Baker
34 ii. Nicholas Lloyd

35
36 b. Probationary Auxiliary Firefighter
37 i. Haley Fountain

38
39 c. Call Assistant Chief
40 i. Marty Harris
41 ii. Jonathan Miller

42

² Although the first sentence of stipulation 8 states that the Fire Department has 18 call positions, the stipulation lists 20 call positions.

- 1 d. Call Captain
2 i. Jonathan Bousquet
3 ii. Jeffery Chaffee
4
5 e. Call Chaplin
6 i. John Brennan
7
8 f. Call Driver/Operator
9 i. Joshua McCarthy
10
11 g. Call EMT B Step 1
12 i. Amelia Coles
13
14 h. Call EMT B Step 3
15 i. Carolyn Bousquet
16 ii. Kristie Merrigan
17
18 i. Call Firefighter Regular
19 i. Justin Dufault
20 ii. Michael Jacobs
21 iii. Nicholas Loglisci
22 iv. Timothy Mascaro
23
24 j. Call Firefighter Spare
25 i. Patrick Jessop
26 ii. Brendon Lloyd
27 iii. Samantha Lloyd
28
29 k. Call Firefighter/Driver/Operator
30 i. Jeremy Bedson
31 ii. John Milne
32 iii. Daniel Rioux
33
34 l. Call Firefighter/EMT B Step 2
35 i. Justin Melbourne
36 ii. Andrew Nothe
37
38 m. Call Firefighter/EMT B Step 3
39 i. Barry Paddock
40 ii. Peter Szarlan
41
42 n. Call Firefighter/EMT I
43 i. John Fitzgerald
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45 o. Call Firefighter/EMT P Step 1
46 i. Ethan Dubois

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- ii. Thomas Edwards
 - p. Call Firefighter/EMT P Step 3
 - i. Kevin Brown
 - ii. Michael Nothe
 - iii. Mathew Walch
 - q. Call Lieutenant
 - i. Rueben Baker
 - ii. Christopher DePace
 - iii. Shane Finnegan
 - iv. Ryan Kiernan
 - r. Call Photographer
 - i. Chris Jacobs
 - s. Probationary Call FF/EMT B Step 1
 - i. Lisa Hermanson
 - ii. Daniel Hope
 - iii. Ashley Jodoin
 - iv. Sean Reynolds
 - v. Daniel Gackowski
 - vi. Jeffrey Halper
 - vii. Michael Germaine
 - viii. Justin Senecal
 - t. Probationary Call FF/EMT-P Step 1
 - i. Jennifer Ashe
9. There is no dispute that the following call employees are not eligible to vote in an election held for the purpose of determining whether a majority of the employees in the above-described stipulated bargaining unit desire to be represented by the Union:

Auxiliary Firefighter
Nicholas Lloyd

Probationary Auxiliary Firefighter
Haley Fountain

Call Assistant Chief
Marty Harris
Jonathan Miller

Call Chaplin
John Brennan

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Call EMT B Step 3
Carolyn Bousquet

Call Firefighter Regular
Justin Dufault
Nicholas Loglisci
Timothy Mascaro

Call Firefighter Spare
Brendon Lloyd
Samantha Lloyd

Call Firefighter/Driver/Operator
Jeremy Bedson
Daniel Rioux

Call Firefighter/EMT B Step 2
Justin Melbourne

Call Firefighter/EMT B Step 3
Barry Paddock

Call Firefighter/EMT P Step 3
Mathew Walch

Probationary Call FF/EMT B Step 1
Daniel Gackowski
Jeffrey Halper

Town and Fire Department Background

10. The Town has a land area of 44.3 square miles and an approximate population of 8,500.

11. The Town operates one centrally located fire station from approximately the center of the Town.

12. The Fire Department provides the following services to the community: fire suppression, fire prevention, fire inspections, public fire and life safety education, plan review, rescue, and emergency medical services at the Basic Life Support and Advanced Life Support (Intermediate) levels of service.

- 1 13. The Town's current vehicle inventory consists of three pumpers, one heavy
2 rescue, one tanker/tender, one brush unit, and two ALS ambulances. The Town
3 also has a UTV Mule vehicle for off-road use for rescue, EMS and forest fire
4 situations. Vehicles are only staffed to the extent that sufficient personnel
5 respond to a call to provide staffing.
6
- 7 14. The Town operates an ambulance service licensed at the Advanced Life
8 Support-Intermediate level of care. The Town is actively pursuing an upgrade of
9 this license to the Advanced Life Support (Paramedic) level of service.
10
- 11 15. The Town has typically set the combined staffing level cap for the Fire
12 Department at 50 personnel excluding the administrative assistant to the Fire
13 Chief.
14
- 15 16. Auxiliary firefighters, call firefighter/EMTs, call EMTs, the call photographer and
16 call drivers are subject to reappointment annually. Full-time firefighter/EMTs,
17 lieutenants, captains, the deputy chief, assistant chiefs and the chaplain are
18 subject to reappointment every three years.
19
- 20 17. In 2014, the Town utilized approximately 45 call firefighters and firefighter/EMTs
21 (including call assistant chiefs, captains, lieutenants, drivers, and EMTs) to
22 supplement the full-time firefighter/EMTs.
23
- 24 18. The job descriptions, hiring procedures, roles and responsibilities of full-time and
25 call personnel are identical with the following exceptions:
26
 - 27 a. The Town requires newly appointed call firefighter/EMT personnel to
28 complete a department run recruit training program within one year of
29 appointment, to make at least 80 percent of training sessions, and to
30 attend the Massachusetts Firefighting Academy Call/Volunteer Training
31 program and become firefighter I/II certified within two years of
32 appointment to the department or within 2 years of their eighteenth
33 birthday.
34
 - 35 b. The Town requires call firefighters to become Emergency Medical
36 Responders but does not require call personnel to become EMTs. On call
37 firefighters and firefighter/EMTs also serve a one year probationary period.
38
- 39 19. In 2013, the Town of Monson adopted M.G.L. Chapter 48 § 42, the "Strong Chief
40 Law" via Town Meeting.
41
- 42 20. Both the call employees and the full-time employees are governed by the rules of
43 the Town of Monson Personnel Policies and Monson Fire Department
44 Management Plans. The rules are applicable to all personnel.
45

1 Fire Department Command Structure

- 2
- 3 21. The Command/Managerial Staff of the Department consists of four chief officers:
- 4 the full-time Fire Chief, two paid call Assistant Fire Chiefs, and a full-time Deputy
- 5 Fire Chief.
- 6
- 7 22. The Command Staff is responsible for all managerial responsibilities including,
- 8 among other things, supervising and disciplining personnel and developing
- 9 departmental budgets and policies.
- 10
- 11 23. The Company Officers consist of two call fire captains and four call lieutenants.
- 12
- 13 24. The Fire Department is divided into two platoons that are further divided into four
- 14 companies. Each platoon is commanded by a Captain who is charged with the
- 15 leadership, management and supervision of that Platoon. Each company is
- 16 headed by a Lieutenant who is charged with the leadership, management and
- 17 supervision of that company.

18

19 Shift Coverage

- 20
- 21 25. The Fire Department has three types of shifts:
- 22 a. regular assigned shifts filled by full-time personnel
- 23 b. per diem shifts filled by call personnel
- 24 c. standby shifts filled by full-time or call personnel
- 25
- 26 26. Only personnel who have an EMT or Paramedic certification are allowed to work
- 27 shift and/or station coverage duties.
- 28
- 29 27. Call firefighters who are Emergency Medical Responder certified only, may not
- 30 fill these shifts because they do not have an EMT or Paramedic certification and
- 31 cannot staff the ambulance.

