
TOWN OF STURBRIDGE AND STURBRIDGE PERMANENT FIRE FIGHTERS ASSOCIATION,
LOCAL 3121, IAFF, MCR-4002 (5/21/92). DECISION ON APPEAL OF
HEARING OFFICER'S DECISION.

35.1 casual and temporary employees
35.7 supervisory and managerial employees
35.811 call firefighters
93.52 appeals to full commission

Commissioners participating:

Maria C. Walsh, Chairperson
William G. Hayward, Jr., Commissioner

Appearances:

James Cosgrove, Esq.	- Representing the Town of Sturbridge
Amy Laura Davidson, Esq.	- Representing the Sturbridge Permanent Fire Fighters Association, Local 3121, IAFF

DECISION ON APPEAL OF
HEARING OFFICER'S DECISION

Hearing Officer Diane M. Drapeau issued her decision in this case on February 19, 1991.¹ The hearing officer ordered that an election be held in a bargaining unit of all full-time and regular part-time fire fighters employed by the Town of Sturbridge (Town), excluding the Fire Chief, the call fire fighters, confidential, managerial, and all other Town employees. The Town filed a Notice of Appeal of the Hearing Officer's Decision and a supplementary statement on March 4, 1991. The Sturbridge Permanent Fire Fighters Association, Local 3121, IAFF (Union) filed a supplementary statement on March 19, 1991. On appeal, the Town objects to the hearing officer's conclusions that the call fire fighters are casual employees who should be excluded from the bargaining unit, and that the full-time captain is not a supervisor and therefore should be included in the unit.

Statement of Facts

The Town claims to object generally to the factual findings of the hearing officer, but identifies no specific factual errors in her decision. We therefore adopt the hearing officer's findings pursuant to Commission Rule 13.15(5), 456 CMR 13.15(5), and summarize them below, supplemented with certain additional facts in the record that the Town addresses on appeal.

¹ The full text of the hearing officer's decision appears at 17 MLC 1523.



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The Town's fire department includes four full-time employees (chief, one captain and two fire fighters) and 34 part-time or "call" employees (one captain, three lieutenants and 30 fire fighters). Three engine companies, each composed of eight to ten fire fighters and one call lieutenant, respond to emergency calls through a dispatch system. A general alarm tone is used during the day, and a specific engine company's tone is used at night. Engine companies are toned on an equalized basis, so that each company is assigned three nights, and the remaining nights are covered by the engine company that has the least amount of time in a given period. During the period January to September 1990, each engine company covered an average of 50 alarms.

Full-time fire fighters. Full-time fire fighters must have a minimum of three years of fire fighting and ambulance experience, be a Massachusetts certified emergency medical technician (EMT) and maintain such certification upon appointment, have an active Massachusetts driver's license and pass a physical examination. Once appointed, full-time fire fighters are required to attend a seven week recruit training program offered by the Massachusetts Fire Fighting Academy and all monthly department level drills thereafter. Full-time fire fighters also are encouraged to maintain and upgrade their skills with other courses.

The three full-time fire fighters, including the captain, cover all of the weekday shifts occurring between Sunday at 5:00 P.M. and Saturday at 9:00 A.M. the full-time captain works Monday through Friday from 7:30 A.M. to 5:00 P.M., along with the chief. One full-time fire fighter works alone Monday through Friday from 5:00 P.M. until midnight, the other works alone Monday through Thursday from midnight to 7:30 A.M. and from midnight Friday through 9:00 A.M. on Saturday.

Full-time fire fighters are required to respond when toned and have no other occupation. They perform all routine equipment maintenance, inspections and housekeeping responsibilities on a daily basis. Full-time fire fighters respond to fire and ambulance calls, drive the apparatus or ambulance as authorized and engage in fire fighting and rescue activities under the direction and supervision of a superior officer. When out on injury leave, full-time fire fighters' shifts are filled by other full-time fire fighters, and they are required to request advance permission from the chief when they wish to trade off shifts. Full-time fire fighters are entitled to vacation, sick, injured-on-duty and bereavement leave, health insurance, overtime and holiday pay and tuition reimbursement. They are paid on a four-step hourly pay scale, with their first raise at six months and on their anniversary date thereafter, and they receive a \$300 clothing allowance.

