WN OF NORWELL AND INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 2700, MUP-5655 (10/15/86).

54.3 management rights
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67. Refusal to Bargain
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mmissioners participating:

Paul T. Edgar, Chairman
Maria C. Walsh, Commissioner
Elizabeth K. Boyer, Commissioner

pearances:

William H. Ohrenberger, Esq. - Representing the Town of Norwell

Matthew E. Dwyer, Esq. - Representing International Association of Firefighters, Local 2700

DECISION

Statement of the Case

The International Association of Firefighters, Local 2700 (Union) filed a arge with the Labor Relations Commission (Commission) on July 3, 1984 alleging at the Town of Norwell (Respondent or Town) had engaged in prohibited practices thin the meaning of Section 10(a)(5) of G.L. Chapter 150E (the Law). Pursuant to ction 11 of the Law and Section 15.04 of the Commission's Rules, the Commission vestigated the Union's charge and on December 17, 1984 issued its own Complaint d Notice of Hearing. The Compliant alleged that the Respondent violated Sections (a)(5) and (1) of the Law by unilaterally transferring bargaining unit work to n-bargaining unit employees.[1] Specifically, the Respondent was charged with affing the fire houses at night with call fire fighters, rather than the full-me permanent fire fighters represented by the Union. Pursuant to notice, the tter came on to be heard before Hearing Officer Robert B. McCormack on four separ-e dates between March 12 and July 10, 1985.[2] Upon the evidence presented, we find d rule as follows:

[1] At the first day of hearing, the hearing officer allowed a motion by the ion to amend the Complaint to allege, in addition, that by its conduct the Respon-nt repudiated the collective bargaining agreement and unilaterally changed em-oyees' terms and conditions of employment. We need not determine whether allowance

(continued; 2, see page 1201)

Findings of Fact

A collective bargaining agreement came into effect between the Union and the Respondent on July 1, 1982. Article VIII, Section (E) of that agreement provided that "Permanent Fire Fighters covered under [it] shall be offered right of first refusal for any extra shifts, or details, such as E.M.T. details. A two-year successor agreement came into effect July 1, 1984. It retained intact the provisions of Article VIII, Section (E) quoted above.

There are both permanent and call fire fighters in the Respondent's fire department. The former are represented by the Union, and the latter were unrepresented at the time of the hearing. There are three fire stations.

Since 1976, the Central fire station has been regularly staffed by three permanent fire fighters between the hours of 6 a.m. to 6 p.m. Station 2, the Ridge Hill station, has normally been staffed by two permanent fire fighters during the same hours.[3] Station 3, the Churchill station, has never been manned on a regular basis. Fire fighters go there when ordered, and drive apparatus parked there to the scene of an alarm.

For some time prior to 1979 or 1980, the permanent fire fighters were regularly scheduled to work a night shift on Wednesdays at the Central fire station in order to complete the 48-hour workweek then in effect. Fire coverage as well as ambulance service was provided by the permanent fire fighters who manned the station on Wednesday nights.[4] As part of an agreement between the Town and the Union in 1979 or 1980 to reduce the workweek of the permanent fire fighters, the Wednesday night coverage was eliminated.

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1 (continued)
of this motion by the hearing officer was proper under Commission Rule 402 CMR 15.05(2), which allows a hearing officer to amend a complaint "provided that such amendment is within the scope of the original complaint," because we do not need to reach that allegation of the Complaint in our decision.

[2]At the last day of hearing, the hearing officer admitted into evidence without objection a transcript of the pertinent portions of the tape-recorded discussion at the Town Meeting held on April 2, 1984, a copy of which was to be forwarded to the Commission after the close of the hearing. The Respondent's subsequent motion to strike the transcript from the record because it was not transmitted by the Union's counsel to Respondent's counsel until after preparation of its brief is denied. Respondent does not allege that it was prejudiced by the late submission, and did not seek leave to submit supplementary argument in the case. Moreover, because the substantive facts concerning the Town Meeting discussions were the subject of testimony by several witnesses, and are not critical to our findings, we perceive no prejudice to Respondent's defense. Respondent's further argument that the transcript is not relevant evidence was not raised before the hearing officer, and is not convincing.