32

33 Station Coverage Shifts Filled by Full-Time Personnel

- 34
- 35 28. Full-time staff work at the Fire Department 20 hours a day, Monday through
- 36 Friday, in two shifts. The day shift is 7:00 AM to 5:00 PM and the night shift is
- 37 from 5:00 PM to 3:00 AM.
- 38
- 39 29. Two full-time staff, Deputy Chief Brian Harris and firefighter/paramedic Matthew
- 40 Sterling, work Monday-Friday 7:00 AM to 5:00 PM.
- 41
- 42 30. Two full-time staff, firefighter/EMT-Intermediates Todd LaCosse and David
- 43 Martin, work Monday-Friday 5:00 PM until 3:00 AM.
- 44
- 45 31. Full-time staff are not assigned to work at the Fire Department on weekends.
- 46

1 Station Coverage Shifts Filled by Call Personnel
2

3 32. One call firefighter/EMT or one call EMT works one per-diem day shift Monday
4 through Friday from 8:00 AM to 4:00 PM at the Fire Department. Different
5 personnel work different days of the week.
6

7 33. Two call firefighter/EMTs or call EMTs work weekend shifts at the Fire
8 Department. The weekend day shift is from 7:00 AM to 5:00 PM and the
9 weekend night shift is from 5:00 PM to 7:00 AM.
10

11 Standby Coverage Shifts
12

13 34. The Town has standby shifts Tuesday through Saturday from 3:00 AM until 7:00
14 AM.
15

16 35. Two call or full-time Firefighters/EMTs or EMTs³ work the Tuesday through
17 Saturday standby shifts.
18

19 36. Personnel working the standby coverage shifts are not required to be at the Fire
20 Station, they are not restricted in their personal activities while on standby other
21 than they must be in a reasonable response area, but they respond in the event
22 of a fire or medical emergency. Personnel are paid \$20.00 standby pay per call
23 slot. They are paid their hourly rate if they are dispatched to an emergency
24 during that period.
25

26 37. In FY 2014, but discontinued in FY 2015, the Town had weekend standby
27 ambulance coverage shifts. The standby day shift was 7:00 AM until 5:00 PM.
28 The standby night shift was from 5:00 PM until 7:00 AM. Both full-time and call
29 personnel could voluntarily sign up for these standby slots on a calendar on the
30 EMS bulletin board. Personnel were paid \$100.00 standby pay per standby slot.
31 With the exception to perform an inventory and inspection of the ambulances,
32 personnel on standby were not required to be at the Fire Station, they were not
33 restricted in their personal activities while on standby other than they must be in
34 a reasonable response area. Upon being alerted to an emergency they would
35 respond to the station to get the ambulance then respond to the emergency
36 scene. They were paid their hourly rate when dispatched to an emergency during
37 that period. Two call or full-time Firefighter/EMTs were on standby during these
38 shifts.
39

³ The parties stipulated that: “[t]he EMTs are grandfathered. There are only two EMTs and they are allowed to work the Tuesday through Saturday standby shifts.”

1 38. A standby fire response crew, that may consist of a duty officer (assistant chiefs,
2 deputy chiefs, captains and lieutenants), a driver, and two firefighters or
3 firefighter/EMTs, responds to all-call alarms weekday evenings and weekends.
4 The standby fire response crew standby shifts are Monday through Friday 5:00
5 PM to 7:00 AM. The weekend standby shifts are from 7:00 AM to 5:00 PM and
6 5:00 PM to 7:00 AM. Call firefighters and firefighter/EMTs may sign up on a
7 calendar located at Fire Headquarters on a bulletin board for individual standby
8 shifts. There is no requirement to staff these positions except for the duty officer.
9 They are completely voluntary and serve only to ensure that at least one piece of
10 apparatus responds to any potential call. The duty officer is paid \$20.00 per
11 standby shift, the driver is paid \$15.00 per standby shift and the firefighters are
12 paid \$10.00 per standby period. Personnel are paid their hourly rate for any still
13 alarm⁴ attended during their standby shift.
14

15 39. Coverage to fill in for a full-time firefighter/EMT who is on vacation, or to fill a per
16 diem weekday or weekend shift is accomplished by interested call personnel
17 submitting the days they are available to work to the Deputy Fire Chief who then
18 places their names on the schedule based on their personal availability and
19 desire to cover these shifts.
20

21 40. If an unexpected absence occurs just prior to the start of a shift or if an employee
22 becomes ill while covering a shift a variety of techniques may be used to get
23 coverage (i.e.: phone texts, radio tones, phone calls, and E-mails).
24

25 41. When working shift scheduling the Town initially sets a limit on part-time
26 employee hours to 19.5 hours per week. If after receiving desired dates from
27 personnel who wish to staff part-time and per diem shifts vacancies remain on
28 the schedule, call employees may sign up through the Deputy Chief to cover
29 these vacancies or may respond to tone/beeper notifications for unanticipated
30 emergency situations (i.e. emergency calls, coverage for sick full time members,
31 if a shift is vacant and needs filling).
32

33 Second Ambulance Alarm Responses

34

35 42. If a second emergency medical call is received, central dispatch will tone out for
36 two available call or full-time firefighter/EMTs to respond to the emergency
37 medical call. The minimum crew configuration consists of two personnel to staff
38 the ambulance.
39

⁴ The parties did not define the term "still alarm."

1 43. Firefighters who are not EMTs may respond to emergency medical calls to staff
2 an ambulance only if two Firefighter/EMTs or EMTs accompany them. These
3 firefighters may only respond if requested by the EMTs. They may not self-
4 dispatch.

5 General "All-Call" Alarm Responses

6
7 44. Off duty full-time firefighters/EMTs, call firefighters, call firefighter/EMTs, and
8 EMTs are notified of a general "all-call" alarm by pagers/beepers and choose
9 whether to respond to an alarm based on their availability. A general alarm or
10 all-call is an event requiring additional staffing.

11
12 45. All-call alarms are the only time, other than training, that all available members
13 are requested to work.

14
15 46. The total number of all-call alarms in FY2014 was 186 out of 264 fire calls. The
16 total number of all-call alarms for the first quarter of FY2015 was 34 out of 52 fire
17 calls.

18
19 47. There are no requirements placed on call firefighter/EMTs with respect to the
20 number of alarms that an employee must respond to on an annual basis nor are
21 there any minimum hour requirements with respect to time spent responding to
22 alarms. The Town does monitor the number of hours each call firefighter works
23 responding to alarms on a monthly basis. Call firefighters are expected to
24 respond to a reasonable number of alarms. Failing to respond to a reasonable
25 number of alarms may subject call firefighters and firefighter/EMTs to removal or
26 non-reappointment.

27
28 Payments/Salaries

29
30 48. For Fiscal Year 2014, the full-time firefighter/EMTs were paid as follows:

- 31
32 a. Full-time Firefighter/EMT-I David Martin - \$21.65 per hour and \$32.48 per
33 hour for overtime;
34
35 b. Full-time Firefighter/EMT-I Todd LaCosse - \$20.45 per hour and \$30.68
36 per hour for overtime;
37
38 c. Full-time Firefighter/EMT-P Matthew Sterling - \$20.45 per hour and \$30.68
39 per hour for overtime.
40
41 d. Additionally, full-time firefighter/EMTs are provided with an annual clothing
42 allowance of \$500.00.
43
44 e. Full-time firefighter/EMTs are also eligible to work outside details at \$30
45 per hour.
46

1 49. In 2014, full-time firefighter/EMT-I Martin earned \$69,253.68 from the Town, full-
2 time Firefighter/EMT-I LaCrosse earned \$58,181.15, and full-time
3 Firefighter/EMT-P Matthew Sterling earned \$8,344.81.⁵
4

5 50. In regard to full-time personnel, the Town follows FLSA 7 (k) exemption. The
6 employees are eligible for overtime pay at time and one half after 106 work hours
7 in a 14-day period.
8