Call fire fighters. Call fire fighters must be at least 18 years old, complete a written application and an oral interview with the Board of Selectmen and senior fire officers, and pass a physical examination. Newly appointed call fire fighters are on probationary training status for their first year, during which they must complete First Responder and CPR courses and attend all department



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and single engine company drills approved by the department training officer, unless excused by the Chief. All call fire fighters are technically required to attend monthly training drills given by the department, but are not disciplined for failing to do so. Call fire fighters are encouraged to obtain and maintain EMT certification, but are not required to do so. Eight of the 30 call fire fighters are not EMT's and are paid at a rate lower than those who are EMT certified.

Call fire fighters perform the same duties as the full-time fire fighters and are covered by the same rules and regulations adopted by the Town's Board of Selectmen. They have an average of ten years of experience, and half of the call fire fighters have served the Town for more than ten years. During the week, call fire fighters work only when they are toned for an alarm or called in for standby or ambulance duty or to fill in for a full-time fire fighter.

Call fire fighters have provided coverage for fire calls for the past 15 years. They respond directly to the scene of a fire when an alarm is sounded. Although call fire fighters wear electronic paging devices, they have other occupations and many are unavailable during the day to answer fire alarms. Not all call fire fighters respond to every alarm, and no call fire fighter has ever been disciplined for not responding to an alarm. During the day, when an alarm is toned to all thirty call fire fighters, on average, from zero to six call fire fighters respond.

During a period of several months prior to September 1990, approximately 19 call fire fighters performed ambulance or standby duty. The number of ambulance or standby shifts worked by individual call fire fighters during that time period varied from two to more than eighty shifts.

Call fire fighters have provided weekend coverage at the fire station for the past 13 years. They are usually assigned to weekend shifts, but may trade off shifts without the chief's permission. Each week, one call fire fighter and one call lieutenant work the Saturday shift (9:00 A.M. to 9:00 A.M. on Sunday) and one call fire fighter and one call lieutenant work the Sunday shift (9:00 A.M. to 5:00 P.M.). The call captain rotates weekend shift assignments with the call lieutenants. Call fire fighters must be EMT certified to work the weekend shifts.

Call fire fighters do not receive leave benefits, health insurance, holiday time or tuition reimbursement, but they do receive an annual \$100 clothing allowance. Call fire fighters with EMT certification are paid on the same pay scale as full-time fire fighters, but take two years to advance on the pay scale. Any call fire fighter seeking a leave of absence must submit a written request to the chief.

Full-time captain. The full-time captain supervises subordinates and is in charge of the fire department in the absence of the chief. He responds to fire and ambulance calls, directs uniformed personnel in fire fighting operations in



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the absence of the chief and serves as the training officer. The full-time captain supervises the inventory of departmental fire fighting equipment, assures that oral and written directions of the chief and departmental rules and regulations are carried out by the call force, and assists the chief in conducting fire inspections of buildings and facilities and in investigating suspected arson cases. The full-time captain has no role in the hiring and evaluation of fire fighters. Although the full-time captain's job description gives him the authority to impose discipline, there is no evidence that he has ever exercised that authority.

Call captain. The call captain responds to fire and ambulance calls and supervises subordinates (full-time and calls) in fire fighting operations in the absence of superior officers. He assures that oral and written directives of the chief and departmental rules and regulations are carried out by the call force, keeps records and prepares reports as requested, assists the training officer in planning and conducting drills and in service training, and may assist the chief in conducting fire inspections of buildings and facilities and in investigating suspected arson cases. In the chief's absence, the call captain sometimes acts as head of the department. The call captain is not involved in the hiring and evaluation process. Although the call captain's job description gives him the authority to impose discipline on fire fighters, there is no evidence that he has ever exercised that authority. The call captain receives the same rate of pay as the full-time captain.

