

## MASSACHUSETTS LABOR CASES

CITE AS 12 MLC 1039

TOWN OF WALPOLE V. MASSACHUSETTS COALITION OF POLICE, IUPA (AFL-CIO) LOCAL 115  
WALPOLE AND JAMES DONAHUE, JR., PRESIDENT, DAVID CORMLEY, VICE-PRESIDENT, MARK  
DALTON, TREASURER AND ROBERT ANDERSON, JR., WILLIAM F. BAUSCH, HAROLD HOPE, RICHARD  
R. RYAN, SI-176 (6/28/85). INTERIM ORDER.

108. Strikes  
108.2 withdrawal of services

Commissioners participating:

Paul T. Edgar, Chairman  
Maria C. Walsh, Commissioner

Appearances:

James A. Toomey, Esq.	- Counsel for the Town of Walpole
Alan H. Shapiro, Esq.	- Counsel for the Massachusetts Coalition of Police, IUPA (AFL-CIO) Local 115 Walpole, et al.

### INTERIM ORDER

On June 14, 1985 the Town of Walpole (Town) filed a petition with the Labor Relations Commission (Commission) pursuant to G.L. c.150E, Section 9A. The petition alleges that the Massachusetts Coalition of Police, IUPA (AFL-CIO) Local 115 Walpole (Union), certain named officers of the union including, James Donahue, Jr., President, David Gormley, Vice-President, Mark Dalton, Treasurer, Robert Anderson, Secretary, and certain named individual members including William F. Bausch, Harold Hope and Richard R. Ryan<sup>1</sup> are engaged in conduct violative of G.L. c.150E (the Law).

Specifically, the Town alleges that Robert Anderson, Jr., William F. Bausch, Harold Hope, and Richard R. Ryan have indicated their intent to withhold part of their services as police officers by letter of May 28, 1985, to the Employer announcing that they would resign [their] E.M.T. status. Anderson, Bausch, Hope and Ryan are all emergency medical technicians (EMT) employed as police officers by the Town of Walpole. On June 19 and 21, 1985, an investigation was conducted by the Commission. After careful consideration of all the facts adduced during the investigation and of the arguments of each party, we make the following findings:

1. The Town is a public employer within the meaning of Section 1 of G.L. c.150E (the Law).
2. The Union is an employee organization within the meaning of Section 1 of the Law.

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<sup>1</sup>The Petition had named two additional individual members but the Employer withdrew the Petition as to Steven P. Kenney and David M. Sullivan.



## MASSACHUSETTS LABOR CASES

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3. The officers of the Union are: James Donahue, Jr., President; David Gormley, Vice-President; Robert Anderson, Secretary; and Mark Dalton, Treasurer.
4. The Union is the exclusive collective bargaining representative of "all regular full-time police officers...up through the rank of sergeant."
5. All members of the Union employed by the Town are public employees within the meaning of Section 1 of the Law.
6. The Town and the Union are parties to a collective bargaining agreement effective by its own terms from July 1, 1982 through June 30, 1985.
7. The Town presently employs 35 police officers, including a chief of police. Of that number, 14 police officers currently hold EMT certification. The Police Department has three shifts that are currently staffed, and a swing shift which is currently vacant. The chief of police assigns police officers to each of the shifts and attempts to assign three EMTs to each shift in order to ensure that at least two EMTs are available to work each shift.
8. Since at least 1978 the Police Department of the Town has run an emergency ambulance service. At all times relevant to this petition, the Police Department has been required to have at least two EMTs available on each shift for the purpose of providing the ambulance service. When calls for emergency ambulance service are received at the police station, usually one EMT drives the ambulance to the scene and is met at the scene by a second EMT.
9. For at least one year prior to May 1985, the Police Department also employed a full-time civilian EMT on one shift. The full-time civilian EMT comprised part of the EMT complement on that shift and would respond to emergency ambulance service calls. Since May of 1985, the full-time civilian EMT position has been vacant. Since prior to 1977, the Town has employed additional civilian EMTs on an "as needed" basis. The Town maintains a list of civilian EMTs who may be called when staffing requires an additional EMT on a particular shift. When the Town calls one of the civilian EMTs in to work, the civilian EMT is called for the entire shift, not merely for the time during which there is an ambulance response. The current list of civilian EMTs available to be called consists of four names. Civilians who are called in to work as EMTs function only as EMTs and do not perform other police duties.
10. When an additional EMT is needed for a shift, the Town first offers to police officer EMTs on the Police Department's overtime roster the opportunity to work overtime. If none of the police officer EMTs accept the overtime, the Town then contacts civilian EMTs and invites them to accept the assignment. If none of the civilian EMTs accept the



