

---

**TOWN OF WENHAM AND WENHAM CALL FIREFIGHTERS  
ASSOCIATION, MCR-4364 (10/4/95).**

17.8 casual employee  
34.1 appropriate unit  
35.1 casual and temporary employees  
35.811 call-firefighters  
93.3 petition for certification

**Commissioners Participating:**

William J. Dalton, Esq., Commissioner  
Claudia T. Centomini, Esq., Commissioner

**Appearances:**

Neil Rossman, Esq. - Representing the Wenham Call  
Firefighters Association

Laurence J. Donoghue, Esq. - Representing the Town of Wenham

**DECISION<sup>1</sup>**

On January 19, 1995, the Wenham Call Firefighters Association (Union) filed a representation petition with the Labor Relations Commission (Commission) under Massachusetts General Laws, Chapter 150E (the Law), Section 4, seeking certification as the exclusive collective bargaining representative for call fire fighters employed by the Town of Wenham (Town).

Following an investigation pursuant to notice, a hearing was conducted by Leigh A. Panettiere, Esq., a duly designated administrative law judge of the Commission, on March 13,

---

1

Pursuant to 456 CMR 13.02(1), the Commission has designated this case as one in which the Commission shall issue a decision in the first instance. The parties agreed to waive the opportunity to have the Administrative Law Judge issue recommended findings pursuant to 13.01(2).

---

**Town of Wenham and Wenham Call Firefighters Association, 22 MLC 1237**

1995. Both parties were afforded a full and fair opportunity to present testimonial and documentary evidence. The Town filed a brief on March 20, 1995, and the Union filed a brief on March 30, 1995. At the request of the Commission, the parties filed supplemental stipulations on July 31, 1995.

**FINDINGS OF FACT**

The Union seeks to represent a bargaining unit described as follows:

All members of the call fire department of the Town of Wenham, up to and including the rank of lieutenant, but excluding any member who currently sits on or is appointed to the Board of Engineers.

On the day of hearing, the parties submitted the following written stipulations of fact:

1. The Town of Wenham (Town) occupies 8.34 square miles. The Town has a population of approximately 4,200 people, including 900 students/residents of Gordon College. (The College has no fire department.) The Town is approximately 95% residential/agricultural. It consists of 1,168 households, and contains approximately 1,000 structures.
2. The Town is governed by a Board of Selectmen. Department heads report to the Town Administrator, who in turn reports to the Board of Selectmen.
3. There is a five member Board of Fire Engineers, appointed by the Selectmen pursuant to G.L.c. 48, Section 45. The appointments take place annually, in April.
4. The supervisory structure of the fire department consists of a Chief, 2 Assistant Chiefs, and one Captain. Each receives a specified salary (\$4,046 for the Chief, \$2,697 for the Assistants and Captain). These officers are on "standby" during various hours of the week, so that there is coverage by one officer at all times. Currently, the Chief, Assistants and Captain are members of the Board of Fire Engineers.

---

**Town of Wenham and Wenham Call Firefighters Association, 22 MLC 1237**

5. The Town currently has 31 call firefighters. They are appointed annually in May, by the Board of Fire Engineers.
6. There are no specific requirements as to age or residence for call firefighters. Nor is there a requirement that, to be considered for reappointment, a call firefighter respond to a specific number or percentage of calls.
7. No strength, conditioning or similar tests are performed or required prior to appointment or reappointment. While a physical exam or a doctor's note is requested for an initial appointment, it is not required for reappointment.
8. Call firefighters are paid on an hourly basis for the time spent responding to calls. The pay rates are as follows:

1st six months of employment:	\$ 6.45
Next six months	\$ 8.36
After one year:	\$10.41
Lieutenants:	\$10.54
EMTs	\$10.54
Captains:	\$10.67
Lieutenant/EMTs	\$10.67
Captain/EMTs	\$10.80
Assistant Chiefs	\$10.80
Chief	\$10.80

9. Call firefighters are paid a one-hour minimum in responding to a fire in the daytime, and three hours minimum for a night time response. After one and three hours respectively, payment is in 15 minute increments.
10. Call firefighters have no Town employee benefits. They are covered under the Town's accident insurance policy for work-related injuries.
11. The procedure for call firefighters to respond is as follows: The Town is on the E-911 system, and jointly runs an Emergency Center with the neighboring town of Hamilton. When a call comes in requiring response by the firefighters, a tone

---

**Town of Wenham and Wenham Call Firefighters Association, 22 MLC 1237**

is sent out to all call firefighters on a beeper. The beeper is provided by the Town. Call firefighters are not required to have the beeper turned on at all times.