Call lieutenants. The call lieutenants respond to fire and ambulance calls, supervise subordinates (full-time and calls) in fire-fighting and rescue operations in the absence of superior officers, perform EMT duties, assist in the general inspection and maintenance of the fire station and grounds, assist superior officers in fire prevention and investigation activities, and keep records and prepare reports as required. The call lieutenants are not involved in the hiring and evaluation process. Although the job description for call lieutenants gives them the authority to impose discipline on fire fighters, there is no evidence that they have ever exercised that authority. On one occasion, a call lieutenant served as the head of the department when the chief and captains were absent. Call lieutenants receive a rate of pay that is between the fire fighters' and captains' rates.

Opinion

On appeal, the Town objects both to the hearing officer's exclusion of the call fire fighters from the bargaining unit and to the hearing officer's finding that the full-time captain is not a supervisor so as to require his exclusion from the unit. Upon our review of the hearing officer's decision and the parties' arguments on appeal, we affirm the decision in part, with the modification that the call captain and lieutenants are not casual employees within the meaning of Chapter 150E and should be included in the bargaining unit of full-time and regular part-time fire fighters.



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1. The call fire fighters

The hearing officer appropriately examined the regularity of the call fire fighters' employment relationship with the Town in determining that they were casual employees not entitled to participation in the collective bargaining process. The evidence shows that call fire fighters routinely do not respond to daytime alarms and have never been disciplined for their failure to respond to alarms at any time. The record does not establish that the calls work a minimum number of ours in a given time period, or that they perform more than occasional weekend duty. The evidence concerning the standby and ambulance shifts performed by call fire fighters shows a considerable variation among the number of shifts worked by individuals.

Although the record shows that call fire fighters have served the Town for many years, with half serving ten years or more, the record does not establish that individual call fire fighters work a certain number of shifts regularly or respond consistently to alarms. We therefore conclude that the call fire fighters' sporadic and variable hours make them too casual to share the requisite community of interest with the regular fire fighters and to participate in collective bargaining. See West Barnstable Fire District, 17 MLC 1076, 1078 (1990) (call fire fighters who were not obligated to respond to all alarms and received no adverse action if they failed to respond were casual employees); Town of North Reading, 6 MLC 1565 (1979) (call fire fighters were too casual to have their relationship with the Town regulated by collective bargaining, where response to an alarm was voluntary and work was sporadic, irregular, highly variable and extremely limited in the number of hours worked); Town of Lincoln, 1 MLC 1422 (1975) (call fire fighters were casual employees where there was an extreme variation in the number of hours worked by the calls and they were under no obligation to respond to any alarm). Cf. Town of Leicester, 9 MLC 1014 (1982) (Commission recognized bargaining rights of call fire fighters who provided the sole fire fighting service to the Town and were subject to discipline or denied reappointment for not responding to alarms).

2. The call officers

The record in this case does establish, however, that the call captain and lieutenants work with sufficient regularity as part-time employees to warrant participation in the collective bargaining process. A call officer is scheduled to work on each of the two weekend shifts, and therefore at least two of the four call officers must be regularly scheduled to work each weekend. Furthermore, the Town's reliance on the call officers to direct the fire fighting operations of both the full-time and call fire fighters in their engine companies at the scene of a fire necessarily implies both a stable and continuing relationship with the Town and the requirement that they respond to alarms on a regular basis. We therefore conclude that the call officers are not casual employees, but rather are regular, part-time employees entitled to bargaining rights.



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We also conclude that the call officers share a community of interest with the full-time fire fighters and do not have the supervisory authority that would require their exclusion from the fire fighters unit. Although they do not receive the same benefits as full-time fire fighters or have identical training and employment requirements, the call officers regularly work alongside the full-time fire fighters and perform the same duties. The call captain receives the same rate of pay as the full-time captain, and the call lieutenants' pay is between that of the fire fighters and the captains. We conclude that the differences between the call officers and full-time officer and fire fighters do not necessitate separate bargaining units, where the employees perform similar functions under similar working conditions and the differences are not so significant as to produce inevitable internal conflicts in the collective bargaining process. See Worcester County, 17 MLC 1352, 1360 (1990) (County's "temporary" positions in existence for longer than 100 days shared community of interest with permanent employees); Town of Sterling, 4 MLC 1473, 1475 (H.O. 1977), aff'd, 4 MLC 1704 (1978) (regular part-time police officers shared a community of interest with regular full-time police officers, even though the part-time officers were paid an hourly rate rather than a salary and did not enjoy the same substantial fringe benefits as the full time officers).

