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**TOWN OF LEICESTER AND LEICESTER BROTHERHOOD OF FIRE FIGHTERS, MCR-3265 (5/27/82).**

(30 Bargaining Unit Determination)  
35.1 casual and temporary employees  
35.811 call fire-fighters

**Commissioners Participating:**

Phillips Axten, Chairman  
Joan G. Dolan, Commissioner  
Gary D. Altman, Commissioner

**Appearances:**

John P. Dolen - Representing Leicester Brotherhood of Fire Fighters  
Demitrois M. Moschos - Representing the Town of Leicester

**DECISION****Statement of the Case**

On January 8, 1982, Leicester Brotherhood of Fire Fighters filed a petition with the Labor Relations Commission (Commission) under Section 4 of G.L. Chapter 150E (the Law) for certification as the exclusive collective bargaining representative of call firefighters in the Town of Leicester.

The petition and accompanying notice of hearing were duly served. Pursuant to notice, a formal hearing took place on February 12, 1982. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce documentary evidence was afforded all parties. Briefs were submitted on March 18, 1982. Based upon the evidence as a whole, as well as the parties' briefs, we find and rule as follows.

**Findings of Fact**

Leicester is a rural community with a population of 9600 to 9800. There are three so-called "villages"<sup>1</sup> in the community, each with a fire station. There are no full-time fire fighters. All fire fighters, including the Chief, are call fire fighters. The Fire Department is primarily supervised by a four-member Board of Fire Engineers, who are appointed by the Selectmen.<sup>2</sup> The four Fire Engineers elect one of their number to serve as Chief. Lory Russell has been Chief since December 1, 1978 and was originally appointed by the Selectmen. The other three Fire Engineers are Deputy Chiefs, and each is assigned a fire station.

There are two categories of fire fighters in Leicester: auxiliary and call. In general, any healthy individual with an active interest may become an

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<sup>1</sup> Zip code areas.

<sup>2</sup> There are five elected Selectmen in Leicester.



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auxiliary fire fighter. Call fire fighters are usually appointed from those auxiliaries who show continued interest in and dedication to fighting fires. Although preference is given to auxiliary fire fighters, a newcomer to town with previous fire fighting experience may be considered for a call fire fighter position. In Leicester, call fire fighters are annually appointed by the Selectmen upon recommendation of the Fire Engineers.<sup>3</sup> In fact, the Selectmen have occasionally appointed call fire fighters against the recommendation of the Fire Engineers.

In addition to a Deputy Chief, each fire house has a Captain and a Lieutenant. G.L. Chapter 48, Section 48 provides that the individuals in the company may elect their own officers. In Leicester, however, they are annually appointed by the Selectmen upon recommendation of the Fire Engineers.<sup>4</sup>

Call fire fighters are paid by town check, and taxes are withheld. The Chief receives \$4,000 per year (\$2,500 salary and \$1,500 car allowance); Deputy Chiefs \$525 per year; Captains \$450; Lieutenants \$425; and Privates \$409.50. In addition, there is \$21,000 in the budget to be used as incentive pay. Fire fighters who attend over 50% of the alarms divide that sum according to a formula that rewards each percentage point of attendance above 50%. The total Fire Department budget is \$63,400. In addition to the officers, there are approximately forty call fire fighters who serve as Privates. Call fire fighters are issued turnout gear<sup>5</sup> and receive insurance benefits of \$150 per week if they are injured on duty. They receive no other fringe benefits.

Fire dispatching is done by the full-time Police Department over a "tone board." The tone board actuates a beeper which is carried by each fire fighter. Either a single company or the whole department may be dispatched by this means.

The Fire Engineers have approved, and the Selectmen have accepted, comprehensive rules and regulations covering Fire Department personnel. For example, they provide that "members shall respond to every alarm of fire for which their alarm has been sounded." As the Chief<sup>6</sup> testified, they should not respond if they have been drinking, partying or are injured. The rules and regulations further provide that:

Every member of the Department must be mentally and physically fit for his duty at all times.

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<sup>3</sup>Under G.L. Chapter 48, Section 47 the Fire Engineers are empowered to appoint subordinate fire fighters.

<sup>4</sup>In 1960 and earlier the men did elect their own officers. This is no longer the practice. A lieutenant recently broke his leg, however, and the men in his company elected a temporary replacement to serve in his absence.

<sup>5</sup>Helmet, boots, coat and badge.

<sup>6</sup>The Chief was the only witness.