[3]There are ten permanent fire fighters on the force altogether. They are
(continued; 4, see page 1202)

Both permanent and call fire fighters regularly respond to alarms. Although whistles and telephones may be used, the usual method of sounding an alarm is by "toning." When fire fighters receive electronic "tones," they listen for their dispatcher's instructions over a radio which is provided to each of them. In this manner either individual stations or the whole force may be summoned into action. An off-duty permanent fire fighter is allowed to respond to any fire alarm, and is paid extra compensation for doing so. Between the hours of 6 a.m. to 6 p.m., the fire apparatus is driven to the scene of the alarm by the permanent fire fighters. Should fire fighting duties require the permanent fire fighters to work beyond their normal 6 p.m. quitting time, they stay on until the job is finished and the equipment is refueled and returned to proper condition for the next alarm. Employees are compensated for those hold-overs at an overtime rate. Occasionally, due to inclement weather, the Chief may order a shift to be held over beyond 6 p.m. His practice in this regard is to hold over the entire platoon rather than merely one or two permanent fire fighters. Aside from hold-over situations, permanent fire fighters may be called back to respond to alarms occurring between 6 p.m. and 6 a.m. The hold-overs and call-backs both provide overtime opportunities for the permanent fire fighters. Call fire fighters assigned to the Central and Ridge Hill stations ordinarily respond from their homes or places of business directly to the scene of an alarm. Prior to July 1, 1984, when an alarm sounded between 6 p.m. and 6 a.m., some permanent or call fire fighters would proceed directly to the station and drive the apparatus to the alarm. Others would drive directly to the scene of an alarm.

In March 1983, pursuant to a recommendation made at a previous Town Meeting, a Fire Department Study Committee was established. Its members were appointed by the Selectmen, and included Selectman Buono, an Advisory Board member, two members at large,[5] the Fire Chief, a call fire fighter, and two permanent fire fighters.

On October 27, 1983, the Union requested to initiate bargaining for a successor collective bargaining contract.[6] A week later the Union met with Selectman Buono, who spoke for the Town during negotiations. It is unnecessary to describe all of the matters discussed; the meeting was described as an initial "skull session" where general concepts were advanced. These matters included the proposed elimination of a vacant position in the collective bargaining unit, and the creation of a new excluded position of Deputy Chief.

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3 (continued)
equally divided into two platoons, each platoon alternately working four 12-hour shifts, followed by four days off. Thus, it may be perceived that five permanent fire fighters normally work between the hours of 6 a.m. and 6 p.m. at any one time.

[4]Since 1976 the fire department has been responsible for providing ambulance service during the day. Ambulance service at night has been provided by Civil Defense personnel, except on Wednesday nights during the time period discussed above.

[5]One of the members at large was Roger Hughes, the Town moderator.

[6]The new contract would commence July 1, 1984.

The Fire Department Study Committee commenced its deliberations in August 1983, and met every other week. At the January 22, 1984 meeting of the Fire Department Safety Committee, one Committee member, Andrew Reardon, a permanent fire fighter, moved that the department be staffed on a 24-hour basis by permanent fire fighters. The Town moderator expressed approval of the 24-hour staffing concept, but suggested that the evening coverage be handled at less expense by call fire fighters. The concept was further discussed, and the consensus was in favor of 24-hour staffing. There was some discussion about whether staffing the station during the evening hours with call fire fighters would give rise to a bargaining obligation. Eventually, the Committee tentatively voted to recommend as part of its final report that the department be staffed by two call fire fighters between 6 p.m. and 6 a.m. Firefighter Reardon dissented at some length, and cast the only negative vote.

A Selectmen's meeting was held February 14, 1984, and Selectman Buono reported on the progress of the Fire Department Study Committee, which had decided to recommend that the staff of permanent fire fighters remain at ten,[7] and that the sum of $65,000 be added to the budget to staff the fire house 24 hours per day. Following the meeting, the Selectmen met with the Union's bargaining representatives and discussed matters unrelated to staffing the station with call fire fighters.

On March 5, 1984, the members of the Fire Department Study Committee received a copy of the rough draft of the full report containing the final recommendations of the Committee, including the recommendation that the Central fire station be manned at night by call fire fighters. Reardon showed the draft to several co-workers. A Union officer, Steven Jackman, learned about the recommendation, and wrote a letter that day to the Board of Selectmen requesting the opportunity to discuss this recommendation "to hire non-union [personnel] to create a night shift" before the scheduled presentation of the report to the Town Meeting on April 2. At a meeting between the Selectmen and Union representatives on March 6, the Union asked to discuss this issue. Selectman Buono responded, according to the Selectmen's minutes offered as part of Respondent's case, that the report of the Committee had "not yet been finalized and not yet voted by [the Committee, and] would be voted upon at their meeting the following Monday." He stated "that there was [sic] some changes in there which may effect negotiations and that Town Counsel in open meeting with them had warned them of this possibility." Buono suggested that it was "premature" to discuss what the Selectmen had not yet read or studied.