12. In 1994 there were a total of 427 calls for the call firefighters. The total hours worked by call firefighters in responding to these call was 8,404.5, or an average of 19.68 hours per call. On average, 18 call firefighters responded to each call.
13. The Town has no full-time firefighters. However, there is one full time Fire Prevention Officer, who is appointed annually, in May, by the Board of Fire Engineers. The person currently holding the position of Fire Prevention Officer is a call firefighter, though it is not required that he be one.
14. The Fire Prevention Officer reports directly to the Fire Chief. The Officer is paid at the annual rate of \$33,208 and is eligible for the following benefits: vacation (2 weeks), sick leave (1.25 days per month) and health insurance.
15. The Town has one fire station, which is in a building shared with the Police Department. The department has four engines (2 pumps, 1 EMS/4 wheel drive vehicle, and a rescue engine) and one ladder. Call firefighters are not ordinarily assigned to cover the station during times when they are not responding to fires.

Additionally, the parties orally stipulated to the following facts at the hearing:

1. The call fire fighters fight fires, provide emergency medical services (along with police officers), and handle hazardous materials;
2. "Night time response" is defined as a response that occurs any time between 10:30 PM and 6:30 AM.
3. Call fire fighters are assigned to cover the fire station during weather emergencies such as hurricanes or snowstorms.
4. Call fire fighters are required to attend a department drill once each month.

**Town of Wenham and Wenham Call Firefighters Association, 22 MLC 1237**

5. Call fire fighters who respond regularly to calls earn an average of \$5,000 to \$6,000 per year.
6. The Town budgets approximately \$70,000 per year for call fire fighters' salaries, and approximately \$20,000 per year for the cost of clothing, equipment, training and vehicles for call fire fighters.

At the Commission's request, the parties submitted a supplemental stipulation on July 31, 1995 providing *inter alia* that: (1) the call fire fighters responded to the following number of calls and worked the following number of hours during 1994:

	<u>Responses:</u>	<u>Hours:</u>
Ballentine, R.	249	344
Bertone, R.	180	269.5
Blanchard, R.	322	459
Brown, R.	288	413
Churches, T.	192	238
Cloutier, J.	136	204.5
Crosbie, T.	57	83.75
Curran, T.	139	225.75
Fowler, E.	220	323.25
Herrick, M.	134	227.25
Howatt, R.	90	145.75
Huntoon, C.	89	130.5
Huntoon, D.	76	132.5
Jaques, W.	133	231.25
Kavanagh, S.	220	336.25
Lawler, H.	40	55.5
Lawler, J. M.	123	168.75
Leszczynski, W.	197	310.25
Leszczynski, W. Jr.	179	260
Linskey, W.	166	268
Melanson, P.	290	334
(continued)		

**MASSACHUSETTS LABOR CASES**

**CITE AS 22 MLC 1242**

**Town of Wenham and Wenham Call Firefighters Association, 22 MLC 1237**

	<u>Responses:</u>	<u>Hours:</u>
O'Brien, A.	215	309.75
Pews, J.	79	80.5
Provost, P.	111	136.25
Raymond, T.	183	280.5
Saunders, B.	126	202.75
Saunders, T.	50	83.5
Sherblom, J.	118	117.25
Stevens, M.	41	50.25
Tarr, A.	68	89.5
Thomas, P.	154	199.75
Tuneburg, L.	159	198.25
Average Runs	151	
Average Hours		216
Total Responses	427	

and (2) the call fire fighters responded to the following number of calls and worked the following number of hours during the first and second quarters of 1995:

