

TOWN OF READING AND LOCAL 1640, READING FIREFIGHTERS, IAFF, MUP-4541 (3/29/83).

- (50 Duty to Bargain)
 - 54.56 safety
 - 54.581 minimum manning
 - 54.7 permissive subjects
 - 54.8 mandatory subjects
- (60 Prohibited Practices by Employer)
 - 67.5 negotiability of times
- (90 Commission Practice and Procedure)
 - 91.13 mootness
 - 92.42 motion to amend
 - 94. Advisory Opinions

Commissioners participating:

Paul T. Edgar, Chairman
Joan G. Dolan, Commissioner
Gary D. Altman, Commissioner

Appearances:

Philip Collins, Esq.	- Representing the Town of Reading
Jonathan P. Hiatt, Esq.	- Representing Local 1640, Reading Firefighters, International Association of Fire Fighters

DECISION

Statement of the Case

This case involved an allegation by Local 1640, Reading Firefighters, International Association of Fire Fighters (Union) that the Town of Reading (Town) violated Sections 10(a)(5) and (1) of G.L. Chapter 150E (the Law) when the Town refused to bargain over the number of firefighters per piece to be sent on a mutual aid response.

After an investigation of the Union's charge, the Labor Relations Commission (Commission)¹ issued a Complaint of Prohibited Practice on September 23, 1981. A formal hearing was held on December 15, 1981 and February 23, 1982 before Diane M. Drapeau, a duly designated hearing officer of the Commission. Both parties were allowed the opportunity to present testimonial and documentary evidence. The parties filed briefs on May 4, 1982.

On the first day of the hearing the Union moved to amend paragraph 3(c) of the Complaint² to read as follows:

¹ The parties do not dispute the Commission's jurisdiction over this matter.

² Paragraph 3(c) stated:

On or about June 25, 1981, the Town agreed to delay implementation of the minimum manning change until the parties had bargained over the impact of reduced manning per shift.



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However, on July 8, 1981 the Chief of the Fire Department Robert Pratt rescinded his order of June 25, 1981 delaying implementation, and the reduction in minimum manning was implemented notwithstanding the fact that the parties had not yet bargained over the impact of reduced manning per shift.

The hearing officer denied the Union's motion, ruling that the Union had ample time to amend the complaint and could not, by amendment, change the theory of the complaint on the day of hearing. The Union had appealed the hearing officer's ruling and has, in effect, raised its Motion to Amend before us.

We deny the Union's motion for the following reasons. Although the Commission generally allows amendments which conform to the evidence in a particular matter, the amendment must fall within the scope of the Complaint. In the instant case, there was no mention of such an allegation by the Union in its original charge to the Commission. We note that the charge was filed on August 19, 1981 and the Complaint issued on September 23, 1981, yet this issue was not raised until the first day of hearing on December 15, 1981 -- three months after the issuance of the Complaint. Therefore, the motion to amend the complaint is untimely and does not fall within the scope of the Complaint.

On January 6, 1983, the parties to the case jointly submitted a letter stipulating that "the issue of past conduct by the Town as violating the Act [was] moot" and requested that "the Commission issue a decision on the underlying mutual aid issue, based on the record, in the form of a legal opinion to guide future conduct. Although the request of the parties is unusual, there is some precedent for the issuance of a post-hearing "advisory opinion" without a remedial order in a matter involving the issue of fire fighter minimum manning. See City of Newton, 2 MLC 1192, 1196 (H.O. 1975). Accordingly, we will acknowledge the stipulation of the parties that the Complaint of Prohibited Practice arising from the alleged conduct of the Town is now moot. We also, however, honor the request of the parties to issue a decision that is, in effect, advisory only based solely upon the record of the hearing, on the issue of whether the Town was obligated to bargain over the number of firefighters assigned to a piece of apparatus when responding to a mutual aid call.