By letter dated March 9, 1984, the Respondent responded to the Union's request to discuss the proposals of the Fire Department Study Committee, and agreed to do so once they received the written recommendations of the Committee.

At its final meeting on March 15, 1984, the Fire Department Study Committee discussed and approved its full report to be forwarded to the Board of Selectmen. Reardon again registered his individual disagreement with the recommendation to employ call fire fighters for station coverage at night, and told the Committee that the Union opposed the proposed change and considered that it had to be bargained.

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[7] In other words, that the vacant position of the eleventh fire fighter not be filled.

As anticipated, several recommendations in the Committee report were placed as articles in the warrant for a vote at the Town Meeting held on April 2, 1984. Article 63 on the warrant concerned the appropriation of $28,000 to pay the call fire fighters to cover the fire station from 6 p.m. to 6 a.m., seven days per week. The voters, upon recommendation of the Selectmen and the Advisory Board, approved this appropriation.

The Respondent did not contact the Union to discuss the subject of using call fire fighters to man the station at night between the time it received the final report of the Fire Department Study Committee and the Town Meeting, as it had promised to do in its March 9 letter.

On March 14, 1984, the Union had requested to resume collective bargaining with the Employer for a successor contract, and offered to meet on March 22. The Employer did not respond until March 22, when it proposed March 26, 27 or 28 for a negotiating session. The Union was unavailable on those dates, and counter proposed March 29 or 30. The Employer's negotiator, Selectman Buono, was unavailable on those two dates. After the Union filed a prohibited practice charge alleging, inter alia, refusal to meet in advance of the Town's budget-making process, the parties agreed to meet on April 5, three days after Town Meeting.

The scheduled April 5 negotiation date was apparently postponed to April 6. At this meeting, the Union raised the subject of the call fire fighters manning the station at night. Selectman Buono remonstrated with them, saying that "he wasn't going to slap the Town of Norwell in the face with something that they had just overwhelmingly mandated at Town Meeting," and it would behoove the Union to "straighten up its act" because of their "poor image in the Town." The Union was charged to "talk to the guys" about their "image," and that the parties would then set up another date to bargain.

The record is somewhat unclear with respect to whether a session was held on April 10. According to Union negotiator Jackman, the next session took place on April 24. The chairman of the Board of Selectmen, J. Richard Hartigan, testified that he and Buono met with Union representatives on April 10, and minutes of a Selectmen's meeting on that date were introduced into evidence. Hartigan, however, conceded that he has no independent recollection of the discussion at that meeting, and the minutes do not indicate that specific discussion on the subject of night coverage by call fire fighters took place with the Union representatives.

Further bargaining sessions occurred on April 24, May 1, May 25, June 6 and June 15. Night coverage by call fire fighters was not discussed, and no proposal was made to change the language of Article VIII, Section (E) which pertains to the Union's right of first refusal for any extra shifts or details.

At a bargaining session on June 18, the Respondent's written proposals were given to the Union. One proposal was to amend Article VIII, Section (E), to provide that "permanent fire fighters covered under this agreement shall be offered right of first refusal for any extra shifts or private details" (emphasis added). This proposal was discussed but subsequently taken off the table by the Respondent. A

final bargaining session was held on June 20. This resulted in consensus on approximately six critical points, and led to the execution of a new agreement and a side agreement pertaining to minimum manning.[8] Article VIII, Section (E) remained as written in the prior contract. The contract and the side agreement were signed on June 26, 1984.

On July 1, 1984 at 6 p.m., two call fire fighters arrived at the Central fire station to work from 6 p.m. to 6 a.m. This was the first time in Norwell's history that call fire fighters were employed to man a fire station. Call fire fighters have been scheduled to man the station daily during those hours since that date. They are paid $35-36 per day, while the permanent fire fighters would cost $60-70 per day.

When an alarm is sounded on their shift, the call fire fighters drive the apparatus directly from the station to the scene of the alarm. This procedure has shortened response time at fires by several minutes, as it was intended that it should.

