
WEST BARNSTABLE FIRE DISTRICT AND WEST BARNSTABLE PROFESSIONAL FIREFIGHTERS,
LOCAL ONE, MCR-3945 (6/25/90). DECISION AND DIRECTION OF ELECTION.

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- 43.2 election -- basis for ordering or denying

Commissioners Participating:

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

Appearances:

- Howard B. Lenow, Esq. - Representing the West Barnstable Professional Fire Fighters, Local One
- Paul V. Lyons, Esq. - Representing the West Barnstable Fire District

DECISION AND DIRECTION OF ELECTION¹

Statement of the Case

On November 7, 1989, the West Barnstable Professional Firefighters, Local One (Union) filed a petition with the Labor Relations Commission (Commission) seeking certification as the exclusive collective bargaining representative for a unit composed of full-time fire fighters employed by the West Barnstable Fire District (District). The Commission investigated the petition and, pursuant to notice, the parties appeared for a hearing on February 23, 1990. At the hearing, the parties presented the case through stipulated facts. Following the hearing, both parties filed briefs which have been carefully considered.

¹ Because this case presents issues of Commission policy and involves no factual conflicts requiring credibility determinations, it has been redesignated "formal" pursuant to Rule 13.02(1) of the Commission's regulations, 456 CMR 13.02(1).



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Findings of Fact

The parties stipulated to the following facts, which the Commission hereby adopts as findings of fact:

1. The West Barnstable Fire District is a "Public Employer" within the meaning of Section 1 of M.G.L. c.150E.
2. A question has arisen concerning the representation of an employee of the Employer.
3. The full-time regular career fire fighter is a public employee within the meaning of Section 1 of G.L. c.150E.
4. The West Barnstable Fire District is comprised of only the following personnel:
 - a. One full-time regular permanent uniformed fire fighter
 - b. One fire chief
 - c. Two deputy chiefs
 - d. 31 call fire fighters
5. There are no other bargaining units in the West Barnstable Fire District.
6. The First District has been established pursuant to G.L. c.48, §60. Its Prudential Committee is comprised of three members, all of whom are elected by the voters of the Fire District.

Its Board of Fire Engineers is comprised of the Chief and two deputy chiefs, all of whom are elected by the voters of the Fire District.
7. The call fire fighters do not work regular hours or regular shifts. They report directly to the scene of the fire. They do not respond to every alarm. They have no obligation to respond to every alarm, it is purely voluntary, if they can make it. A failure to respond to an alarm results in no adverse or disciplinary action. They are paid hourly and they receive their pay twice per year, in June and December. Fire fighting is not their full-time occupation. There are variations in the number of hours worked creating irregular hours amongst the 31 individuals.
8. The petitioner seeks a unit of all full-time permanent uniformed fire fighters.
9. The West Barnstable Professional Firefighters Local One is comprised of one member who is the sole officer. West Barnstable Professional Fire Fighters Local One does not represent any employees of any employer.



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10. As of the time of the hearing, the West Barnstable Professional Firefighters Local One had not complied with Sections 13 and 14 of G.L. c.150E.

OPINION

Based upon the stipulations of the parties, we conclude that the call fire fighters employed by the District are casual employees and therefore should not be included in a bargaining unit containing regular employees. We rely upon the fact that the call fire fighters are not obligated to respond to all alarms, and receive no adverse action if they fail to respond to an alarm. Therefore the call fire fighters, as presently comprised, are "casual" employees within the meaning of the Law. Cf. Town of Leicester, 9 MLC 1014 (1982) (detailing the evidence on which the Commission relies to determine whether fire fighters are regular employees). Also based upon the stipulations of the parties, we find appropriate a bargaining unit of all full-time and regular part-time fire fighters in the West Barnstable Fire District excluding all casual fire fighters, the Chief, the deputy chiefs and all other employees of the West Barnstable Fire District.

Next we consider two issues raised by the District: Whether a one-person bargaining unit is appropriate in this case and whether a one-person organization can constitute an employee organization within the meaning of Section 1 of G.L. c.150E (the Law). The District argues that a one-person bargaining unit is inappropriate, citing Town of Dracut, 6 MLC 1057 (1979), Chatham School Committee, 6MLC 1042 (1979), and cases decided by the National Labor Relations Board (NLRB). It also contends that the language of Chapter 150E does not refer to a one-person unit, in contrast to G.L. c.150A, which does. In contrast, the Union argues that the absence of a Commission rule prohibiting one-person units evinces the appropriateness of such units when, as in the instant case, there exists no other unit into which an employee could be placed.

Unlike Chapter 150A, which references single-person units in Sections 2, 3 and 5, Chapter 150E does not specifically address the issue of single-person units. Nevertheless, we do not interpret the lack of a similar reference in Chapter 150E to prohibit one-person units. Chapter 150E imposes a duty to bargain upon public employers and employee organizations with respect to wages, hours and terms and conditions of employment for employees in appropriate bargaining units. A unit of full-time and regular part-time fire fighters is an appropriate unit that happens to contain only one person at the present time. The fact that the unit currently contains only one person does not render it inappropriate per se, because the appropriateness of a bargaining unit is not necessarily affected by its size.²

The Commission has sometimes declined to hold that units limited to a single

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To the extent that NLRB cases hold otherwise, we decline to follow them.