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assignment, the Chief orders police officer EMTs to "hold over" from one shift to the next to ensure adequate staffing.

11. The dates of hire for the individual respondents are as follows: Harold M. Hope<sup>2</sup> - July 4, 1982; Robert E. Anderson, Jr. - January 7, 1980; Richard R. Ryan - January 7, 1980; and William F. Bausch - January 7, 1980.
12. On April 11, 1978, at a regular meeting of the Board of Selectmen of the Town of Walpole, the Selectmen approved the following policy:

"The Board make it mandatory that any new firefighter or police officer must become an EMT within one year of employment."

Following this vote of the Board of Selectmen, the Chief of Police of the Town made it his practice to inform all applicants being considered for hire by the Town that they would be required to become EMTs within one year of their date of hire by the Police Department. The Chief informed the following employees of this requirement: Robert Anderson, Jr., William E. Bausch, Harold Hope, and Richard R. Ryan. All of the named employees understood that they were required to become an EMT within one year of being hired. Each of the named individuals fulfilled that requirement. Other police officers who have been hired since April of 1978 have been informed of the same requirement. The Police Department currently employs three officers who have not yet received their EMT certification; one officer is now being trained as an EMT; and two officers will be required to undergo such training as soon as they complete their police academy training.

13. At a regularly scheduled meeting of the Board of Selectmen held on April 21, 1981, the Board adopted a policy (herein the 1981 policy) concerning emergency medical technicians in the police and fire departments. The full text of that policy is contained in Appendix A of this Interim Order.
14. Following the adoption of the policy contained in Appendix A, the Chief posted a copy of the policy on a door in the Police Department where notices commonly were posted. The Chief did not post the policy contained in Appendix A where "general orders" from the Police Chief commonly were posted. The Chief left the notice posted for approximately one month. Many police officers including William F. Bausch did not see the posted policy. The Chief did not otherwise inform police officers of the language of the 1981 policy.
15. At least one police officer, who is not now an officer of the Union or a named individual respondent in this case, admits having been aware for approximately one year prior to the investigation of the petition that the Chief of Police took the position that police officers could



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not resign their EMT status. Other officers were aware that sometime during the six weeks prior to the investigation of the petition, the Chief of Police had conversed with police officer Robert Anderson, Jr. concerning Anderson's obligation to maintain his EMT status. Employees were aware that the Chief had told Anderson that Anderson would be fired if he resigned his EMT status. Police Officer William F. Bausch assumed that the Chief's policy toward Anderson was equally applicable to Bausch because they had been hired at the same time. One member of the bargaining unit<sup>3</sup> represented by the Union has told at least one other member of the bargaining unit that police officers cannot resign their EMT status. This conversation occurred within six weeks of the date of the investigation of the petition and at least Officer William F. Bausch was aware of the conversation. The unit member who announced management's position asserted that he was speaking on behalf of "the Town."

16. At least three police officers have ceased being EMTs during their employment with the Police Department. Each of the three officers was hired before April of 1978 and there is no evidence that any of the three officers was disciplined or otherwise adversely affected by his failure to retain EMT status. Since at least 1978 no police officers who were hired on or after April of 1978 have either failed to maintain their EMT status or failed to perform as EMTs when assigned.
17. The collective bargaining agreement effective from July 1, 1982 through June 30, 1985 contains no description of job duties of police officers. The only reference to EMT status is contained in Article 21 of the collective bargaining agreement which contains the following clause:

"The Town will provide a three hundred (300) dollar stipend annually for certified emergency medical technicians. Those who accept the stipend also accept the responsibility to maintain the EMT certification for the contract year in which the stipend was paid or return the stipend promptly."