The effect of the call fire fighters upon the overtime afforded to the permanent fire fighters is disputed. Prior to the current fiscal year, the overtime budget was $8,000. Now it is $47,000. A Union witness, who was formerly persident of the Union, admitted to earning more overtime in the 1985 fiscal year than in the previous one. This increase, however, was due to the minimum manning provision in the new collective bargaining agreement.

As previously described, shifts were sometimes held over due to inclement weather. Since July 1, 1984, there have been no hold-overs of permanent fire fighters for this reason. However, no evidence indicated the existence of a weather emergency, and Chief Merritt testified, without contradiction, that the fact that two call fire fighters man the Central station at night would have no bearing upon a decision whether to hold over or call back an entire shift of permanent fire fighters because of weather conditions.

The Union offered several examples of other overtime opportunities. They included refueling the apparatus, installing tire chains, pumping cellars, rescuing cats from trees, changing batteries and filling Scott air packs. Since July 1, 1984, no permanent fire fighter has been recalled to perform those overtime tasks. The evidence, however, does not establish that these tasks were taken over by the call fire fighters after July 1, 1984. Cellar-pumping was eliminated with the advent of Proposition 2-1/2, and the department no longer maintains pumps for that purpose. Only one instance in the past eight years demonstrates that a permanent fire fighter was called back to change a dead battery. Although permanent fire fighters may have installed tire chains after having been recalled to duty, nobody has been recalled in the evening solely to install chains since 1972. Nor has anyone been called back

[8] In the side agreement the Union, in substance, assented to the reduction of its unit to 10 fire fighters, in exchange for a four-person minimum manning provision.

to refuel apparatus since 1972. The practice was, and continues to be, that when either permanent or call fire fighters return from an alarm, they ready the equipment for the next alarm before they leave the station. This includes refueling the equipment if it must be refueled. It is a practice to refuel during the day when the gas tanks at the highway department are unlocked. There is a notation in a detail sheet that on January 29, 1984, men who were presumably permanent fire fighters "took care off [sic] a Main Street cat in tree" at 1815 hours.[9] This was at best a 15-minute hold-over, and nobody has ever been recalled specifically to attend to cat problems. On one occasion prior to July 1, 1984, a call fire fighter was called in, and paid, to fill a Scott air bottle, which precipitated a grievance which ultimately went to arbitration. On June 19, 1984, the arbitrator ruled that the work was a "detail" under Article VIII(E), and should have been assigned to a member of the bargaining unit.

Since they have been manning the station at night, there have been instances when call fire fighters have cleaned the engines, painted diamond plate, refueled the apparatus and once repacked hose. The refueling was done on a single occasion when they discovered that the day fire fighters did not complete their maintenance before going off duty, and they felt the tanks were too low. The evidence suggests that the engine-cleaning and hose-repacking was done to while away the evening hours. The Chief later instructed call fire fighters not to perform these tasks unless they are incident to a run or the toning of a station.

Opinion

It is apparent that the Respondent unilaterally determined to begin staffing the Central fire station in the evening between 6 p.m. and 6 a.m. Considered by itself, this decision to expand the level of fire services provided in the Town is a core governmental determination which may properly be made without submitting it to the collective bargaining process. Newton School Committee, 5 MLC 1016, 1022 (1978); Town of Danvers, 3 MLC 1559 (1977). However, bargaining about the impact of such a decision on the terms and conditions of employment of organized employees is required. Newton School Committee, supra; Town of Danvers, supra; Lawrence School Committee, 3 MLC 1304, 1310 (1976).

It is also well-settled that a public employer may not unilaterally decide to transfer work which is properly considered bargaining unit work to non-bargaining unit personnel. City of Gardner, 10 MLC 1218 (1983); Town of Danvers, supra.

The Respondent contends that its decision to assign call fire fighters to man the fire station between the hours of 6 p.m. and 6 a.m. is an exercise of its core managerial prerogative with respect to the nature and level of governmental services it will provide, and that it therefore had no obligation to bargain with the Union about that decision. This position blurs the critical distinction between the decision to provide station coverage at night, which need not be bargained with the Union, and the decision to assign that bargaining unit work to the non-unit

[9] In other words, 15 minutes after the shift ended at 6 p.m.

call fire fighters, which must be bargained with the Union. While we agree with the premise that no bargaining was required about the core governmental decision that the fire station would be manned at night, we cannot agree that the decision to have the call fire fighters rather than the permanent fire fighters perform that work is a decision exempted from the statutory duty to bargain with the Union. The decision to assign the bargaining unit work of manning the fire stations to non-bargaining unit personnel is a mandatory subject of bargaining. Town of Andover, 4 MLC 1086 (1977).