9 51. Call personnel are paid an hourly rate for all time spent in response to an alarm,
10 training, shift coverage, or ambulance call. For Fiscal Year 2015, the following
11 hourly rates are paid: (1) auxiliary firefighter \$8.00 per hour, (2) call firefighter
12 spare \$11.23 per hour, (3) call firefighter regular \$12.31 per hour, (4) call
13 firefighter/EMT-B \$14.33 to \$15.85 per hour, (5) call firefighter/EMT-I \$15.85 to
14 17.83 per hour, (6) call firefighter/EMT-P \$16.66 to 18.36 per hour, (7) call
15 firefighter/driver \$14.31 per hour, (8) call lieutenant \$18.00 per hour, (9) call
16 captain \$20.00 per hour, (10) call assistant chief \$22.00 per hour, call
17 photographer \$12.31 per hour. Additionally, call officer positions receive an
18 annual "rank pay" in the following amounts: lieutenants \$500.00, captains
19 \$1,000.00, assistant chiefs \$2,000.00. The department also has a fire chaplain
20 who does not receive a salary.
21

22 52. Call firefighters and firefighter/EMTs do not receive employee benefits. They are
23 covered under the Town's accident insurance policy for work related injuries.
24

25 53. There are no set minimum pay hours per call. The current policy is to pay for a
26 minimum of 0.5 hours per call. Increments thereafter are always rounded up to
27 the nearest quarter hour. This is an unwritten policy.
28

29 Training
30

31 54. Full-time firefighter/EMTs are required to successfully complete training and
32 certification at the Firefighter I and II level before being hired. Additionally, the
33 Town requires that prior to becoming a full-time firefighter/EMT, the applicant
34 must be EMT certified at the paramedic level and maintain this credential as a
35 condition of employment. None of these requirements pertain to applying for
36 becoming a call firefighter. Finally, an applicant for a full-time firefighter/EMT
37 position is also required to complete a one-year probationary period.
38

39 55. Fire line training is held on the first Monday of each month. Officer training is held
40 on the second Monday of each month, and EMS training is held on the third
41 Monday of each month.

⁵ Sterling did not start work until April of 2014.

1 56. The minimum number of hours of proficiency training per month is 2.5 hours for
2 fire suppression personnel and 2.5 hours for EMS personnel for a minimum of
3 ten months.

4
5 57. In addition to monthly training, the Department conducts approximately 3
6 weekend training sessions a year.

7
8 58. The Department also requires annual CPR, AED and Emergency Medical
9 Responder training.

10
11 59. The Town's practice has been to permit the use of training from other emergency
12 service organizations and fire departments in which employees are employed to
13 satisfy certain training requirements of the Town.

14
15 60. Except as set forth in paragraph 47, the training sessions are the only required
16 work hours for call firefighters and firefighter/EMTs.

17
18 Other Town Bargaining Units

19
20 61. The Town currently recognizes the American Federation of State, County, and
21 Municipal Employees (AFSCME), State Council #93, Local #1725, Monson
22 Chapter, as the exclusive bargaining representative for the Town Clerical staff,
23 Water/Sewer Department, Highway Department, and full and part-time
24 communication employees.

25
26 62. The Town currently recognizes the International Brotherhood of Police Officers,
27 Local 423 as the exclusive bargaining representative of the Town's full and part-
28 time police officers.

29 Findings of Fact

30 Call Employees at Issue

31 In FY14 and FY15, the Fire Department employed 38⁶ and 49⁷ call employees,
32 respectively. In November of 2014, the Fire Department employed 46 call employees.
33 The parties stipulated that 18 of those call employees with 12 different titles are

⁶ We make this finding based on Joint Exhibit 7A, FY14 Total Fire and EMS Calls, which lists 38 call employees. (Stipulation 17 provides that the Town utilized 45 call employees in 2014, not FY14.)

⁷ We make this finding based on Joint Exhibit 7B, FY15 Total Fire and EMS Calls, which lists 49 call employees. (Stipulation 8 lists 46 call employees that worked for the Department in November of 2014, not all FY15 employees.)

1 ineligible to vote in a representation election. The 12 titles fall into 7 general positions:
2 Call Auxiliary Firefighter, Call Assistant Chief, Call Chaplin, Call EMT, Call Firefighter,
3 Call firefighter/Driver/Operator, and Call Firefighter/EMT.

4 The parties disagree about whether 28 call employees with 17 different titles are
5 eligible to vote and become bargaining unit members. The 17 titles fall into 9 general
6 positions: Call Captain, Call Lieutenant, Call Firefighter/EMT, Call Firefighter, Call
7 Firefighter/Driver/Operator, Call Driver/Operator, Auxiliary Firefighter, Call EMT, and
8 Call Photographer. The 9 general positions can be divided into 4 basic groups: 1)
9 firefighter/EMTs; 2) EMTs; 3) firefighters; and 4) non-firefighter/non-EMTs.

10 Call firefighter/EMTs work weekday and weekend per diem shifts, standby shifts,
11 and respond to second ambulance alarms and all-call alarms. Call EMTs also work
12 weekday and weekend per diem shifts, and respond to second ambulance alarms and
13 all-call alarms. Also, two grandfathered call EMTs work standby shifts. Non-EMT call
14 firefighters respond to all-call alarms and may respond to second ambulance alarms in
15 limited circumstances. Non-firefighter/non-EMT call employees, namely, the
16 photographer, appears on scene at any time to document Fire Department activities, but
17 performs no firefighting duties. On a couple of occasions, the Chief has asked the
18 photographer to document a specific event.

19 Call Personnel Shift Coverage Scheduling

20 Two months in advance of scheduling shifts, the Deputy Chief Brian Harris
21 (Harris) emails call firefighter/EMTs and EMTs and asks them to submit days and times
22 that they are willing to work particular shifts. Based on the dates and times that each
23 call employee volunteers to fill, the Deputy Chief assigns shifts, and posts monthly

1 assignments about two weeks before the month starts. The Fire Department only
2 assigns shifts in conjunction with call employees' availability. Assignments are
3 predicated on the call employees telling the Fire Department that they are willing and
4 able to work a future shift. The Fire Department does not tell call employees that they
5 are expected to work any specific date and time, and does not order or direct call
6 employees to work any shift that they do not want to work.⁸

7 The job descriptions for call firefighter/EMS/Paramedic/EMTs like those of their
8 full time equivalents, reflect that they are expected to perform housekeeping/yard work,
9 equipment and truck maintenance duties, dispatch duties and respond to alarms and
10 other tasks assisting in the operation of the Fire Department when they are "standing
11 watch in quarters."

12 General Order 14-001

13 By email dated September 11, 2014, Deputy Chief Harris issued General Order
14 14-001 that stated, in relevant part:

15 We do not have money allotted in the budget to pay personnel to show up
16 to calls because they thought the crew needed assistance, additionally it is
17 inappropriate for personnel to assign themselves hours of work. In
18 accordance with the Town of Monson personnel policies work hours are to
19 be assigned by the department head or their designee. While there will be
20 times a crew does need assistance it is the responsibility of that crew to
21 notify central of the need and central will tone appropriately.
22

23 General Order 14-001 addresses call personnel "freelancing" by prohibiting call
24 employees to "self-dispatch." The Fire Department must authorize call personnel to

⁸ Although at the June 1, 2014 Annual Fire Department Meeting, Fire Chief Laurent McDonald (McDonald) said that, if necessary, he would order call personnel in to cover FY15 EMS shifts, the Chief has never ordered call personnel to cover any shifts that they have not requested to work.

1 work and dispatch call personnel to incidents.