During the negotiations which led to this agreement, there was no discussion at the table concerning either resignation from or mandatory retention of EMT status. There was some discussion at the table that employees would receive their \$300 stipend at the beginning of the year and that if an employee failed to retain EMT certification during the year, the employee would be required to return a portion of the stipend.

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<sup>2</sup> (From page 1041)

Hope transferred to the Walpole Police Department as a tenured civil servant on July 4, 1982.

<sup>3</sup>The member was identified as Sergeant Betro.



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18. The Town and the Union currently are negotiating a successor collective bargaining agreement. Both sides have made proposals concerning the EMT stipend. As of the first day of the investigation in this matter, the employer had proposed that the EMT stipend be reduced to \$150 per year while the Union had proposed that the EMT stipend be increased to \$3,000 per year. Simultaneous with the negotiations between the Town and the Union are negotiations between the Town and the exclusive collective bargaining representative of certain fire fighters employed by the Town. The Town has proposed that certain ambulance duties be assigned to the fire department and that the responsibility for providing EMT coverage for the ambulance service be shared between the police and fire departments. Neither the Town nor the Union has made proposals concerning performance of EMT duties or retention of EMT status.
19. By letter dated May 28, 1985, Steven P. Kenney, Harold Hope, Robert E. Anderson, Jr., Richard R. Ryan, David M. Sullivan and William F. Bausch, all police officer EMTs, announced their intent to resign as EMTs effective July 1, 1985. A copy of the letter is reproduced as Appendix B to this Interim Order. The May 28, 1985 letter was handed to a representative of the Town by the Union's attorney at the conclusion of a June 5, 1985 bargaining session.
20. No Town job descriptions for Police Officers were submitted at the investigation. The job title of police officer is taken from the Municipal Classification system. In Civil Service Requisition Blanks<sup>4</sup> filed with the Massachusetts Director of Civil Service the Town has identified the duties of the position as "Civil Service Requirements," and has not mentioned EMT duties or certification. The Municipal Classification Manual contains an abbreviated description of illustrative duties of police officers as follows:

"This is responsible general duty police work in protecting life and property through enforcement of laws and ordinances. Work involves responsibility for performing assigned police work of average difficulty and responsibility in enforcement of laws and ordinances, prevention and detection of crime and delinquency, apprehension of violators, preservation of order, gathering evidence, management of potential conflict, and related police functions. Work is performed under supervision in accordance with well established police practice and departmental regulations and frequently involves the performance of hazardous tasks and

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<sup>4</sup> Civil Service Requisition Blanks are filed to requisition an employee for a Civil Service position. In this case, the Requisition Blank indicated that the Town intended to fill a vacant position from a list of eligible applicants who had taken the relevant Civil Service exam.



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the exercise of initiative and judgment in emergency situations which might endanger life and property. No supervision is ordinarily exercised over other employees."

The Municipal Classification Manual does not include a comprehensive description of job duties. Postings contain job descriptions for the posted position. Civil Service exams were given in 1975, 1978, 1981 and 1983. The posting applicable to the 1975, 1978 exams briefly described the duties of a police officer as follows:

"Under supervision and within proper jurisdictional limits, to perform the regular duties of a police officer in order to: identify criminal offenders and criminal activity and, where appropriate to apprehend offenders and participate in subsequent court proceedings; reduce the opportunities for the commission of some crimes through preventive patrol and other measures; aid individuals who are in danger of physical harm; protect constitutional guarantees; facilitate the movement of people and vehicles; assist those who cannot care for themselves; manage or resolve conflict; identify problems that are potentially serious law enforcement or governmental problems; create and maintain a feeling of security in the community; promote and preserve civil order; and provide other services on an emergency basis; and to perform related work as required." (emphasis added).