Findings of Fact

The Town has two fire stations: the Central Station and the Westside Station. With ten men on duty townwide, the Westside Station normally has two men assigned to the ladder truck (which, because of its rear tiller steering, requires two men to operate) and two men assigned to the engine (Engine 1) stationed there. The Central Station normally has one man assigned as the desk man (who performs the duties of fire alarm operator), two men assigned to the ambulance, two men assigned to Engine 2 and one man assigned to Engine 5. With nine men on duty, Engine 5 is normally taken out of service and only Engine 2 responds from the Central Station. We say "normally" because the shift captains have the discretion to assign the men to different pieces of apparatus and take pieces of apparatus out of service depending upon the type of apparatus involved, the nature of the call and the available manpower.

There are two basic types of responses by the Fire Department to alarms within



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Reading. All fire fighters, except the desk man, respond to box alarms. One engine responds to still alarms, with either two or three men, depending on the engine involved and the nature of the call. There have been instances where two men on an engine responding to a still alarm have encountered a working fire upon arrival at the scene.

There are three types of mutual aid response. For known working fires, one engine responds to assist a mutual aid department which is already fighting the fire, usually by laying additional water lines. A second response is a "cover assignment, where the engine goes to the vacant station of the mutual aid community to respond to any additional calls which might arise. The community tires to leave or supply a pilot to assist the department providing the mutual aid. The third response is a "line box," where a box on the border of two communities brings a full response by the town where the box is located and a one-engine response by the other town. Engines responding to mutual aid calls have traditionally been manned by three fire-fighters.

On June 18, 1981³ the Fire Chief issued a notice which stated:

Effective 7:30 a.m., June 26, 1981 the minimum manning will be reduced from 10 men per shift to 9 men per shift until further notice.

The past practice had been to maintain a complement of 10 firefighters per shift. The Union first became aware of the Chief's notice on June 22.

On June 24, the Union sent the following letter to the Board of Selectmen:

In re Fire Department Reduction of Manpower

The Fire Chief has indicated that effective June 26, 1981, he will reduce the minimum manning of each shift in the Fire Department from 10 to 9 men. We learned of his decision on June 22. Such a change in staffing will affect the working conditions of the fire-fighters, in particular the degree of danger and the workload to which they will be exposed.

This letter is to request that you bargain with us about the impact of the chief's decision upon all mandatory bargaining subjects prior to the implementation of his decision. Please contact our attorney (Joseph G. Dandulli, 33 Mt. Vernon St., Boston, MA 02108, telephone 742-2533) to set up a bargaining session.

We also ask you to delay the June 25 scheduled implementation of the policy until we have had a proper opportunity to bargain. Unless you delay the implementation of the decision and commence bargaining,

³Unless otherwise noted, all dates refer to calendar year 1981.



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we will file an unfair labor practice charge with the Labor Relations Commission seeking, among other things, compensation for the increased workload and exposure to danger.

In response to this letter the Chief informed the Union that he would postpone the reduction in minimum manning indefinitely.

On July 6, the parties met for their first bargaining session. Present for this session were three members of the Board of Selectmen, the Town's attorney, the Union's attorney, and a four-member Union negotiating committee. The parties discussed the impact of reduced minimum manning on the safety of the firefighters and the public. The parties reached a tentative oral agreement on a four-hour minimum call-back procedure and agreed that the Chief and the Union would meet on July 8 to work out guidelines for implementation of the call-back procedure. It was decided at this session that the agreement would take the form of an amendment to the current collective bargaining agreement, which contained a call-back provision.⁴

Another issue discussed was the abuse of sick leave. Nothing was resolved on this issue. Another area of discussion was the Town's proposal to reduce the number of fire fighters per piece from 3 to 2. The Union stated that this would result in a firefighter entering a burning building alone because one firefighter always stayed with the apparatus. The Town assured the Union that it would not require any firefighters to enter a burning building alone.