The Respondent has apparently ignored this established distinction because of an artificially narrow conception of what should properly be regarded as the bargaining unit work of the permanent fire fighters. It is true, as Respondent notes, that the work of responding to fire alarm calls at night has for many years been a responsibility shared by both the call fire fighters and the permanent fire fighters. Both groups of employees have responded to night-time alarms directly from their homes, and received compensation for this fire-fighting work when they performed it at night. In support of its contention that its decision to man the fire station at night with call fire fighters did not represent an assignment of any bargaining unit work to the non-unit call fire fighters, the Respondent relies upon the fact that both the permanent and the call fire fighters continue to share the night-time fire-fighting work as they did previously. While this is true, the record also establishes that the Respondent has never regularly staffed its firehouses with other than the full-time permanent firefighters.[10] Since it has never historically been shared with the call fire-fighting personnel, the distinct function of staffing, or manning, the fire stations belongs exclusively to the permanent fire fighters and is properly considered bargaining unit work.

The proposition that the Respondent has no duty to bargain over unscheduled overtime also has no application here.[11] The issue is the manning of the evening shifts, which are regularly scheduled. Assuming, arguendo, that the call fire fighters are not now doing any other work, such as packing hose, etc. which the permanent fire fighters might have been called back to do, the fact remains that a new twelve-hour shift was created, and that the manning of the fire stations constitutes unit work.

The Respondent also incorrecity asserts that the permanent fire fighters have never performed the work which it has now assigned to the call fire fighters at night. The record establishes that night-time station coverage, along with ambulance service, was provided by the permanent fire fighters on Wednesday nights for several years prior to 1980 as part of their regularly scheduled workweek. This fact, however, is not critical to our analysis because the proper focus in determining

[10]The record contains no evidence that call fire fighters were ever assigned to man the fire stations at night. Their function was only to provide fire-fighting coverage at night when the fire alarm was sounded, as did the permanent fire fighters.

[11]Unscheduled overtime was discussed in Town of Billerica, 8 MLC 1957 (1982).

what constitutes bargaining unit work is not the time of performance but, rather, the nature of the functions which have been performed exclusively by the bargaining unit members. Town of Watertown, 8 MLC 1376 (1981); Northeast Metropolitan Regional Vocational School District, 1 MLC 1005, 101 15 (1974). Here, the manning of the fire stations has clearly been shown to be a function which has been performed exclusively by the permanent fire fighters.

Having decided that the Respondent has assigned bargaining unit work to non-bargaining unit personnel, we must next decide (1) whether the assignment of such work had an adverse effect upon individual employees or on the bargaining unit itself, and (2) whether the Town gave the Union prior notice and an opportunity to bargain over the decision to assign the work to the call fire fighters. City of Gardner, 10 MLC 1218 (1983); Town of Marblehead, 12 MLC 1667 (1986).

The Respondent contends that its decision to man the fire station at night with call fire fighters did not adversely affect individual employees or the bargaining unit as an institution because there was no evidence that it resulted in the elimination of any bargaining unit position, the layoff of any unit employee, or the loss of any overtime opportunities for unit employees. We disagree. Once the Town decided, as a core managerial prerogative, that station coverage would be provided at night, the bargaining unit members had the right to bargain concerning their performance of that work. By the Respondent's unilateral assignment of the work to non-unit personnel, the unit members lost both the opportunity to perform the work on an overtime basis, and the bargaining unit as a whole lost the opportunity to represent additional members which the Town might have hired to provide this night shift coverage if it chose not to assign it exclusively on an overtime basis. Were we to accept the Respondent's view, an employer could with impunity add a new shift, or new weekend work, for example, to its normal operations, and create a second workforce of unrepresented employees to perform the same work regularly performed by bargaining unit employees during its other hours of operation.

Turning to the question whether the Respondent gave the Union prior notice and an opportunity to bargain over its decision to assign unit work to the call fire fighters, we conclude that the Respondent unlawfully refused to engage in bargaining with the Union, which had timely demanded to bargain about the issue, prior to its decision to assign the work. In so finding, we also reject Respondent's contention that the Union waived its right to insist upon bargaining.

