

CITY OF NEWTON AND NEWTON FIREMEN'S WELFARE ASSOCIATION, MUPL-2035 (9/8/77).
Decision on Appeal of Hearing Officer's Decision.

- (50 Duty to Bargain)
54.56 safety
54.581 minimum manning
54.7 permissive subjects
54.8 mandatory subjects
(90 Commission Practice and Procedure)
92.51 appeals to the full Commission

Commissioners Participating: James S. Cooper, Chairman; Garry J. Wooters,
Commissioner

Appearances:

Leon J. Kowal, Esq. - Counsel for the City
John P. Courtney, Esq. - Counsel for the City
Jonathan P. Hiatt, Esq. - Counsel for the Association

DECISION ON APPEAL OF HEARING OFFICER'S DECISION

Statement of the Case

On October 29, 1975, Hearing Officer Robert McCromack issued his Decision in this matter pursuant to the Expedited Hearing procedure established by Section 11, Chapter 150E (the Law). Therein he concluded *inter alia* that a proposal which would require a minimum number of employees to be assigned to a shift or platoon in the fire department of the City of Newton (City) regardless of the apparatus that the City chooses to use, is not a mandatory subject of negotiations. He further concluded that the number of firefighters to be assigned to a piece of firefighting apparatus when that apparatus responds to an alarm constitutes a mandatory subject of bargaining to the extent that it raises a question of safety. No remedial order was issued.

On October 21, 1975, the Newton Firemen's Welfare Association (Association) pursuant to Article III, §28 of the Commission's Rules and Regulations (Rules and Regulations) requested review by the full Commission of the Hearing Officer's Decision. The Hearing Officer submitted his Decision and the exhibits which had been accepted into evidence at the hearing as his written statement of the case in accordance with Article III, §28 of the Rules and Regulations. The Association filed a supplemental statement challenging certain of the findings of fact made by the Hearing Officer.

The Association further filed with the Commission on November 7, 1975, a Motion to Dismiss Complaint,¹ a Motion to Present Additional Evidence, Written

¹The Association moved in part to dismiss all portions of the Complaint dealing with minimum manning on a "per shift" basis. The Association had similarly moved during the hearing. Although the Hearing Officer deferred ruling on the Motion and did not make a ruling on it in his written Decision, the fact that he dealt substantively with "per shift" minimum manning operates as a denial of the Motion. The Association moved further to dismiss that part of the Complaint (cont'd.)

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Memoranda and Oral Argument, and a Motion for a New Hearing. On November 28, 1975, the City of Newton (City) filed a Motion of Leave to Present Additional Evidence, Written Memoranda and Oral Argument.²

Opinion

The timely filed supplementary statement of the Association has put at issue certain of the findings of fact made by the Hearing Officer in his Decision of October 20, 1975. Town of Dedham, 3 MLC 1332 (1977). However, on our view of the case, resolution of these disputes is unnecessary as the facts challenged are not material. Town of Andover, 3 MLC 1710 (1977); City of Medford, 3 MLC 1584 (1977). Should we assume as valid the Association's³ version of each of the challenged facts, we would affirm the Hearing Officer's conclusions of Law.

The bulk of the Association's supplementary statement is devoted to opposing the conclusion of the Hearing Officer that bargaining is not required over a proposal which would mandate that a particular number of firefighters be on duty on any shift. We have reached the identical conclusion in Town of Danvers, 3 MLC 1559 (1977). Even were this recent precedent not controlling, we note the passage of Chapter 347 of the Acts of 1977 which makes this subject matter non-mandatory for municipal police and fire employees. As the hearing officer noted, his opinion was advisory only, no remedial order having issued. As our decision will have only prospective application, we see no point in considering a finding which conflicts with current statute law. We, therefore, affirm the Hearing Officer's finding that minimum manning on a "per shift" basis is a non-mandatory subject of negotiations.

The Association has requested a clarification of the Decision of the Hearing Officer as it relates to "per piece" coverage. The unmistakable meaning of the Hearing Officer's Decision is that when firefighting apparatus responds to an alarm the number of firefighters on that apparatus is a mandatory subject of bargaining to the extent that such coverage raises a question of safety. It is equally clear that the Decision of the Hearing Officer does not make mandatory a proposal for coverage per piece of apparatus while that apparatus awaits an alarm. Thus, the number of firefighters on duty on a shift per piece of equipment was not found to be a mandatory subject of bargaining. This would be tantamount to minimum manning per shift which we have found to be permissive.

We believe that the facts found by the Hearing Officer amply justify his conclusion that the number of firefighters on a piece of equipment when it is responding to an alarm has a direct and substantial impact on safety and workload. The basic functions and tasks of a firefighter are keyed to the operation

1 (cont'd.)

dealing with minimum manning on a "per piece" basis on grounds that the Complaint was improperly amended to include such in violation of Article III, §5 of the Commission's Rules and Regulations. The Commission hereby denies the Motion in its entirety.

²For the reason stated in the Decision, we consider the record in this matter adequate for resolution of the issues presented. We, therefore, deny these Motions.

³The Town did not challenge the Hearing Officer's findings.



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of a "company", the normal complement on a piece of equipment. The safety and efficiency of the fire suppression effort is thus related to the operation of these companies. While the number of companies responding or available to respond on a given shift is a level of services decision, the composition of the firefighting team expected to operate that equipment at the scene of a fire is a question of workload and safety. The number of firefighters on a piece of equipment as it responds to an alarm is substantially related to these negotiable concerns. To make this topic permissive would restrict the ability of the firefighter to bargain over their safety and workload concerns in the most practical and effective manner.

We view the departure of firefighting apparatus from the station in response to an alarm to be a logical and rational point at which to draw the line between mandatory and permissive bargaining over coverage. Obviously, nothing in this Decision should prevent the City from keeping on duty at all times a suppression force large enough to staff all trucks sent to the scene of a fire in accordance with the negotiated minimum number which must be assigned to the trucks as they respond.

WHEREFORE, on the basis of the foregoing, it is hereby ordered that the Decision of the Hearing Officer in the case of City of Newton and Newton Fireman's Welfare Association, MUPL-2035, is affirmed.

James S. Cooper, Chairman

Garry Wooters, Commissioner