The 1981 Civil Service exam expanded the description of job duties as follows:<sup>5</sup>

"A police officer works to protect life, property and the civil rights of individuals through enforcement of laws and ordinances. The police officer's work is performed under supervision in accordance with well established police practice and departmental regulations. The job frequently involves the performance of hazardous tasks and the exercise of initiative and judgment in emergency situations which might endanger life and property. No supervision is exercised over other employees. The duties may be divided into several major areas: patrolling, providing service and rendering assistance, applying and enforcing the law, investigating, assisting in prosecution, and documenting and recording. Examples of job tasks involved in the major duties areas are as follows: PATROLLING: [driving or acting as observer in a patrol car; using a radio or walkie-talkie; establishing and maintaining relationships with citizens while on a beat; checking doors and windows of business establishments and unoccupied dwellings; observing suspicious persons and activities likely to lead to criminal acts]; PROVIDING SERVICE AND RENDERING ASSISTANCE: [responding to motor vehicle accidents, domestic

<sup>5</sup>The 1983 Civil Service exam posting is similar in all relevant respects to the 1981 posting.



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disputes and disabled vehicles; assisting or handling intoxicated individual or individual who are either mentally ill, highly emotional or deranged; advising individuals on specific law(s), statute(s), code(s), ordinance(s) and criminal justice procedures; giving general information to individuals; administering first aid and cardio-pulmonary resuscitation; taking custody of property; controlling flow of pedestrians and traffic]; APPLYING AND ENFORCING THE LAW: [issuing oral and/or written warnings or citations to individuals violating the law; responding to crimes; encouraging individuals to comply with the law; making arrests without the use of force; operating a revolver or other weapon; pursuing violators of the law by vehicle; engaging in self-defense; applying apprehension and search techniques]; INVESTIGATING: interviewing complainants or victims; taking statements from witnesses; investigating or observing suspicious person(s) and circumstances; investigating traffic accidents; conducting or participating in the initial investigation of crimes; searching suspects, vehicles or premises; performing security techniques at the scene of a crime]; ASSISTING IN PROSECUTION: [preparing for court appearances; testifying in court; serving subpoenas, summonses and warrants acquiring and maintaining chain of custody of evidence; conducting, booking and searching operations at the station]; DOCUMENTING AND RECORDING: [writing, typing, dictating reports on what was done on duty; completing departmental or court forms; maintaining a personal notebook]; MISCELLANEOUS: [recognizing abnormal or unusual situations; performing other related duties as required]. (emphasis added).

21. EMT certification is not normally required by Civil Service as a qualification for the job of police officer. Nonetheless, the Town may define the duties of its police officers to include functions related to "intrinsic" police duties. Without deciding whether the EMT duties at issue in this case are "intrinsic" to police duties, we find that performance of the EMT duties at issue here, is related to the "intrinsic" duties of police officers in the Town of Walpole.<sup>6</sup>

#### Opinion

Section 9A(a) of the Law reads as follows:

No public employee or employee organization shall engage in a strike, and no public employee or employee organization shall induce, encourage or condone any strike, work stoppage, slowdown or withholding of services.

<sup>6</sup> This finding is based both upon a review of the Civil Service exam postings which describe the job and upon consideration of the expert opinion of Laura Rasmussen, General Counsel, Massachusetts Department of Personnel Administration.



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Section 9A(b) provides recourse to the Commission "[w]hen a strike occurs or is about to occur."

In prior cases the Commission has found a strike within the meaning of Section 9A(a) where employees are refusing to perform some portion of their assigned duties. Lenox School Committee, 7 MLC 1761 (1980); City of Newburyport, 8 MLC 1373 (1981); Southeastern Regional School District Committee, 7 MLC 1801 (1980). In determining whether public employees are engaging in a strike or withholding of services, the Commission considers the following factors: 1) whether the service is one which employees must perform as a condition of employment; 2) whether the service was in fact withheld or is about to be withheld; and 3) the party responsible for the withholding of the service. Newton School Committee, 9 MLC 1611 (1983).

In the instant case, the Union argues that the individual respondents may resign as EMTs because police officers hired after April 1978 were not specifically told that they had to retain EMT certification as a condition of employment. In support of this contention, the Union points to Article 21 of the parties' collective bargaining agreement and urges that we interpret the contract to permit the EMT certification of any police officer to lapse, conditioned only upon the return of the contractual stipend. The Town argues that the respondents' threatened resignation is tantamount to a refusal to accept EMT assignments in violation of Section 9A(a) of the Law.