2 Training

3 The Fire Department mandates that call firefighters/EMTs, firefighters, and EMTs
4 be trained. Call employees must have CPR, AED and Emergency Medical Responder
5 training. Within one year of appointment, call firefighter/EMS personnel must complete
6 a Department run recruit training program, attend at least 80% of training sessions, and
7 attend a training program to become firefighter I/II certified within two years or by their
8 18th birthday.⁹

9 In addition, the Fire Department requires call employees to meet minimum
10 monthly proficiency training requirements. Fire suppression personnel and EMS
11 personnel must attend a minimum of 2.5 hours of proficiency training per month for 10
12 months.¹⁰ The Fire Department holds monthly training sessions on the first three
13 Mondays of each month in fire line training, officer training, and EMS training,
14 respectively. The Fire Department also holds three weekend training sessions annually
15 on subject matter such as summer water rescue, winter ice rescue, extrication, tanker
16 operations, and relay pumping.

17 The record contains conflicting information about whether the Fire Department
18 mandates call personnel to attend all of the Fire Department's training sessions.
19 Section 3.1.6.4 of the Fire Department Management Plans states:

⁹ There is no testimony in the record that clarifies whether newly appointed call firefighters must attend 80% of the Fire Department's recruit training program, or 80% of all Department training programs in general. However, this is not a material fact.

¹⁰ There is no testimony in the record that clarifies the minimum training requirements for firefighter/EMTs.

1 Participating in training by all personnel is mandatory. Anyone missing a
2 training day is required to make arrangements with their company officer
3 to make up training they missed.
4

5 However, stipulation 59 provides that the Town permits the use of training from other
6 emergency service organizations and fire departments in which employees are
7 employed to satisfy "certain training requirements" of the Town.¹¹ Thus, notwithstanding
8 the language of Section 3.1.6.4 of the Fire Department Management Plans that
9 personnel may not miss a training day, the Fire Department in practice does not require
10 call employees to attend all of the training sessions at the Fire Department.
11 Accordingly, we find that call employees are subject to a mandatory minimum of 2.5
12 hours of proficiency training per month for 10 months, but are not required to attend a
13 baseline number of training hours physically at the Fire Department.

14 Reporting System

15 The Fire Department uses the Image Trend reporting system to manage payroll
16 and track Department activities, including incident response rates for individual
17 personnel. The Fire Department offered Image Trend training to all members of the
18 Department prior to November of 2013. Call firefighter/EMT Michael Nothe (M. Nothe)
19 led the training program.¹² The Department offered employees vendor web based
20 training, in-house classes from experienced colleagues, and private classes with Mike
21 Walsh (Walsh) and M. Nothe.¹³ M. Nothe recommended to the Chief that training be

¹¹ There is no testimony to clarify the phrase "certain training requirements."

¹² M. Nothe has worked for the Fire Department for 8 years. For the last 3 years, he has been a full-time employee in the Longmeadow Fire Department.

¹³ Firefighter/EMT Kevin Brown (Brown) testified that the Department had not trained him on how to enter reports into the Image Trend database. He did not elaborate on

1 mandatory, especially for medical providers because of patient care reporting
2 requirements. However, there is no evidence that the Chief mandated Image Trend
3 training for employees.

4 Employees use the Image Trend system to file both National Fire Incident
5 Reporting System reports (NFIRS reports) and Electronic Patient Care Reports (EPCR).
6 The Fire Department has trained most firefighters and officers in EMS and fire reporting
7 duties through Department leadership personnel and web based programs.¹⁴ Although
8 the Department had not trained M. Nothe on NFIRS, he uses the same system at his
9 full-time position in the Longmeadow Fire Department.

10 The officer in charge of a particular fire call is ultimately responsible for the fire
11 report.¹⁵ However, others may initiate the report. For instance, while working in the
12 dispatch room, call firefighter/EMT Brown has initiated NFIRS reports for officers in
13 charge of calls by entering the incident location, type of alarm (all-call, officer only,
14 paged, or not paged), the apparatus that responded, and the individuals on the
15 apparatus. Chief officers¹⁶ review NFIRS reports and send feedback concerning errors,
16 but NFIRS reports are not subject to the same quality assurance reporting requirements

this point or otherwise explain why he did not pursue any of the training opportunities that the Department offered.

¹⁴ The Chief provided undisputed testimony on this point. Therefore, we do not credit the Union's post-hearing brief allegation that the Fire Department has not held documentation training for employees that use the NFIRS reporting program.

¹⁵ The Fire Department initiates NFIRS reports for cancelled calls. Employee responses to cancelled calls are recorded as response hours.

¹⁶ The parties did not define the term "chief officers."

1 as EPCRs.¹⁷ The Fire Chief does not review all fire reports.

2 The Fire Department uses written incident attendance sheets to ensure that
3 NIFRS reports accurately reflect personnel incident attendance. Employees are
4 required to check in with incident command officers when responding to incidents. It is
5 the employee's responsibility to communicate to the incident command officer that they
6 have responded to a call, even when dispatch cancels a call.¹⁸ The Fire Department
7 transfers the written attendance sheet information into the computerized reporting
8 system. The Fire Department does not use pay sheets to mark attendance or cross-
9 reference payroll with attendance sheets.

10 The Image Trend system tracks fire report completion rates based on mandatory
11 fields of entry. Once users enter all mandatory fields, the system allows users to close
12 out reports as complete. There is no information in the hearing record identifying
13 mandatory fields. Non-mandatory fields include alarm type, personnel incident
14 attendance, and apparatus assignment. Alarm types include all-call, not paged, or
15 officer tone only. The Fire Department uses alarm types to track the personnel alerted
16 on calls. Incident attendance may or may not require users to enter a one person

¹⁷ EPCRs are subject to medical requirements that mandate quality assurance reports.

¹⁸ M. Nothe testified that once every two weeks or so, central dispatch tones out for fire alarm activation but cancels the response. In such instances, he discontinues his emergency response and goes to the station to put in for 30 minutes. Although he testified that there is not always a checksheet at the station, he did not deny the Chief's testimony that employees are responsible for communicating to the incident commander that they responded to a call. Moreover, M. Nothe admitted on cross-examination that recall time is recorded as response hours that he worked for the Fire Department.

1 minimum.¹⁹ Users may enter apparatus without entering the personnel assigned to the
2 apparatus.²⁰

3 There is conflicting testimony about whether inaccurate personnel incident
4 attendance data entry has deflated call employees' alarm response rate data. Brown
5 testified that 90 of 264 fire reports that he reviewed prior to the hearing with the Chief
6 had discrepancies including one non-existent address, apparatus with no assigned
7 personnel, and calls with more apparatus than people. Brown admitted that he and the
8 Chief did not look at the reports "too deeply" except to determine the type of call (paged,
9 not paged, all-call, officer only). He said the discrepancies were "relatively minor,"
10 except for personnel missing from apparatus. Brown also testified that he had
11 "concerns" that the Town had not entered personnel into the database, thereby deflating
12 personal response rates, particularly for all-call alarms. However, Brown provided no

¹⁹ The Chief initially testified that it is not mandatory to enter personnel into the report because everyone in the database would have to be "clicked," but then stated that at least one person must be entered. He then said that he was not sure if one person must be listed to close out a report where an incident is cancelled en route. Brown and M. Nothe did not address whether incident attendance requires a one person minimum. Nevertheless, there is no evidence of any incident with no recorded personnel response. Therefore, minimum response data entry is not a material fact.

²⁰ The Chief testified that he thought that an overall report would flag as incomplete if users entered apparatus with no personnel, but he did not know. Regardless, there is no evidence that apparatus assignments form the basis of incident personnel attendance. Therefore, apparatus assignments are not a material fact.

1 more specific testimony on this point.²¹ He admitted that he had not verified the
2 accuracy of all 264 reports and had not cross-referenced paper checksheets and time
3 sheets with the computerized data.