On July 8, the Chief issued an order stating that effective July 10 the 9-man minimum manning would be implemented. Also on this date the parties met to discuss the call-back guidelines. Present during this meeting were the Fire Chief and Deputy Fire Chief, Selectman O'Brien, and five members of the Union negotiating committee. The Union was upset at the presence and participation of Selectman O'Brien since they had understood that the guidelines would be negotiated between the Chief and the Union. O'Brien acted as the recorder of this meeting and the proposed guidelines were a product of the notes she took at the meeting.

At the July 8 meeting the Union was concerned about three issues: 1) the maintenance of a complement of three firefighters on the ambulance by utilizing the call-back procedure; 2) granting the captains the discretion to call back in emergency situations; and 3) the maintenance of three fire fighters per piece responding to a mutual aid call. The past practice for mutual aid calls was three fire fighters per piece. All of these issues were discussed at this meeting.

On July 10, the Town's attorney sent the Union's attorney a draft of the amendment to the call-back provision of the collective bargaining agreement to which the

⁴Section 5. Call Back Service

An employee covered by this Agreement who is called back to duty and completes a tour of duty shall be paid as follows: a) If called back before 12:30 p.m. in the day shift or 12:30 a.m. in the night shift, he shall receive pay for a shift. b) If called back after 12:30 p.m. in the day shift or 12:30 a.m. in the night shift, he shall receive an amount equivalent to one-half (1/2) the full pay for the shift.



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parties had orally agreed on July 6. Also on July 10, the Chief's order of July 8 reducing the minimum manning per shift from 10 to 9 went into effect.

On July 16, the Union's attorney sent the following letter to the Town's attorney:

Here is a copy of the guidelines. There are 3 basic problems:

1. Under the General Guidelines manpower must be tied up for at least 2 hours. The 2 hours is too long. No one can accurately know in advance how long equipment will be tied up.
2. On mutual aid there should be a 3rd man sent to known working fires. A replacement should be hired for the 3rd man.
3. When a 3rd man goes with the ambulance, there should be an immediate replacement, not an hour's delay.

My suggestion is that we arrange for Mr. Redfern, Mr. Price and Chief Pratt to meet and resolve these matters.

On July 21, the parties met again to resolve the issue of guidelines for the call-back procedure. Present during this meeting were Selectman Price, the Fire Chief, and a two-member Union team. The parties reached agreement on the three concerns expressed by the Union at the July 8 meeting. The parties agreed that: 1) a 3rd firefighter would be sent on the ambulance and one firefighter would be called back; 2) captains would be given the discretionary authority to call back firefighters in an emergency situation; and 3) three firefighters per piece would respond on a mutual aid call. There was some discussion at the July 21 meeting regarding whether three firefighters per piece on a mutual aid call would require having to take one piece of apparatus out of service.

On July 22, the Chief told Redfern that he was having second thoughts about the third firefighter responding on a mutual aid call because it would mean taking the ladder truck out of service. The following day the Chief met with the Board of Selectmen and expressed his reservations about the July 21 agreement regarding the third firefighter responding on a mutual aid call. Selectman Price mentioned to the Chief and the other selectmen that the Union had called him to express their concern over the Chief's change of mind. The selectmen decided, however, not to go along with the July 21 agreement.

On July 23, the Chief issued the following guidelines to be effective on that date.

Guidelines to be Used
for Four-Hour Call-Back Policy

General Guidelines: When the shift is down to three inactive men, due to emergency services (not lock outs or other non-emergency services) and it is expected that the equipment and manpower will



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be tied up for a period of forty-five (45) minutes to an hour, the four-hour call-back policy can be implemented at the discretion of the shift officer.

Mutual Aid policy as it is currently implemented will be maintained. No call-back will be authorized for any situation where mutual aid has been used in the past.