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person are appropriate. See Chatham School Committee, 5 MLC 1345 (H.O. 1978) (concluding that unit consisting of school nurse alone would encourage the proliferation of small units and would not be appropriate, aff'd, 6 MLC 1042 (1979) (finding that school nurse appropriately could be included in another, larger unit, the Commission declined to conclude that one-person bargaining units were inappropriate per se). See also Town of Dracut, 6 MLC 1057 (1979) (Commission declined to hold that one-person units are inappropriate as a matter of law, but found a single dog officer unit inappropriate because position could appropriately be included in other unit(s)). The policy concerns articulated in those cases are inapplicable here, however, because a unit of all full-time and regular part-time fire fighters is not otherwise inappropriate and no other bargaining units exist in the District.

We are similarly unpersuaded that an organization containing only one person cannot constitute an employee organization within the meaning of Section 1 of the Law. As we have noted in City of Haverhill/Hale Hospital, 15 MLC 1334 (1989), and Massachusetts Correction Officers Federated Union (MCOFU), 15 MLC 1380 (1989), the definition of "employee organization" is broad and does not require any specific form of organizational structure. Instead, the Commission's inquiry focuses on whether the organization's membership is open to public employees and whether it exists for the purpose of assisting employees to improve their wages, hours and conditions of employment. City of Haverhill, 15 MLC 1355; MCOFU, 15 MLC at 1384. Here, there is no evidence that Local One does not admit public employees to membership. Indeed the sole member is a public employee. Although the District suggests that allowing a sole employee in a one-person unit to represent himself as Local One is "ridiculous" and "unworkable," it does not cite any case law, and we know of none, holding that such a result is unlawful. Section 2 of the Law affords employees the right, inter alia, to join any employee organization for the purpose of bargaining through representatives of their own choosing. As we noted in Commonwealth of Massachusetts, 10 MLC 1557, 1561 (1984), "[i]t is not our role to evaluate the relative ability of a particular organization to effectively represent the interests of employees. The election which we conduct provides the forum in which employees can exercise their right to evaluate and select the bargaining representative of their choice." Accordingly, we conclude that the West Barnstable Professional Firefighters, Local One is an employee organization within the meaning of Section 1 of the Law.³

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We take administrative notice of the fact that at the time of this Decision, Local One has complied with the filing requirements of Sections 13 and 14. The District had argued that the Union's noncompliance with those sections at the time of the hearing in this matter should cause the Commission to conclude that the Union is not a "labor organization" within the meaning of the Law. The Commission previously has concluded that compliance with the filing requirements contained in Sections 13 and 14 is not a condition to establishment of a lawful employee organization. Commonwealth of Massachusetts, Department of Administration and Finance, 2 MLC 1322 (1976). Commission Rule 16.05, 456 CMR 16.05, requires that an employee
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Wherefore, on the basis of the foregoing, we conclude that:

1. A question has arisen concerning the representation of an employee of the West Barnstable Fire District.
2. The unit appropriate for purposes of collective bargaining consists of all full-time and regular part-time fire fighters employed by the West Barnstable Fire District excluding the Chief, the Deputy Chiefs and all casual, confidential, managerial and all other employees.
3. An election shall be held for the purpose of determining whether or not the employees in said unit wish to be represented by the West Barnstable Professional Firefighters, Local One or by no employee organization.
4. The eligible voters shall include persons in the above-described unit whose names appear on the payroll of the Employer for the payroll period immediately preceding the issuance of this decision, and who have not quit or been discharged for cause prior to the date of the election.

IT IS HEREBY DIRECTED that an election shall be conducted under the direction and supervision of representatives of the Commission among the employees in the aforesaid bargaining unit at such time and place and under such conditions as shall be contained in the Notice of Election issued by the Commission and served on all parties and posted on the premises of the West Barnstable Fire District together with copies of the specimen ballot.

In order to ensure that all eligible voters will have the opportunity to be informed of the issues and their statutory right to vote, all parties to this election should have access to a list of voters and their addresses which may be used to communicate with them.

Accordingly, IT IS HEREBY FURTHER DIRECTED that three copies of an election eligibility list must be filed by the West Barnstable Fire District with the Executive Secretary of the Commission, Leverett Saltonstall Building, 100 Cambridge Street, Room 1604, Boston, MA 02202, no later than fourteen (14) days from the date of this decision.

The Executive Secretary shall make the list available to all parties to the election. Since failure to make timely submission of the list may result in

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organization filing a petition or a charge shall make a sworn declaration or an affirmation that it has complied with the requirements of Sections 13 and 14. If a labor organization fails to comply with Rule 16.05 the Commission can compel compliance by an appropriate order. In the instant case no further order is necessary because the Union already has complied with the filing requirements.



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substantial prejudice to the rights of the employees and the parties, no extension of time for the filing thereof will be granted except under extraordinary circumstances. Failure to comply with this direction may be grounds for setting aside the election should proper and timely objections be filed. SO ORDERED.

**COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION**

PAUL T. EDGAR, CHAIRMAN

MARIA C. WALSH, COMMISSIONER

ELIZABETH K. BOYER, COMMISSIONER