4 The Chief testified that he and Brown checked 90 reports that were in a category
5 of "other" to determine alarm type. He denied that 90 fire reports had inaccurately
6 entered alarm types and inaccurately recorded responding personnel. The Chief
7 testified that only three people were missing one or two runs out of 1036 total fire and
8 EMS calls, and that he corrected those errors by adding two fire calls for Nothe and
9 Brown, as well as for another person.²² The Chief acknowledged that some reports had
10 apparatus recorded without personnel, but explained that he and Brown had not opened
11 the apparatus section in each of the 264 reports to review crew complement accuracy.²³
12 As with Brown, the Chief had not cross-referenced paper reports with 264 computerized
13 fire reports, but the Chief said that he found the 1036 combined fire and EMS runs
14 together with the personnel numbers to be "in the ballpark of where they should be."

15 We find Brown's testimony too vague to establish that the Fire Department failed

²¹ The Union's post-hearing brief states that, "[o]n many occasions employees are not indicated on the official report as being present for the call." We find no evidence in the record to support this claim. Brown did not testify about the written incident attendance sheets, or the process of transferring that information into the computer system. He did not explain whether there is a connection between incident attendance and apparatus assignments, or whether apparatus assignments are the basis of personnel incident attendance. M. Nothe did not address the issue. He could not remember the last time he was responsible for entering fire report information.

²² Brown did not address this portion of the Chief's testimony.

²³ The Chief was unsure whether the reports with missing personnel assigned to the apparatus were totally complete reports. Brown did not clarify whether the reports with no personnel assigned to the apparatus were complete reports. For reasons stated above, we do not find that apparatus assignments are a material fact.

1 to properly record personnel incident attendance. Neither Brown nor any other call
2 employee testified explicitly that the Fire Department failed to transfer their written
3 incident attendance records into the computer system. In contrast, the Chief identified a
4 few specific errors that he corrected with Brown prior to the hearing. Therefore, we do
5 not find that the Fire Department's personnel incident attendance data entry has
6 deflated the call employees' response rate data.

7 Fiscal Year 2014 Work Statistics

- 8
- 9 • Full-time employees, excluding the Chief, worked a total of 10,789 hours
10 (including training). The hearing record does not specifically include the Chief's
11 hours of work, but all full-time employees are scheduled to work 2600 hours per
12 year.²⁴ Deputy Chief Harris worked 2755.75 hours, firefighter/EMTs LaCosse,
13 Martin, Fitzgerald, and Sterling worked 2698.25, 2752, 2195, and 388 hours,
14 respectively.²⁵
 - 15
 - 16 • 38 call employees worked a total of 6,314.5 hours, including training and
17 emergency calls. Individual hours ranged from a low of 5 hours to a high of
18 1140.65 hours.²⁶ The average hours of work per call employee was 166 hours.
 - 19
 - 20 • Call employees earned a total of \$165,546.32. Individual earnings ranged from
21 \$227.73-\$27,144.33, with an average of \$4,356 per call employee.
 - 22
 - 23 • The Fire Department had a FY14 total of 1036 combined fire and EMS calls with
24 266²⁷ fire calls and 770 EMS calls. Individual call employees attended from 0 to

²⁴ In general, full-time employees are scheduled to work 2600 hours per year, but work about 2700 hours per year with overtime, call backs and extended shifts.

²⁵ In April of 2014 Fitzgerald left to take a full-time position elsewhere, and the Town hired Sterling.

²⁶ The Union states in its post-hearing brief that call firefighter/EMTs "are responsible for covering 156 man hours a week versus 150 man hours a week for the full-time personnel." However, the Union does not identify the source of its assertion, and we find no explicit reference to the Union's claim in the hearing record. We therefore do not include this fact.

²⁷ Stipulation 46 indicates that there were 264 total FY14 fire calls. However, Joint Exhibit 7A, page 3, states in the header that there were 266 total FY14 fire calls. We rely on the data in Joint Exhibit 7A.

1 295 of combined fire and EMS calls, with an average of about 46 calls.
 2 Attendance percentages ranged from 0% to 28.47%. Of 38 call employees, 35
 3 attended fewer than 10% of combined fire and EMS calls. The 3 with more than
 4 10% attendance were: Andrew Nothe (A. Nothe) 28.47%, Amelia Coles (Coles)
 5 14.48%, and Ethan Dubois (Dubois) 11.58%.²⁸ No call employee attended 33%
 6 of combined FY14 fire and ambulance calls.

- 7
- 8 • In FY14, the Fire Department had a total of 266 fire calls. Individual call
 9 employees attended from 0 to 94 of fire calls, with attendance percentages that
 10 ranged from 0 to 35.34%. Of 38 call employees, 2 had attendance that
 11 exceeded 25% of fire calls: A. Nothe 35.34%, and Jeffery Chaffee (J. Chaffee)
 12 30.8%. Thus, one call employee attended more than 33% of FY14 fire calls.
 - 13
 - 14 • The Fire Department had a FY14 total of 186 all-call alarms.²⁹ Individual call
 15 employees attended from 1 to 94 all-call alarms, with attendance percentages
 16 that ranged from .54% to 50.54%.³⁰ Of 38 call employees, 4 had attendance that
 17 exceeded 25% of fire calls: A. Nothe 50.54%, John Fitzgerald (Fitzgerald)
 18 50.54%, J. Chaffee 43.01%, and Jonathan Miller (Miller) 32.8%. Thus, three call
 19 employees attended more than 33% of FY14 all-call alarms.
 - 20
 - 21 • The Fire Department had a FY14 total of 770 EMS calls. Eligible call employees
 22 attended 0 to 201 EMS calls, with attendance percentages that ranged from 0%
 23 to 26.1%. No call employee attended 33% of EMS calls.

24

25 Fiscal Year 2015 (First Quarter) Work Statistics

- 26
- 27 • Full-time employees, excluding the Chief, worked a total of 2790.5 hours
 28 (including training). Harris, Lacosse, Martin and Sterling worked 626, 712.25,
 29 725.75 and 726.5 hours, respectively.
 - 30
 - 31 • 49 call employees worked a total of 2,871.55 hours, including training and
 32 emergency calls. Individual hours ranged from a low of 0 hours to a high of 293
 33 hours. The average hours of work per call employee was 58 hours.

²⁸ Dubois was in college during unspecified point in time. He is now a full-time firefighter in Ludlow and a call firefighter in the Town.

²⁹ Stipulation 44 defines an all-call as an event requiring additional staffing in which the Town notifies off duty full-time firefighters/EMTs, call firefighters, call firefighter/EMTs, and EMTs by pagers/beepers. Employees choose whether to respond to an all-call alarm based on their availability.

³⁰ The Union states in its post-hearing brief that "Call Firefighters are requested to the majority of fire calls, 186 of 264 in FY14 for a total of 71%." In light of our analysis below, we do not find this to be a material fact.