	<u>Responses:</u>			<u>Hours:</u>		
	<u>1st Qtr</u>	<u>2d Qtr</u>	<u>Total</u>	<u>1st Qtr</u>	<u>2d Qtr</u>	<u>Total</u>
Ballentine, R.	47	54	101	49	66.25	115.25
Bertone, R.	35	30	65	49	51	100
Blanchard, R.	89	70	159	132	100	232
Brown, R.	71	59	130	104.25	90	194.25
Churches, T.	43	48	91	62.75	68.5	131.25
Cloutier, J.	30	30	60	47.5	44	91.5
Crosbie, T.	9	19	28	12	22.75	34.75
Curran, T.	17	20	37	27	35.5	62.5
Fowler, E.	47	42	89	66.25	80	146.25
Herrick, M.	9	7	16	9.5	19.75	29.25

(continued)

**Town of Wenham and Wenham Call Firefighters Association, 22 MLC 1237**

	<u>Responses:</u>			<u>Hours:</u>		
	<u>1st Qtr</u>	<u>2d Qtr</u>	<u>Total</u>	<u>1st Qtr</u>	<u>2d Qtr</u>	<u>Total</u>
Howatt, R.	9	10	19	13	9	22
Huntoon, C.	8	13	21	14	20.5	34.5
Huntoon, D.	6	7	13	9	14.5	23.5
Jaques, W.	29	23	52	52.75	54.25	107
Kavanagh, S.	62	45	107	90.75	69	159.75
Lawler, H.	8	1	9	8	1	9
Lawler, J. M.	25	18	43	31.5	22	53.5
Leszczynski, W.	23	23	46	34.5	29.5	64
Leszczynski, W. Jr.	17	12	29	19.75	14.5	34.25
Linskey, W.	54	40	94	68	68.5	136.5
Melanson, P.	79	62	141	92.75	63	155.75
O'Brien, A.	35	33	68	52	50.25	102.25
Pews, J.	14	18	32	11	17	28
Provost, P.	16	21	37	23.5	27.75	51.25
Raymond, T.	52	34	86	86	55	141
Saunders, B.	22	15	37	31.25	24	55.25
Saunders, T.	48	28	76	88.5	45	133.5
Sherblom, J.	20	6	26	23	5	28
Stevens, M.	0	4	4	0	10.5	10.5
Tarr, A.	31	26	57	38.75	35.25	74
Thomas, P.	37	37	74	49.75	63	112.75
Tuneburg, L.	26	40	66	23.75	39.5	63.25

OPINION

The Town argues that the Wenham call fire fighters are casual employees, and thus are not appropriate for organization into a collective bargaining unit. The Union argues that the call fire fighters comprise an appropriate unit for collective bargaining. The Commission has addressed this issue on several occasions, and the precedent thus established may be summarized as follows.

---

**Town of Wenham and Wenham Call Firefighters Association, 22 MLC 1237**

---

In Town of Leicester, 9 MLC 1014 (1982), the Commission found a unit of call fire fighters appropriate where: the call fire fighters constituted the Town's entire fire fighting force; the contours of the proposed unit were readily ascertainable because all of the fire fighters were required to attend monthly training and first aid sessions; the average number of alarms was consistent each year; the call fire fighters were summoned by beeper and were expected to respond to each alarm; and there was a detailed code of regulations applicable to the call fire fighters. In Town of Stow, 11 MLC 1312 (1984), the Commission found a unit of call fire fighters appropriate where: the town relied solely on its call fire fighters for fire protection; the volume of work was consistent each year; the fire fighters were assigned to regular tours of duty and were required to respond to alarms during their tour of duty; and fire fighters were responsible for maintaining the fire station.

In Town of North Reading, 6 MLC 1565 (1979); Town of Lincoln, 1 MLC 1422 (1975); Town of West Barnstable, 17 MLC 1076 (1990), and Town of Sturbridge, 18 MLC 1416 (1992), the Commission found units of call fire fighters inappropriate. In each of these cases, there was also a unit of regular, full-time fire fighters in the town, with whom the Commission found the call fire fighters did not share a community of interest. Additionally, in those cases the call fire fighters were not required to respond to alarms or, in Town of Sturbridge, to attend training sessions, although the full-time fire fighters were required to respond to both; and the call fire fighters' hours of work were not regular. Additionally, it is the Commission's policy not to establish a dual unit structure by placing call fire fighters in a unit separate from the full-time fire fighters with whom they work, because to do so would create conflict and instability by requiring separate units to negotiate with the employer for contracts covering the same work. See, e.g., Town of North Reading, 6 MLC at 1566.