The record clearly establishes that the Respondent's decision to have call fire fighters man the fire station at night was made without first bargaining with the Union as exclusive representative to either impasse or resolution as required by Section 10(a)(5) of the Law. City of Chicopee, Electric Light Department, 5 MLC 1043, 1046 (1978); Scituate School Committee, 9 MLC 1010 (1982). After the Union demanded on March 6 to bargain about the proposed change prior to Town Meeting, the Respondent did not engage in any bargaining with the Union about this issue before the Town Meeting on April 2, at which the change was adopted. In fact, the record establishes that the Town's negotiator, Selectman Buono, refused to bargain when requested by the Union, contending that bargaining was "premature" because the Fire

Department Study Committee's report was not yet finalized.[12]

Once the report was finalized on or about March 15, no bargaining took place before the Town Meeting was held. On March 14, the Union proposed a negotiating session on March 22 at 8 a.m. at the fire station, which the Respondent was unable to attend. Thereafter, two dates were advanced by each side, but rejected by the other as unsuitable. No bargaining occurred until four days after the Town Meeting, when the matter had essentially become a fait accompli.

When the parties did meet four days after the Town Meeting, Buono rebuffed the Union for asserting its rights, and refused to discuss the matter, charging that the Union should "clean up its act" and improve its poor image in the Town. Further events are chronicled in our findings, and need not be repeated here. The Respondent's answer admits that it did not bargain with the Union about the creation of the second shift manned by call fire fighters at any time after the Town Meeting.

The Respondent argues that the Union should be considered to have waived its right to bargain by failing to renew its request to bargain, or by failing to initiate bargaining, on this subject after the decision was made at Town Meeting. The Respondent notes that negotiations between the parties for a successor collective bargaining agreement continued after the date of the Town Meeting until a successor agreement was executed on June 26, but that the Union neither requested to bargain about the assignment of call fire fighters to man the station at night, nor introduced any proposals on the subject, during those negotiations. We reject the Respondent's contention that these facts constitute waiver by inaction on the part of the Union. Once a union which has actual notice of a proposed change makes a demand for bargaining about the change to the employer, the employer bears the responsibility under the Law to ensure that bargaining either to resolution or to impasse on the subject takes place before the change is implemented. Town of Dennis, 12 MLC 1027, 1033 (1985); City of Cambridge, 4 MLC 1620 (H.O. 1977) aff'd 5 MLC 1291 (1978).

In addition, we are not persuaded that the Union waived any rights by having acquiesced in the Town's use of call fire fighters in previous years or by the participation of Firefighter Reardon on the Fire Department Study Committee. Although the call fire fighters were previously used to augment the number of persons responding to a day or night alarm, they were never assigned to man the stations. Stated simply, call fire fighters were never before utilized to perform the bargaining unit work of providing station coverage, so that the Union cannot be said to have waived its right to challenge that change by its historical acceptance of the Town's use of call fire fighters to augment fire-fighting work at night. Nor can the Union be held to have waived any rights by virtue of Firefighter Reardon's participation on the Fire Department Study Committee. Reardon, who was not an officer of the Union, did alert the Committee to the concerns of the permanent fire fighters by speaking and

[12] Selectman Buono, as a member of the Fire Department Study Committee, knew that the Committee's final recommendations, including the recommended change here at issue, were completed in draft form as of March 5.

voting against staffing by call fire fighters. Moreover, no evidence suggests that he possessed any authority to bargain on the Union's behalf.

Finally, we conclude that the Union did not waive its right to bargain about the proposed decision to assign the unit work of staffing the station to non-unit call fire fighters by an untimely demand to bargain. Although the Respondent does not appear to raise this issue explicitly as part of its affirmative defense of Union waiver by inaction, we find that the Union's March 6 demand to bargain was timely. Immediately after a Union officer, Steven Jackman, became aware of the final recommendation of the Fire Department Study Committee, he transmitted a timely demand to bargain to the Respondent on behalf of the Union. When, on March 6, the Union demanded bargaining on the Fire Department Study Committee's proposals, Town Meeting was slightly less than a month away. It was well known that action upon the Committee's recommendations would be taken at Town Meeting. Section 6 of the Law requires an employer to meet in advance of its budget-making process, as indeed it must if negotiations are to be meaningful and effective. The Selectmen's actions subsequent to the Union's bargaining request exhibit a disregard for their statutory responsibility. The Union's March 6 demand afforded the employer sufficient time to bargain had it chosen to do so.