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Except as hereinafter provided, every member of the Department must hold himself in readiness to instantly respond to an alarm of fire or other such call when summonsed.

In addition to fighting fires, call fire fighters must attend monthly training sessions and take first aid and CPR courses. They must also attend to maintenance and housekeeping duties as the following rules and regulations describe:

[Firefighters must] perform general maintenance work in the upkeep of property of the Fire Department, including minor repairs, painting and housekeeping of station, equipment, and vehicles.

All firefighters shall assist in loading of hose, replacing ladders, filling masks, etc. to aid in returning of apparatus to service without delay, and assist custodian in returning station to order. All companies shall assist other companies with heavy work burdens.

All apparatus shall be washed and cleaned after each run or as soon as possible thereafter.

In the past three years there were 250, 300 and 304 alarms respectively. Ten to fifteen percent were structural fires. There was not 100% turnout at every alarm, and nobody was disciplined for not attending a fire.<sup>7</sup> Nor has anyone been dismissed or suspended for failing to attend training sessions. Approximately 12 fire fighters, however, were not reappointed because they failed to take a required first aid course.

The following department rules and regulations are pertinent as they affect the duty and conduct of the call fire fighters:

General Regulations -- Charges and Offenses

The Chief of the Fire Department may reprimand, suspend or discharge, or recommend the reprimand, suspension or discharge of any member of the Fire Department for any act contrary to good order and discipline or constituting neglect of duty or for any violation of the rules and regulations governing conduct, behavior, and deportment or for any violation of these rules. Any member may be so punished or recommended for punishment for any of the following causes;

1. Intoxication.
2. Neglect of duty.

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<sup>7</sup>One fire fighter was suspended for leaving the scene after the fire was extinguished but before he was dismissed from duty.



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3. Disobeying order of a Superior Officer.
4. Disrespect to a Superior Officer.
5. Conduct unbecoming a member of the Department.
6. Conduct prejudicial to good order.
7. Use of profane and unseemly language.
8. Cowardice or shirking duty at a fire.
9. Refusal to pay a Company debt.
10. Abuse of any privilege granted by the Chief or Governing body of the Town of Leicester.
11. Any other act, deed, or omission which in the opinion of the Chief, justifies disciplinary action.

It is obligatory upon the officers of the fire department to report all violations under their command, and immediately prefer charges for such violations and submit them to the Chief of the Fire Department. Any failure to do so will be treated as neglect of duty.

Opinion

The Commission has in the past dismissed petitions which sought to organize call fire fighters. Town of Lincoln, 1 MLC 1422 (1975); Town of North Reading, 6 MLC 1565 (1979). For the reasons that follow, we conclude that these cases are distinguishable from the situation presented here.

In Lincoln, we concluded that call fire fighters should not be placed in a unit which included five full time fire fighters because of a lack of community of interest with the full time fire fighters. We also declined to give the call fire fighters their own unit because of the instability of the work force, the difficulty in determining the contours of the bargaining unit, and the variation in hours which the call fire fighters worked.

The Commission likewise declined to establish a dual unit structure in North Reading. The Commission emphasized that the work of the call fire fighters in question was typically sporadic, irregular, highly variable, and extremely limited in the number of hours. In short, the Commission determined that the employment relationship was "too casual" to be regulated by collective bargaining. The Commission further concluded that a dual unit structure would breed competition and conflict in contravention of the purposes of the Law.

The circumstances in Leicester are substantially different. First, the contours of the proposed unit are readily ascertainable. The evidence demonstrates that nonactive call fire fighters are annually weeded out, as shown by the non-reappointment of the dozen who failed to take the first aid course. In addition, there is no evidence that the hours of the fire fighters significantly vary. The frequency of alarms per year is fairly constant. Last year there were 250 alarms, and there were 300 and 304 respectively in the previous two years. If we average the three figures, we may say there are approximately 284 alarms per year, or 5.46 per week. To be sure, some fire fighters may have a better attendance record than others, but the fact remains that all are expected to attend every



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alarm. The Chief admitted that if a fire fighter were to miss calls regularly or habitually without excuse, the individual would be reprimanded. It also appears that such a fire fighter would not be tendered reappointment.