Certain police officers have regularly been assigned EMT duties since at least 1978 in connection with the Police Department's emergency ambulance service. The Chief of Police assigns at least three EMTs to each of three shifts in order to ensure that at least two EMTs are available to respond to emergency ambulance service calls. "Duties of employment,...include...those practices...which have been performed by employees as a group on a consistent basis over a sustained period of time." Lenox School Committee, supra at 1775. We conclude, therefore, that for the group of police officers who have regularly been assigned EMT duties since 1978, EMT duties have been performed on a consistent basis over a sustained period of time, thereby making them "duties of employment."

In order to perform the assignment of responding to emergency ambulance service calls, police officers must be certified EMTs. All police officers hired subsequent to April 1978, including the individual respondents, understood that they were required to become EMTs within one year of being hired. Each fulfilled that requirement. With the exception of three officers that are in training or are about to undergo training, all police officers hired since April 1978 have received and maintained their EMT certification. The Union on behalf of the individual respondents argues, however, that the requirement to obtain EMT certification does not include the requirement to retain such certification. Thus, the argument concludes, officers hired since 1978 are free to resign as EMTs at any time.<sup>7</sup> We do not agree. Since the assignment to provide emergency ambulance

<sup>7</sup>The Town does not contend that, and we do not consider whether, police  
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service requires EMT certification, employees so assigned must obtain and retain EMT status. It strains credulity to believe that once an officer has agreed to become EMT certified as a condition of hire and accepts ambulance service assignments over a sustained period of time, she or he would not know that the EMT certification necessary to perform those assignments must be retained. Implicit in the duty to provide ambulance service is the obligation to obtain and retain the necessary EMT certification. Resignation by the individual Respondents of their EMT status constitutes a refusal to perform emergency ambulance service assignments.<sup>8</sup> Therefore, the stated intention by certain police officer EMTs to resign as EMTs is a strike or withholding of services that is about to occur in violation of Section 9A(a) of the Law.

Finally, we find that the Union has encouraged and condoned the threatened strike or withholding of services. The announced intention of the individual respondents to resign as EMTs effective July 1, 1985 was delivered to the Town by the Union's attorney and was signed by the Secretary of the Union. By becoming an active participant in the announcement of the employees and taking no action to disavow their intended actions, the Union has encouraged and condoned the threatened strike in violation of Section 9A(a) of the Law.

#### Conclusion

Based upon the above facts, we conclude that the individual respondents are about to engage in a strike or withholding of services and that the Union is encouraging and concurring such action in violation of Section 9A(a) of the Law.

#### ORDER

Accordingly, pursuant to the power vested in the Commission by G.L. c.150E, Section 9A(b), we hereby issue the following order:

1. The Massachusetts Coalition of Police, IUPA (AFL-CIO) Local 115 Walpole, its officers, members, and the employees whom it represents shall immediately cease and desist from encouraging or condoning any strike, work stoppage, slowdown, or other withholding of services.
2. The Massachusetts Coalition of Police, IUPA (AFL-CIO) Local 115 Walpole and its officers shall immediately take steps to notify its members and the employees whom it represents of their obligation to fully

7 (continued)

officers hired prior to April 1978, who were not required to obtain EMT certification within one year of employment as a condition of hire are required to maintain their status as EMTs.

<sup>8</sup> We find nothing in Article 21 of the contract to warrant a different conclusion. The contract is silent concerning the obligation of police officers to perform EMT duties. Rather, the contract describes the obligation of an EMT to return the stipend in the event that the officer ceases to be an EMT. The conditions by  
(continued)



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perform the duties of their employment, including the obligation of employees first employed by the Town since 1978 to fully perform EMT duties. Such notification shall be completed before July 1, 1985.