We find that a unit of call fire fighters is appropriate for bargaining in the Town of Wenham. A major problem often present in call fire fighter cases -- avoiding a dual unit structure -- is notably absent here because there are no full-time fire fighters in Wenham. Instead, there is a stable demand for the call fire fighters, and the Town depends on them entirely to fight fires. However, because the call fire fighters are not required to respond to any set number of calls to remain employed and the record demonstrates that response records vary among individual employees, the question remains whether some of the call fire fighters are too casual to be included in the bargaining unit.

In determining whether temporary, part-time or call employees are too casual for collective bargaining, the Commission examines the factors affecting the stability of the



---

**Town of Wenham and Wenham Call Firefighters Association, 22 MLC 1237**

---

proposed bargaining relationship. The Commission examines continuity of employment, regularity of work, the relationship of the work performed to the needs of the employer, and the amount of work performed by the employees. Worcester County, 17 MLC 1352, 1358 (1990); Massachusetts Board of Regents of Higher Education, 13 MLC 1173, 1183 (1986); Boston School Committee, 7 MLC 1947, 1951 (1981). As noted above, our analysis of the last two criteria (relationship of the call fire fighters' work to the Town's needs, and the amount of work performed by the call fire fighters) weighs in favor of finding the unit appropriate. However, to assess continuity of employment and regularity of work, we must examine the employees' work schedules. The Commission has excluded employees from collective bargaining where, *inter alia*, the employees' work schedules demonstrated that the workforce was unstable, its hours were irregular, and the contours of the proposed unit were poorly defined. See Town of Lincoln, 1 MLC at 1424; Boston School Committee, 7 MLC at 1949-50. For example, in Boston School Committee, 7 MLC at 1951, the Commission considered whether substitute teachers were entitled to collective bargaining rights. Noting that some of the substitute teachers worked only sporadically but most relied upon teaching for a substantial portion of their income, the Commission found that those substitute teachers who worked sixty (60) days in an approximately 180-day school year had a substantial and continuous relationship with their employer, and, therefore, were entitled to collective bargaining rights. Similarly, in this case a good portion of the call fire fighters work enough hours that their call fire fighter pay constitutes a significant portion of their income. However, some work only sporadically and, therefore, do not demonstrate a substantial and continuous relationship with the Town. As in Boston School Committee, we must draw a distinction, albeit a somewhat inexact one, between these two groups based on the number of calls to which individual fire fighters tend to respond. Accordingly, we find that call fire fighters who have responded to at least thirty-three percent of all alarms sounded in a year's time have a sufficient continuity of employment to entitle them to collective bargaining rights.

### CONCLUSION AND DIRECTION OF ELECTION

Based on the record and for the reasons set forth above, we conclude that a question of representation has arisen concerning certain employees of the Town of Wenham, and the unit appropriate for collective bargaining within the meaning of Section 3 of the Law consists of:

All call fire fighters of the Town of Wenham who responded to a minimum of thirty-three percent of all alarms sounded in the twelve months preceding the date of this decision, up to and including the rank of lieutenant, excluding the Chief, Assistant

---

**Town of Wenham and Wenham Call Firefighters Association, 22 MLC 1237**

Chief(s), Captain(s), any member of the Board of Engineers, and all managerial, confidential, casual and all other employees of the Town of Wenham.

IT IS HEREBY DIRECTED that an election shall be held for the purpose of determining whether a majority of the employees in the above-described unit desires to be represented by the Wenham Call Firefighters Association, or by no employee organization. The eligible voters shall include all those persons within the above-described unit whose names appear on the Town's payroll 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 the 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 DIRECTED that three (3) copies of an election eligibility list containing the names and addresses of all eligible voters must be filed by the Town of Wenham with the Executive Secretary of the Commission, Leverett Saltonstall Building, 100 Cambridge Street, Room 1604, Boston, Massachusetts 02202, not 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. Failure to submit this list in a timely manner may result in substantial prejudice to the rights of the employees and the parties; therefore, no extension of time for filing the list 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**

**ROBERT C. DUMONT, CHAIRMAN  
WILLIAM J. DALTON, COMMISSIONER  
CLAUDIA T. CENTOMINI, COMMISSIONER**