We agree with the hearing officer's conclusion that the full-time captain lacks the requisite supervisory authority to exclude him from the bargaining unit, and we apply the same reasoning to the positions of call captain and lieutenants. The captains and lieutenants are not true supervisors within the meaning of the Law, because they do not have the independent authority to make, or the power to recommend effectively, personnel decisions such as whether to hire, transfer, suspend, promote or discharge employees or to resolve grievances. See Greater New Bedford Regional Vocational School Committee, 15 MLC 1040, 1045 (1988), citing, Board of Trustees, University of Massachusetts, 3 MLC 1179, 1205 (1976).

The record in this case is clear that the full-time and call captains and the call lieutenants play no role in the hiring or evaluation process and have never exercised any disciplinary authority. The reference in the officers' job descriptions to the authority to impose discipline is insufficient by itself to establish the requisite level of disciplinary responsibility that would cause inherent conflicts if the officers were included in the rank and file unit.² Furthermore, neither the temporary exercise of authority as officers in charge at the scene of a fire nor the direction of a training program sufficiently demonstrate supervisory authority to require placement in a separate bargaining unit.

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Even if evidence had been allowed on the record concerning the Chief's opinions as to what discipline the officers could impose, we would find such evidence to be too speculative to establish actual disciplinary authority. See School Committee of Wellesley v. Labor Relations Commission, 376 Mass. 112, 125-26 (1978).



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See, e.g., Town of Hadley, 11 MLC 1457 (1985) (police lieutenant included in bargaining unit of patrol officers and sergeants); City of Westfield, 7 MLC 1245, 1253 (1980) (Commission found fire captains were appropriately placed in fire fighters unit and should not be severed to create a new supervisory unit), aff'd sub nom. Local 1111, IAFF, AFL-CIO v. Labor Relations Commission, 14 Mass. App. Ct. 236 (1982). We therefore conclude that the full-time and call captains and the call lieutenants are appropriately included in the bargaining unit of full-time and regular part-time fire fighters.³

Direction of Election

We conclude that a question has arisen concerning the representation of certain employees of the Town of Sturbridge. The unit appropriate for the purposes of collective bargaining is described as follows:

All full-time and regular part-time fire fighters, excluding the chief and all managerial, confidential, casual and all other employees of the Town.

By virtue of and pursuant to the power vested in the Commission by M.G.L. c.150E, IT IS HEREBY ORDERED that an election be held at a time, date and place to be specified by the Commission for the purpose of determining whether a majority of employees in the above-described unit desire to be represented by the Sturbridge Permanent Fire Fighters Association, Local 3121, IAFF or by no employee organization.

The eligible voters shall include all those persons within the above-described unit whose names appear on the payroll of the Town of Sturbridge for the payroll period immediately preceding the date of this Decision, and who have not since quit or been discharged for cause.

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

Accordingly, IT IS HEREBY FURTHER ORDERED that four (4) copies of an election eligibility list, containing the names and addresses of all eligible voters must be filed by the Town with the Executive Secretary of the Commission, Leverett Saltonstall State Office Building, 100 Cambridge Street, Room 1604,

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We also note that the issue of the appropriateness of a one-person bargaining unit has no relevance to this case, but, in any event, has been resolved by our decision in Town of West Barnstable, supra.



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Boston, Massachusetts 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 substantial prejudice to the rights of the employees and the parties, no extensions of time for filing the lists 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

MARIA C. WALSH, CHAIRPERSON

WILLIAM G. HAYWARD, JR., COMMISSIONER