Situations where call-back policy will be implemented at the discretion of the shift officer are as follows:

- A. When, because of working fires, ambulance calls and other emergency situations (excluding lockouts, inspections, cellar pump-ins and other non-emergency situations) equipment and manpower have been reduced to the point where additional manpower is needed to maintain a three-man attack on a working fire.
- B. When the third man is necessary in the ambulance, the pump driver will drive the ambulance. The man remaining will drive the apparatus back to the station whether he be Fire Fighter or Officer. When it is determined the third man is necessary, the officer will call the dispatcher to call one man back.
- C. When a minimum of two pieces of fire equipment and a minimum of four fire fighters are in service on two working fires.
- D. When three men are already out with the ambulances and another incident occurs requiring three men for an extended period of time.
- E. The Shift Captain will contact the Chief or Deputy Chief on any situation which does not fall within these guidelines and in the view of the Shift Captain requires additional manpower.
- F. Going out on Mutual Aid - Engine No. 1 and two men will respond. If it is known you are going to a fire, one man will be called in and sent to the scene in Car No. 7. When the apparatus gets to the scene, cover or fire, and finds they will be tied up for a considerable time, radio back to officer in station and call back two men to Engine No. 5. Line boxes, two men will respond. Cover assignments, if there is no one at the station, and are going to be there for a considerable time, call back one man and send to the scene.

When the Four-Hour Call-Back Policy is implemented, a report stating when, why and who was called back is to be submitted to the Chief, a copy of which is to be forwarded to the Selectmen along with the weekly report.

These guidelines will be reviewed sixty (60) days after their implementation.



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These guidelines were not in conformance with the parties' July 21 agreement.

Redfern called Selectman Price to inform him that he objected to the guidelines which the Chief issued. On July 28, the Union sent the following letter to Price:

This is to confirm our telephone conversation of last evening. Local 1640, I.A.F.F., does not agree with nor condone the "Guidelines to be used for four hour call back policy," as presented by Chief Pratt. Therefore, at this time, we can not sign the amendment to the call back section of the contract that was drafted by Attorney Drachman.

Subsequently, on August 12, the Union sent Price, the Chairman of the Board of Selectmen, the following letter.

The Reading Firefighters would like to resume bargaining over the Call-Back Guidelines and related matters. We have the following general problems with the Guidelines developed by the Chief:

1. Mutual Aid

- A) A response with only two employees is inadequate for the employees' safety. Three employees should be sent.
- B) Improve method of covering Reading stations when employees are out on mutual aid. More employees should be called back than provided for in the Guidelines.
- C) We have searched for Reading's mutual aid agreements with other towns. There appears to be a valid agreement only with Stoneham. The Wakefield agreement does not appear to be authorized by the selectmen as it must be to comply with Ch.48 Section 59A. We found no other agreements. We would like to be sure that all mutual aid is in accordance with the statute.

2. Ambulance

Improve the call back when the ambulance is out of the station. An employee should always be called back when three are needed on the ambulance. Employees should be called back when the ambulance is out even if only two employees are needed.

3. Miscellaneous

There are a number of drafting problems we would like to deal with mostly involving only phraseology (i.e. substituting the word "unavailable" for "inactive"). We would like to reduce from 45 to 30 minutes the time an employee must be anticipated to be occupied before a call back is made. Finally we want to establish



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a procedure for carrying out the call-back (i.e. which group is called first, what records of the call are kept, etc.).

On August 14, the Town responded in the following manner:

The Reading Board of Selectmen, through its Chairman, John Price, has requested me to respond to your letter to Mr. Price dated August 12, 1981.

Please be advised that the Board of Selectmen is not willing to bargain with the Reading firefighters' union concerning the subjects listed in your August 12 letter. All those subjects appear to be within the exclusive control of the fire chief under M.G.L. c.48, bargaining under M.G.L. c.150E.

In October, the parties met for further negotiations on these issues and the Town reinstituted the minimum manning level to ten firefighters.