While we note that it is approximately 45% more economical to man the fire station at night with call fire fighters rather than with permanent men, and that it is not surprising that such a notion would appeal to the Fire Department Study Committee and to the Selectmen, it is difficult to understand why so little attention was paid to the rights of the permanent fire fighters, who had requested in early March to bargain before Town Meeting about the recommendation to hire "non-union [personnel] to create a night shift." Although we do not need to base this decision upon benefits granted under the collective bargaining agreement, we also note that Article VIII, Section (E) grants permanent fire fighters first refusal over any extra shifts. Further, the arbitrator's award which issued in June, 1984 in favor of the Union over the Scott air pack issue ought to have served as additional warning that employee rights were at stake.

Therefore, on the basis of the facts presented, we find that the Respondent has unlawfully refused to bargain collectively in good faith with the Union, in violation of Section 10(a)(5) of the Law, by refusing to bargain about the assignment of bargaining unit work to non-bargaining unit employees. Derivatively, it has also interfered with, restrained and coerced its employees in violation of Section 10(a)(1) of the Law by its unlawful refusal to bargain. This violation justifies the imposition of the usual remedial order to restore the status quo and to make whole the fire fighters for their losses occasioned by the Town's illegal action.

Order

WHEREFORE, on the basis of the foregoing, IT IS HEREBY ORDERED that the Town of Norwell shall:

1. Immediately CEASE and DESIST from:

a. Assigning non-unit fire-fighting personnel to staff the fire stations between the hours of 6 p.m. and 6 a.m.;

b. Failing or refusing to bargain in good faith with the International Assocaition of Firefighters Local 2700 concerning the decision to staff the fire stations with firefighting personnel between the hours of 6 p.m. and 6 a.m.;

c. In any like manner, interfering with, coercing or restraining its employees in the exercise of their rights protected under the Law.

2. Take the following affirmative action that will effectuate the purposes of the Law:

a. Upon request, bargain in good faith with the Union to resolution or impasse concerning the decision to assign fire-fighting personnel to staff the fire stations between the hours of 6 p.m. and 6 a.m.;

b. Make whole any permanent firefighter who suffered monetary loss as a result of the Town's decision to assign fire station staffing between 6 p.m. and 6 a.m. to non-unit personnel. The compensation to be paid shall include interest at the rate specified in M.G.L. c.231 Section 6B, with quarterly compounding;

c. Post the attached Notice to Employees in all fire stations in the Town where notices to employees are customarily posted;

d. Notify the Commission, in writing, within thirty (30) days of service of this Decision and Order of the steps taken to comply herewith.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

PAUL T. EDGAR, CHAIRMAN

MARIA C. WALSH, COMMISSIONER

ELIZABETH K. BOYER, COMMISSIONER

NOTICE TO EMPLOYEES
POSTED BY ORDER OF
THE MASSACHUSETTS LABOR RELATIONS COMMISSION
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS

Following a hearing before the Massachusetts Labor Relations Commission, The Commission has found that the Town of Norwell has committed a prohibited practice by assigning call fire fighters to regularly man the fire stations between 6 p.m. and 6 a.m. without giving the International Association of Fire Fighters, Local 2700 an opportunity to bargain. The Labor Relations Commission has ordered us to take certain action to comply with the Law and we will do the following:

1. WE WILL immediately cease and desist from staffing the fire stations with call fire fighters between the hours of 6 p.m. and 6 a.m.

2. WE WILL NOT fail or refuse to bargain with the International Association of Fire Fighters, Local 2700 concerning staffing of the fire stations between 6 p.m. and 6 a.m.

3. WE WILL NOT in any like or related manner interfere with, coerce, or restrain employees in the exercise of rights protected by the Law.

4. WE WILL Make the permanent fire fighters represented by the Union whole for loss of wages occasioned by the regular employement of call fire fighters during the 6 p.m. to 6 a.m. shift, with interest.

5. WE WILL upon request bargain with the International Association of Fire Fighters, Local 2700 concerning the staffing of the fire stations between 6 p.m. and 6 a.m.

_____ _____
SELECTMAN SELECTMAN

_____ _____
SELECTMAN SELECTMAN

_____
SELECTMAN