Other considerations lead us to conclude that the fire personnel at issue in this case are not properly deemed "casual" employees. The existence of rights under the law is not conditioned on an arbitrary number of hours worked per week, much less on a full-time employment standard. Town of Saugus, 4 MLC 1361, 1362 (1977); University of Massachusetts, 4 MLC 1384; 1390 (1977) Town of Wilmington, 4 MLC 1273, 1275 (1977); Pittsfield School Committee, 2 MLC 1523, 1525 (1976). In County of Plymouth, 2 MLC 1106 (1975), we included part-time matrons who usually worked one and one-half to two days per week. In Southborough School Committee, 2 MLC 1467, 1469 (1976) we included an employee who worked two hours per day on a regular basis. Our general policy has been to interpret the law broadly. City of Fitchburg, 2 MLC 1123, 1135 (1975). Thus, we have afforded coverage to nonclassified employees,<sup>8</sup> non-tenured teachers,<sup>9</sup> part-time employees,<sup>10</sup> summer employees,<sup>11</sup> employees hired under EEA and CETA programs,<sup>12</sup> Title I teachers<sup>13</sup> and certain substitute teachers.<sup>14</sup> The National Labor Relations Board (NLRB) has also broadly defined the number of hours of work necessary to entitle an employee to bargaining rights.<sup>15</sup> Moreover, in Leicester the call fire fighters provide the sole fire fighting service. As the NLRB has held in regard to seasonal employees, a relatively stabilized demand for such employees and dependence upon them by the employer are factors to be weighed when considering whether to

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<sup>8</sup> Town of Townsend, MUP-298 (10/6/72).

<sup>9</sup> Mt. Wachusett Community College, 1 MLC 1496 (1975).

<sup>10</sup> Stoughton School Committee, MUP-276 (7/10/72) (enf. den. on other grounds); Pittsfield School Committee, 2 MLC 1523 (1976); County of Plymouth, supra; including part-timers who were full-time students, Quincy Library Department, 3 MLC 1517 (1977).

<sup>11</sup> Bay State Harness Raceway, 2 MLC 1340 (1976); City of Gloucester, 1 MLC 1170 (1974).

<sup>12</sup> City of Springfield, 2 MLC 1233 (1975); Town of Halifax, 1 MLC 1486 (1975); City of Fitchburg, supra.

<sup>13</sup> Somerville School Committee, 4 MLC 1244 (1977).

<sup>14</sup> Boston School Committee, 7 MLC 1947 (1981).

<sup>15</sup> See, for example, Central Iufina, 92 NLRB 1509 (1951) (checkers on loading docks employed only 20 to 30 days each year); Julliard School, 208 NLRB 153 (1971) (stage department employees employed either five days in the one year prior to the election, or at least 15 days over a two year period).

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afford them bargaining rights. Seneca Foods Corp., 248 NLRB 119, 104 LRRM 1014 (1980); California Vegetable Concentrates, Inc., 137 NLRB 1779, 1781, 50 LRRM 1510 (1962); Kelly Brothers Nurseries, Inc., 140 NLRB 82, 85, 51 LRRM 1572 (1962). Furthermore, the Town of Leicester's promulgation of such a strict and detailed code of rules and regulations governing call fire fighters belies the Employer's present claim that they are merely casual volunteers.

In sum, the community of interest and dual unit problems existing in the Lincoln and North Reading cases present no obstacle here. In Leicester the call fire fighters constitute the community's regular fire fighting work force. Moreover, the detailed rules and regulations under which they work, the readily ascertainable contours of the proposed unit, the apparent stability of the work force, and the regularity of their work all lead us to conclude that call fire fighters in Leicester should be afforded the rights provided by Chapter 150E.

#### Direction of Election

We therefore conclude that a question has arisen concerning the representation of certain employees of the Town of Leicester within the meaning of Section 4 of the Law.

The unit appropriate for the purposes of collective bargaining consists of all regularly employed call fire fighters of the Town of Leicester excluding the Chief and Deputy Chiefs.

It is hereby ordered that an election shall be held for the purpose of determining whether a majority of the employees in the above described unit desire to be represented by the Leicester Brotherhood of Firefighters 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 employer on May 1, 1982 and who have not since quit or been discharged for cause.

In order 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 ordered that three (3) copies of an election eligibility list containing the names and addresses of all eligible voters must be filed by the employer with the Executive Secretary of the Commission, Room 1604, Leverett Saltonstall Building, 100 Cambridge Street, 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 of the parties to the election. Since failure to make the timely submission of this list may result in substantial prejudice to the rights of the employees and the parties,



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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.

COMMONWEALTH OF MASSACHUSETTS  
LABOR RELATIONS COMMISSION

PHILLIPS AXTEN, Chairman

JOAN G. DOLAN, Commissioner

GARY D. ALTMAN, Commissioner