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- Call employees earned a total of \$60,178.56. Individual earnings ranged from \$0 to \$6,223.85, with an average of \$1228.
 - In the first quarter of FY15, the Fire Department had a total of 250 combined fire and EMS calls, with 50³¹ fire calls and 200 EMS calls. Individual call employees attended from 0 to 41 of 250 total fire and ambulance calls, with an average of about 10 calls. Attendance percentages ranged from 0% to 16.4%. Of 49 call employees, 43 attended fewer than 10% of all-calls. The 6 with more than 10% attendance were: Kristie Merrigan (Merrigan) 16.4%, A. Nothe 15.6%, Peter Szarlan (Szarlan) 12%, Fitzgerald 11.2%, Daniel Hope (Hope), 11%, and Coles 10.4%. No call employee attended 33% of first quarter FY15 combined fire and ambulance calls.
 - In the first quarter of FY15, the Fire Department had 50 fire calls. Individual call employees attended 0 to 24 of fire calls, with attendance percentages that ranged from 0 to 48%. Of 49 call employees, 5 had attendance that exceeded 25% of fire calls: J. Chaffee 48%, Justin Senecal (Senecal) 32%, Patrick Jessop (Jessop) 30%, A. Nothe 28%, and Rueben Baker (R. Baker) 26%. Thus, one call employee attended more than 33% of first quarter FY15 fire calls.
 - In the first quarter of FY15, the Fire Department had 34 all-call alarms. Individual call employees attended 1 to 24 all-call alarms, with attendance percentages that ranged from 2.94% to 70.59%. Of 49 call employees, 13 had attendance that exceeded 25% of fire calls: J. Chaffee 70.59%, Justin Senecal (Senecal) 47.06%, Jessop 44.12%, A. Nothe 41.18%, R. Baker 38.24%, Shane Finnegan (Finnegan) 35.29%, Jonathan Bousquet 32.35%, Chris Jacobs (C. Jacobs) 32.35%, Michael Jacobs (M. Jacobs) 32.35%, John Milne (Milne) 32.35%, Benjamin Baker (B. Baker) 29.41%, Joshua McCarthy (McCarthy) 29.41%, and Fitzgerald 26.47%. Thus, six call employees attended more than 33% of first quarter FY15 all-call alarms.
 - In the first quarter of FY15, the Fire Department had a total of 200 EMS calls. Call employees attended 0 to 34 EMS calls, with attendance percentages that ranged from 0% to 17%. No call employee attended 33% of EMS calls.

FY14 and First Quarter FY15 Averages

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- Combined fire and ambulance calls: No call employee averaged 33% attendance.
 - EMS calls: No call employee averaged 33% attendance.

³¹ Stipulation 46 indicates that there were 52 fire calls in the first quarter of FY15. However, Joint Exhibit 7B, page 3, states in the header that there were 50 fire calls in the first quarter of FY15. We rely on the data in Joint Exhibit 7B.

1 employees who lack a sufficient interest in their wages, hours and other terms and
2 conditions of employment to warrant collective bargaining. Town of Lee, 34 MLC 39,
3 45, MCR-06-5218 (October 12, 2007).

4 To decide whether the petitioned-for unit is appropriate in cases involving on-call
5 employees, the CERB first examines whether the call employees' employment
6 relationship with the Town is too insubstantial or casual to justify participation in
7 collective bargaining. Town of Boxford, 35 MLC 113, 118, MCR-06-5239 (December
8 23, 2008). The CERB examines a number of factors, including the employees'
9 continuity of employment, regularity of work, the relationship of the work performed to
10 the needs of the employer and the amount of work performed by employees. Id. No
11 one factor is dispositive. Id. Rather, the CERB examines the function, nature and
12 character of employees' work in relation to the needs of the employer in making this
13 determination. Id. The existence of rights under the Law is not conditioned on an
14 arbitrary number of hours worked per week, much less on a full-time employment
15 standard. Town of Leicester, 9 MLC 1014, 1018, MCR-3265 (May 27, 1982). If the
16 CERB determines that the call personnel at issue are not casual, but are regular part-
17 time employees, the CERB then determines whether they share a sufficient community
18 of interest with other bargaining unit members to warrant their inclusion in the unit.
19 Town of Sturbridge, 29 MLC 156, 161, MCR-02-4998 (February 7, 2003) (Sturbridge II).

20 The CERB has applied these standards on a case-by-case basis in a number of
21 different call firefighter scenarios. In communities where call firefighters are a
22 municipality's sole source of fire protection and the municipality imposes certain
23 requirements upon them, such as requiring them to work a specific or minimum number

1 of shifts, participate in training, and/or be subject to consequences for failing to respond
2 to alarms, the CERB has generally held that the call firefighters are not casual
3 employees. For instance, in Town of Leicester, 9 MLC at 1015-1016, the town required
4 call firefighters to respond to every alarm and attend monthly training sessions.
5 Likewise, in Town of Stow, 11 MLC 1312, 1313, MUP-5281 (December 19, 1984), the
6 town assigned weekly tours of duty on a rotating basis. In both cases, the CERB
7 concluded that the call firefighters at issue were not casual. Id. at 1318; Town of
8 Leicester, 9 MLC at 1019.

9 In similar situations where the municipality exerted some control over on-call
10 employees' employment by, among other things, assigning them to work particular
11 shifts, requiring them to work a minimum number of shifts or undergo regular training,
12 but where the on-call employees were not the municipality's sole source of fire
13 protection, the CERB also has concluded that call firefighters were not casual
14 employees. Thus, in Town of Sturbridge, 18 MLC 1416, 1420, MCR-4002 (May 21,
15 1992) (Sturbridge I), the CERB included call officers in a unit of full-time firefighters
16 because the town required two out of the four call officers to work weekend shifts.
17 Similarly, in Sturbridge II, 29 MLC at 161, the CERB held that part-time firefighters had
18 a sufficient interest in their employment relationship where the town regularly assigned
19 weekend shifts and required attendance at monthly drills. In particular, the town
20 assigned the part-time firefighters to weekend shifts on a rotating basis. Id. at 159.
21 Each firefighter/EMT worked 32 hours every six weeks, or nearly 70 hours each quarter
22 year, excluding standby coverage and monthly drill attendance. Id. at 161.

23 The CERB has taken a different approach in cases where the call employees

1 have total control over their working hours, i.e., in cases where the municipality makes
2 no assignments to on-call employees, does not require them to work a minimum
3 number of hours or shifts, and sets no minimum number of mandatory call responses.
4 In those situations, the CERB has, with judicial approval, granted bargaining rights to at
5 least some of these employees, where it found there was a clear and close relationship
6 between the employees' work and the employer's firefighting needs and where there
7 was sufficient continuity and regularity in the call employees' work. For example, in
8 Town of Wenham, 22 MLC 1237, 1244-1245, MCR-4364 (October 4,1995), *aff'd sub*
9 *nom.* Town of Wenham v Labor Relations Commission, 44 Mass. App. Ct. 194 (1998),
10 the call firefighters were the town's sole source of fire protection but the town did not
11 assign them to regularly-scheduled shifts or require them to respond to any set number
12 of calls. Some call firefighters worked only sporadically, but a good portion of them
13 worked enough hours that their pay constituted a significant portion of their income. Id.
14 at 1245. To distinguish the two groups, the CERB held that call firefighters who
15 responded to at least 33% of all alarms sounded annually had a sufficient continuity of
16 employment to entitle them to collective bargaining rights. Id. This formula was upheld
17 on appeal as "reasonable and susceptible of consistent application." Town of Wenham
18 v. Labor Relations Commission, 44 Mass. App. Ct. at 199. The CERB had previously
19 devised a similar "33% solution" in Boston School Committee, 7 MLC 1947, 1951, MCR-
20 3074 (March 23, 1981), where it held that substitute teachers who worked at least 60
21 days out of the 180-day school year, whether or not consecutive and regardless of
22 location, had substantial continuity of employment.

23 In Town of Boxford, 35 MLC at 118-119, as in the Town of Sturbridge decisions

1 described above, the town did not rely exclusively on call firefighters to meet their
2 firefighting and emergency needs. However, unlike Sturbridge I and II, Boxford did not
3 assign specific shifts or require the call employees to work a minimum number of shifts.
4 Rather, as in Town of Wenham, 22 MLC at 1245, Boxford's call firefighters chose
5 whether to respond to alarms based on their personal availability. Boxford also required
6 them to attend at least 60% of weekly training sessions. 35 MLC at 118-119. To
7 determine which call firefighters had a sufficient continuity of employment to entitle them
8 to collective bargaining rights in that situation, the CERB relied on the standard
9 articulated in Town of Wenham, 22 MLC at 1245, but modified it to account for the
10 mandatory weekly trainings. 35 MLC at 119. Thus, the CERB defined a regular part-
11 time employee as a firefighter who responded, on a compensated basis, to no less than
12 33% of all alarms sounded during the calendar year and who attended no less than
13 60% of the weekly training sessions. Id. The CERB concluded that this formula
14 ensured that those included in the unit enjoyed a substantial employment relationship
15 with the town both in terms of hours worked and demonstrated compliance with the
16 job's requirements. Id. The CERB stated that this formula provided a workable solution
17 for employees whose hours are not regularly scheduled but rather are dependent in part
18 on the demand for their services. Id. The CERB further stated that this formula
19 avoided the problems inherent in conditioning the existence of rights under the Law on
20 an arbitrary number of hours worked. Id.