The Union's witnesses testified that manning on mutual aid calls has more relevance to safety and workload issues than manning on in-town runs. When a mutual aid call comes in, the chances are extremely high that there is a working fire or actual emergency at stake because the other community would not be calling for mutual aid unless such was the case. Moreover, on a mutual aid call the Reading firefighters would be entering unfamiliar buildings, operating unfamiliar hydrants, and would have no knowledge of the water main pressure. If there is a two-man team rather than a three-man team assigned per piece, the stress and strain factors are increased when the firefighters attempt rescues and participate in the physical activity required to extinguish a fire.

In addition, it makes no difference whether the Reading piece of equipment is first to respond to a working fire, since the men assigned to each piece of equipment at the fire scene from other communities have their own functions to perform and are not able to provide additional manpower to an undermanned mutual aid piece.

In rebuttal, the Town submitted the following statistics regarding mutual aid calls:

Year	No. of Cover Assignments	Cover to Working Fire <u>OR</u> Cover Diverted to Working	Percent
		Fire	
1979	52	2 ⁵	3.8
1980	23	4 ⁶	16.7
1981	43	2 ⁷	4.7

⁵No diversions to fires while en route to cover.

⁶One diversion, but cancelled and returned to Reading.

⁷One diversion, but after restoration of 10-man minimum.



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Opinion

The issue before us is whether, on the record of this case, the Town was obligated to bargain over the minimum manning per piece of fire apparatus responding to a mutual aid call. Earlier Commission decisions have articulated a distinction between minimum manning per shift and minimum manning per piece of apparatus. In Town of Danvers, 3 MLC 1559 (1977), we held that minimum manning per shift is a permissive subject of bargaining. The Union bargaining proposal at issue in that case involved minimum coverage per shift and mandatory call-back (overtime) to fill shift vacancies. In that decision, the minimum manning and overtime requirements were discussed as a single entity, and we found that the number of firefighters per shift had no direct impact on workload and safety. The Commission stated:

"We find that a decision regarding shift coverage in a fire department has far greater impact on the level of delivery of a public service than on workload and safety of firefighters. Thus, we find it to be a permissive subject of bargaining. Nothing in this opinion should prevent firefighters from bargaining with their employers regarding such subjects as safety and workload." 3 MLC 1574.

In relating the subjects of safety and workload to proposals for minimum manning coverage per piece of apparatus, we affirmed and clarified the decision of the hearing officer in City of Newton, 4 MLC 1282, 1283 (1977), by stating that, when fire 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. We contrasted that situation, however, to a proposal for coverage per piece of apparatus while that apparatus awaits an alarm. We reasoned that the latter situation would be tantamount to minimum manning per shift, which was held to be a non-mandatory subject of bargaining in Danvers. As stated in Newton:

...[t]he 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... . 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. 4 MLC 1284

In Town of Billerica, 8 MLC 1957, 1961 (1982), we reiterated the distinction between proposals for minimum manning coverage per piece of apparatus while responding to an alarm of fire and while in the station awaiting an alarm of fire. We then concluded that:

"When Danvers and Newton are read together, the cases must be seen as standing for the proposition that what is mandatorily bargainable about any type of minimum manning proposal is the safety and workload aspect at the time a piece of apparatus is responding to an alarm."



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With these principles in mind, we now turn to the facts of this case.

The difficulty in this area of cases stems from the fact that firefighting is an inherently dangerous occupation. It is, in the testimony of one Union witness, the single most hazardous profession in the world. As a result, nearly every aspect of the occupation, from equipment to the size and method of attack on a fire, may arguably be characterized as involving an impact on the safety of firefighters. With respect to firefighter manning levels, one Union witness testified that, since firefighting is a constant danger, the fewer firefighters there are to work with, the greater the danger to those who are working." Yet not every aspect of the occupation gives rise to a bargaining obligation. As our cases cited above indicate, we have attempted to balance the competing concerns of employees over their safety and workload and those of employers over fire department management. We have carefully avoided adopting a *per se* rule that minimum manning per piece of apparatus is a mandatory subject of bargaining. Such manning, we have held, is bargainable only to the extent that it raises questions of safety and workload. The extent to which such questions are raised must actually be proved, however, and we will not infer questions of safety from the number of fire fighters manning a piece of apparatus alone.