3. The Massachusetts Coalition of Police, IUPA (AFL-CIO) Local 115 Walpole shall immediately take any necessary steps to inform the members and the employees it represents of the provisions of Section 9A(b) of G.L. c.150E and the contents of this Interim Order. Such notification shall be completed before July 1, 1985.
4. Robert Anderson, Jr., William F. Bausch, Harold Hope and Richard R. Ryan shall immediately cease and desist from engaging in, or threatening to engage in, a strike, work stoppage, slowdown or other withholding of services.
5. Robert Anderson, Jr., William F. Bausch, Harold Hope and Richard R. Ryan shall notify the Chief of Police in writing before June 30, 1985, that they will not engage in, or threaten to engage in, a strike, work stoppage, slowdown or other withholding of services and that they rescind their letter of May 28, 1985 (Appendix B of this Interim Order).
6. The Town of Walpole and the Massachusetts Coalition of Police, IUPA (AFL-CIO) Local 115 Walpole shall continue to negotiate concerning the EMT stipend as part of their negotiations for a collective bargaining agreement and shall report to the Commission on the progress of such negotiations at 10 a.m. on July 1, 1985.
7. The Massachusetts Coalition of Police, IUPA (AFL-CIO) Local 115 Walpole, Robert Anderson, Jr., William F. Bausch, Harold Hope, Richard R. Ryan, and the Town of Walpole shall notify the Commission at 10 a.m. on July 1, 1985 of the steps taken to comply with this Interim Order.
8. The Commission will retain jurisdiction of this matter to set any further requirements that may be appropriate.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS  
LABOR RELATIONS COMMISSION

PAUL T. EDGAR, Chairman  
MARIA C. WALSH, Commissioner

8 (continued)

which an employee might cease to be an EMT are not specified and we decline to construe this silence as a permit for officers hired since 1978 to change the conditions of their employment.



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APPENDIX A

POLICY RELATIVE TO  
EMERGENCY MEDICAL TECHNICIAN  
FOR  
POLICE AND FIRE DEPARTMENTS

- A. It shall be a condition of employment that all Police Officers and Permanent Fire Department Personnel hired after April 11, 1978 obtain and retain certification as an Emergency Medical Technician. Said certification shall be obtained within a year after appointment.
- B. All Police Officers and Permanent Fire Department Personnel hired prior to April 11, 1978 shall be given the opportunity to obtain certification as an Emergency Medical Technician subject to the following conditions:
1. Police Officers and Permanent Fire Department Personnel shall pay for all expenses associated with the Emergency Medical Technician training.
  2. Upon successfully completing the EMT training and being certified by the State as an EMT, the Town will reimburse the Police Officer or Permanent Fire Department Personnel for tuition and required course books.
  3. The Police Officer and Permanent Fire Department Personnel will be allowed to attend classes if they fall in scheduled work nights subject to the prior approval of the appropriate Chief.
  4. Time will be accrued for class time attended during off-duty hours and may be used as lieue-time in the event that the eligible applicant receives EMT certification. Said lieue-time shall be scheduled by the mutual agreement of the Police Officer or Permanent Fire Department Personnel and appropriate Chief.
  5. The appropriate Chief reserves the right to restrict the number of Police Officers or Permanent Fire Department Personnel permitted to take EMT training at any given time. In the event of an unforeseen emergency the Appropriate Chief may require the Police Officer or Permanent Fire Department Personnel to work scheduled shifts even though it results in the missing of an EMT training class(es).
- C. Any Police Officer or Permanent Fire Department Personnel that has an EMT certification or is in the process of obtaining this certification at the time of adoption of this Policy and has not received prior compensation for this training activity shall be reimbursed retroactively in accordance with Section B.



## MASSACHUSETTS LABOR CASES

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### APPENDIX B

May 28, 1985

Effective July 1, 1985, we the undersigned Walpole police officers/E.M.T.'s (emergency medical technicians) will resign our E.M.T. status. Our resignations are predicated on the belief we will be working without a contract as of July 1, 1985. The many current issues and questions relative to the ambulance and the E.M.T.'s prohibits our working without a contract.

When a police contract agreement is finalized all E.M.T. resignations will be rescinded and void.

Any future decision to resign as E.M.T.'s will be a reserved right and a matter for each individual police officer/E.M.T. to decide. Each individual E.M.T. must decide for themselves if the incentive for being an E.M.T. is adequate compensation for the duties, responsibilities, liabilities, and stress associated with being an E.M.T.

(signed)

Steven P. Kenney  
Harold M. Hope  
Robert E. Anderson, Jr.  
Richard R. Ryan  
David M. Sullivan  
William F. Bausch