21 Issues Presented

22 In November of 2014, the Monson Fire Department had 5 full-time and 46 call
23 employees. The parties agreed to the following bargaining unit description:

1 All full-time and regular part-time employees of the Monson Fire
2 Department, but excluding the Chief, Assistant Chiefs, Deputy Fire Chief,
3 and administrative assistant, and further excluding all managerial,
4 confidential and casual employees, and all other employees of the Town
5 of Monson.

6 There is no dispute that, pursuant to the stipulated bargaining unit description, 3
7 full-time firefighter/EMTs are eligible to vote in the representation election. Additionally,
8 the parties stipulated that 18 of the 46 call employees are ineligible voters. However,
9 the parties disagree about whether the remaining 28 call employees are eligible to vote
10 in the representation election.

11 Relying on the precedent described above, the Union argues that the call
12 employees at issue are not casual employees, but rather regular part-time employees
13 subject to assigned shifts and mandatory training sessions. The Union thus contends
14 that as in Sturbridge II, 29 MLC at 161, call employees who work 70 hours per quarter
15 should be included in the unit. Alternatively, the Union argues that, pursuant to Town of
16 Boxford, call employees who respond to 33% of *all-call* alarms should be included in the
17 unit. 35 MLC at 119.

18 In contrast, the Town maintains that the call employees at issue are casual
19 employees who work on a voluntary basis and may satisfy the Town's training
20 requirements with training obtained through other full-time firefighting/EMT employment.
21 Relying on Town of Wenham, and Town of Boxford, *supra*, the Town argues that during
22 FY14 and the first quarter of FY15, call employees worked so infrequently and
23 sporadically that none responded to more than 33% of total Fire Department alarms.
24 The Town rejects the Union's argument that the CERB should limit the measure of call
25 employee response rates to all-call alarms because that category does not encompass

1 the total departmental calls for emergency fire services and does not consider
2 emergency medical services calls. The Town maintains that focusing only on all-call
3 alarms inflates call firefighter response percentages by inaccurately reflecting total Fire
4 Department activity and is inconsistent with Wenham and Boxford.

5 While we agree with the Union that call employees are subject to mandatory
6 training, we disagree with the Union that we should apply the 70-hour per quarter
7 Sturbridge II standard because the evidence shows that employees sign up for shifts
8 based on personal availability and the Town does not assign shifts on a set or rotating
9 basis. We further disagree with both the Union and the Town that we should apply the
10 Town of Boxford 33% alarm response standard, whether measured in terms of
11 responses to all-call, or total number of alarms sounded, because that standard fails to
12 take into account all the hours worked by call employees who staff the regularly
13 scheduled per diem shifts. For reasons explained below, this is a key factor that
14 distinguishes the facts here from those in Town of Boxford. These regularly-scheduled
15 per diem shifts must also be considered when determining whether the employees at
16 issue here have sufficient continuity of employment and regularity of work to justify
17 conferring collective bargaining rights.

18 Preliminarily, we agree that call employees are subject to mandatory training and
19 that this is one factor we should consider in determining call employees' employment
20 status. In addition to training for new hires and CPR, AED, and Emergency Medical
21 Responder certification requirements, call employees are subject to a mandatory
22 minimum of 2.5 hours of proficiency training per month for 10 months. However, unlike
23 in Town of Boxford, where the town required call firefighters to attend at least 60% of its

1 training sessions, 35 MLC at 114, the call employees in this case are not required to
2 attend a baseline number of training hours in-house at the Fire Department. Rather, the
3 Fire Department permits call employees to substitute the Town's training requirements
4 with training obtained through other emergency service organizations and other fire
5 departments for which the call employees work.

6 We next address the Union's argument that the Town assigns call employees to
7 work shifts and, therefore, the 70 hour per quarter standard used in Sturbridge II should
8 be applied here to assess the disputed titles' eligibility to vote in the election. The Union
9 also contends that the Town controls hours available to call employees, limits their work
10 hours, sets irregular schedules, and limits the number of call employees needed for
11 each situation. In support of its position, the Union highlights the phrase in GO 14-0001
12 which states, "it is inappropriate for personnel to assign themselves hours of work."

13 The Union's position ignores that the ultimate decision about whether to work
14 and when to work rests with the call employee, subject only to the availability of open
15 shifts posted by the Deputy Chief. The Deputy Chief assigns call employees to shifts
16 only after they volunteer for open shifts. The Fire Department has never ordered call
17 employees to accept a shift, and call employees are not subject to mandatory call-in by
18 the Chief. There are no sanctions for not volunteering for open shifts. Thus, like the
19 call firefighters in Town of Wenham, 22 MLC 1237, and Town of Boxford, 35 MLC 113,
20 the call employees' personal availability in this case always drives the hours that they
21 work. The fact that the call employees at issue may choose not to sign up for any shifts
22 distinguishes them from cases where call firefighters were required to attend every
23 alarm (Town of Leicester, 9 MLC at 1017-1018), or where they worked a rotating

1 schedule (Sturbridge II, 29 MLC at 161; Town of Stow, 11 MLC 1313). Accordingly,
2 because the Town does not make assignments on a set or rotating basis, this case is
3 distinguishable from Sturbridge II, 29 MLC at 161. We therefore reject the Union's
4 argument that, at a minimum, call employees who work 70 hours per quarter should be
5 included in the unit.

6 We find equally unavailing the Union's alternative argument that call employees
7 who respond to 33% of all-call alarms, rather than to total combined fire and EMS
8 alarms or total fire alarms, should be included in the unit. In evaluating whether call
9 employees' employment relationship is too insubstantial or casual to justify participation
10 in collective bargaining, the CERB examines the function, nature and character of
11 employees' work in relation to the needs of the employer. Town of Boxford, 35 MLC at
12 118. The Union's argument that call employees' relationship with the employer should
13 be measured strictly by all-call alarms disregards the Town's need to have emergency
14 personnel respond to every type of fire alarm and EMS alarms.

15 Moreover, the nature of the work that call firefighter/EMTs, EMTs, and non-
16 firefighter/nonEMTs perform extends beyond responding to all-call alarms. These call
17 firefighter/EMTs also work weekday and weekend per diem shifts, standby shifts, and
18 respond to second ambulance alarms and all-call alarms. Likewise, call EMTs work
19 weekday and weekend per diem shifts, and respond to second ambulance alarms and
20 all-call alarms. Also, two grandfathered call EMTs work standby shifts. Moreover, the
21 non-firefighter/non-EMT photographer may appear at any scene to document Fire
22 Department activities. We acknowledge that non-EMT firefighters respond largely to all-
23 call alarms and may respond to second ambulance alarms only in limited

1 circumstances. However, as explained above, in Boston School Committee, 7 MLC at
2 1951, the CERB held that substitute teachers who worked 60 of 180 days in a school
3 year had a sufficient continuity of employment to enjoy collective bargaining rights.
4 Notably, the CERB did not limit the standard to 1/3 of the number of days that the
5 School Committee actually invited substitute teachers to work. Id. Thus, the fact that
6 the non-EMT firefighters might not be eligible for, or have the opportunity to, respond to
7 most alarms, other than all-call alarms, does not require us to limit our evaluation of
8 bargaining rights here to responses to all call alarms.