The Union attempted to show that a mutual aid call was tantamount to an alarm of fire, at which the composition of the firefighting team expected to operate the equipment at the scene of the fire has been held to be a question of workload and safety. *City of Newton*, 4 MLC 1282, 1284. One Union witness summed up the nature of a mutual aid call as follows:

"You know you're responding to a known emergency that paid professional firefighters can't handle. So you're being asked to assist. You're not going to a false alarm. You're not going to a rubbish fire...You're going to a known emergency of the magnitude that an entire fire department can't handle it and they are asking for assistance."

And how often did mutual aid calls involve the Reading firefighters in actual alarms of fire? One Union witness testified that, based upon his experience, 25% of the cover assignments during a given year ended up in alarms for working fires. He cautioned, however, that the Fire Department records would be a more accurate source. Another Union witness testified that, based upon his experience in the Town of Randolph (a community purportedly similar to Reading in size, composition and makeup of its fire department), nearly 1/3 of the cover assignments resulted in diversions to working fires.

The actual Reading fire department statistics, however, indicated a significantly lower number of actual working fires. Out of 118 mutual aid cover assignments during the years 1979, 1980 and 1981, only 8 resulted in diversions to working fires and, from among those, one appeared to be a cancelled call. In other words, over 94% of the mutual aid calls over the latest three-year statistical period amounted to cover assignments wherein the Reading company responded to the vacant station of the mutual aid community to await alarms from that community.

In analyzing these fire alarm statistics, we note that they do not reflect a



MIDDLESEX COUNTY COMMISSIONERS AND NAGE, LOCAL RI-70, MUP-5015 (3/29/83). RULING ON COUNTY COMMISSIONERS' MOTION TO DISMISS.

- (20 Jurisdiction)
25.2 prior court decision -- res judicata
(90 Commission Practice and Procedure)
92.47 motion to dismiss

RULING ON COUNTY
COMMISSIONERS' MOTION TO DISMISS

Statement of the Case

On October 12, 1982, the National Association of Government Employees, Local RI-70 (Union) filed a charge with the Labor Relations Commission (Commission) alleging that the Middlesex County Commissioners (County Commissioners) had violated Sections 10(a)(1), (3), and (5) of G.L. c.150E (the Law). After an investigation, the Commission issued a Complaint on January 19, 1983, alleging that the County Commissioners had violated Sections 10(a)(1), (3), and (5) of the Law.

The Complaint included the following allegations:

"9. On July 1, 1982, a collective bargaining agreement between the County Commissioners and the Union, providing at Article V, Section 6 that laid off employees were entitled to be recalled for a 12 month period following the date of a layoff, was in full force and effect."

* * * * *

12. On September 9, 1982, the Middlesex County Superior Court, Ronan, J., issued a decision finding that the collective bargaining agreement referred to in paragraph 9, above, was no longer in effect."

At the outset of the formal hearing in this matter, on February 17, 1983, the County Commissioners moved to dismiss the Complaint on the ground of res judicata. We decided to rule upon that Motion prior to the date scheduled for the continuation of the hearing and so advised the parties by letter dated February 18, 1983. Thereafter, both parties filed memoranda in support of their respective positions on this issue, which we have duly considered.

For the reasons set forth below, we deny the County Commissioners' Motion to Dismiss the Complaint. However, we amend the Complaint by deleting paragraph nine and all references thereto and reissue the Complaint as thus amended.

Facts

For purposes of ruling upon this Motion, the uncontested¹ facts leading to the present case may be summarized as follows.

¹The following summation includes facts which appear to be uncontroverted as a result of examining the Complaint, the Answer, the stipulated exhibits filed in this case, and the Commission's decision in Case No. MUP-4718.