9 For similar reasons, we do not limit our evaluation of the Town's employment
10 relationship to call employees to whether they have responded to 33% of *all* alarms
11 sounded in a given year, the standard used Town of Boxford and Town of Wenham. As
12 we emphasize above, unlike in those cases, the nature of the work that these call
13 firefighter/EMTs, EMTs, and non-firefighter/nonEMTs perform extends beyond
14 responding to alarms and includes working regularly scheduled weekday and weekend
15 per diem shifts that are staffed exclusively by call personnel, standby shifts and
16 covering shifts for firefighters who are on vacation or out on sick leave based on their
17 personal availability. The on-going, regularly-scheduled availability of the per-diem
18 shifts demonstrates that the Town has a stable and continuing demand for its call
19 employees' services and that there is a clear and close relationship between call
20 employees' work and the Town's firefighting and emergency response needs. See
21 Town of Wenham, 22 MLC at 1245. Accordingly, in addition to their responses to total
22 combined fire and EMS alarms or total fire alarms, all of the time that call employees
23 spend working on these shifts, in addition to other work that call personnel perform on

1 an hourly-compensated basis, as described above, must be also considered in
2 determining whether any of the call employees here have a sufficient continuity of
3 employment and regularity of work to entitle them to collective bargaining rights. Town
4 of Wenham, 22 MLC at 1245 (continuity of employment and regularity of work assessed
5 by looking at employees' work schedules).

6 We must therefore determine what standard to apply to distinguish the Fire
7 Department's casual employees from regular part-time employees. Where, as here,
8 there is a clear and stable demand for call employees' services, but they work variable
9 hours based on their personal availability, the CERB has held that those employees
10 who work at least 33% of some quantifiable, non-arbitrary standard are not casual
11 employees. See Boston School Committee, 7 MLC at 1951, Town of Wenham, 22 MLC
12 at 145, Town of Boxford, 35 MLC at 119. The parties have stipulated that call personnel
13 are paid an hourly rate for all time spent in response to an alarm, training, shift coverage
14 or ambulance calls and, thus, both alarm responses and shifts covered can be and are
15 measured in terms of hours worked. The record further shows that full-time Fire
16 Department employees are scheduled to work 2600 hours per year. Applying the 33%
17 standard described above, we hold that any call employee who works at least 33%, i.e.,
18 858, of the 2600 hours that full-time employees are regularly scheduled to work, by
19 performing work for which the Town pays them at their hourly rate, i.e.,

1 responding to alarms, training, shift coverage³⁵ or ambulance calls, is not a casual
2 employee, but rather has sufficient regularity and continuity of employment to be
3 deemed a regular, part-time employee entitled to collective bargaining rights. See
4 Boston School Committee, 7 MLC at 1951 (substitute teachers who worked 60 days out
5 of the 180 day school year were entitled to collective bargaining rights).

6 In so holding, we are cognizant of our previous efforts to craft a solution for
7 determining the collective bargaining rights of non-regularly scheduled that avoided the
8 “problems inherent in condition the existence of rights under the Law on an arbitrary
9 number of hours worked.” Town of Boxford, 35 MLC at 114 (citing Town of Lee, 34
10 MLC 39, 45, MCR-06-5218 (October 12, 2007)). However, the number of hours upon
11 which we base our standard here is not arbitrary. Rather, as in Boston School
12 Committee, it is tied to regular employees’ work schedules. 7 MLC at 1951. Further,
13 basing our standard on hours worked in this case provides a simple way to quantify *all*
14 of the work for which call employees are paid on an hourly basis, thus providing a
15 workable way of measuring regularity of work and consistency of employment in the
16 unique circumstances of this case.

17 In the event that one or more call personnel meet the criteria describe above, we
18 next address whether they share a community of interest with the full-time employees.

³⁵ For purposes of this analysis, the hours a call employee spends working on a per diem shift should be counted once, regardless of whether they respond to any alarms during the shift. Further, with respect to standby shifts, the only hours that should be counted are those for which call personnel are paid an hourly rate if they are dispatched to an emergency or respond to a still alarm. The stipulations reflect that employees working the standby shifts are not required to be at the Fire Station and are not restricted in their personal activities while on standby, other than they must be in a reasonable response area. See Stipulations 36, 38.

1 Town of Boxford, 35 MLC at 119 (citing Worcester County, 17 MLC 1352, 1358 (1990)).
2 Other than asserting that all of the call firefighters are casual employees without
3 bargaining rights, the Town does not claim that the call employees lack a community of
4 interest with full-time Fire Department employees.

5 To determine whether employees share a community of interest, the CERB
6 considers factors like similarity of skills and functions, similarity of pay and working
7 conditions, common supervision, work contact and similarity of training and experience.
8 Waltham School Committee, 25 MLC 137, 139, CAS-3220, MCR-4541 (March 1, 1999).
9 No single factor is outcome determinative. Id. Community of interest does not require
10 an identity of interest, provided there is no inherent conflict among consolidated groups
11 of employees. Town of Somerset, 25 MLC 98, 100, CAS-3145 (January 6, 1999). The
12 CERB has consistently found a community of interest among employees who share a
13 similarity of interests and working conditions based upon common supervision and
14 similar work environment. Springfield Water and Sewer Commission, 24 MLC 55, 59,
15 MCR-4603 (January 15, 1998).

16 The record reflects that that the job duties of both groups of employees are
17 essentially the same when responding to fires, medical emergencies and other
18 emergencies as well as when they are providing station coverage. The evidence also
19 shows that the two groups of employees work together, both at the station during the
20 week and when responding to fires and other emergencies. While there are some
21 differences in pay, benefits and training, there is no evidence that they are so significant
22 as to produce inevitable conflict within the unit. Town of Boxford, 35 MLC at 120. We
23 therefore conclude that those call personnel who qualify as regular, part-time personnel

1 share a community of interest with their full-time counterparts.

2 Conclusion and Direction of Election

3 Based on the record and for the reasons stated above, we conclude:

4 1. That a question of representation has arisen concerning certain firefighters of
5 the Town of Monson.

6
7 2. That a unit appropriate for collective bargaining consists of all full-time and
8 regular part-time employees of the Monson Fire Department, but excluding
9 the Chief, Assistant Chiefs, Deputy Fire Chief, and administrative assistant,
10 and further excluding all managerial, confidential and casual employees, and
11 all other employees of the Town of Monson.

12
13 3. That for purposes of this unit the term "regular part-time employee" is defined
14 as :

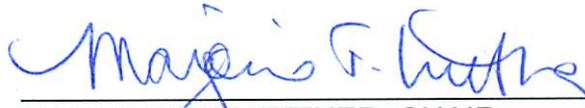
15
16 a. Any employee who has, in the fiscal year preceding the date
17 of this decision, worked at least 33%, i.e., 858, of the 2600
18 hours that full-time employees are regularly scheduled to
19 work, by performing work for which the Town pays them at
20 their hourly rate.

21
22 In or about July 1 of each year, the parties will meet to review information
23 from the prior fiscal year to determine which employees meet the above
24 criteria.

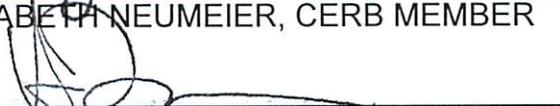
25
26 4. Within fourteen (14) days of this Decision, the Town shall provide the
27 Department of Labor Relations and the Union with an election eligibility list,
28 containing the names and addresses of all eligible voters, as defined above.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD


MARJORIE F. WITTNER, CHAIR


ELIZABETH NEUMEIER, CERB MEMBER


HARRIS FREEMAN, CERB MEMBER