

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS
BEFORE THE COMMONWEALTH EMPLOYMENT RELATIONS BOARD

| | | |
|------------------------------------|---|--------------------------------|
| In the Matter of | * | |
| | * | |
| TOWN OF BOXFORD | * | Case No. MCR-20-8361 |
| | * | |
| and | * | Date Issued: February 8,. 2022 |
| | * | |
| BOXFORD PROFESSIONAL FIREFIGHTERS* | * | |
| Local 5305, IAFF | * | |
| | * | |

Board Members Participating:

Marjorie F. Wittner, Chair
Joan Ackerstein, Board Member
Kelly Strong, Board Member

Appearances:

| | | |
|----------------------------------|---|---|
| Nicholas Anastasopoulos, Esq. | - | Representing the Town of Boxford |
| James Hykel, Esq. | - | Representing the Boxford Professional Firefighters, Local 5305, IAFF |

DECISION

1 Summary

2 The central issue before the Commonwealth Employment Relations Board (CERB)
3 is which formula to use to determine whether on-call firefighters in the Town of Boxford
4 (Town) should be included in a proposed bargaining unit of all full-time and regular part-
5 time firefighters. The Boxford Professional Firefighters, Local 5305 IAFF (Union or
6 Petitioner) argues that there is no factual or legal basis to deviate from the formula set
7 forth in Town of Boxford, 35 MLC 113, MCR-06-5239 (December 23, 2008) (Boxford I),

1 in which the CERB required call firefighters to have responded to at least 33% of all
2 alarms and to have attended 60% of Monday night trainings in the preceding year to be
3 considered regular part-time employees eligible for inclusion in the bargaining unit. In
4 contrast, the Town argues in favor of an entirely new formula that, in the first year, would
5 automatically designate all call firefighters hired before January 1, 2015 as regular part-
6 time employees, and call firefighters hired after January 1, 2015 with Firefighter I/II and
7 EMT certifications as regular part-time employees, and, after the first year of certification,
8 would require bargaining unit members to respond to 33% of eligible alarms and attend
9 60% of trainings to maintain bargaining unit membership.

10 For the reasons described in greater detail below, the CERB finds that the Town
11 of Monson, 42 MLC 75, MCR-14-3997 (August 28, 2015) (Monson) formula applies, and
12 that any call firefighter who works at least 33% of the hours that full-time firefighters are
13 scheduled to work in the preceding year, by performing work for which the Town pays
14 them at their hourly rate, such as responding to alarms, training, responding to still alarms
15 as the Officer-in-Charge (OIC), providing shift coverage for absent full-time firefighters,
16 working details, or otherwise working at the direction of the Chief, are entitled to collective
17 bargaining rights. 33% of the full-time firefighters' scheduled 2080 hours, rounded to the
18 nearest whole number, is 686 hours.

19 Statement of the Case

20 On October 29, 2020, the Union filed a petition in Case Number WMAM-20-8282
21 seeking to represent a unit consisting of “[a]ll full-time and regular part-time firefighters
22 below the rank of Chief [excluding] managerial, confidential, casual and other
23 employees.” In an amended petition filed on October 30, 2020, the Union clarified that the

1 petitioned-for unit consisted of four full-time employees. The parties were unable to agree
2 on a formula for determining the inclusion of call firefighters in the unit. On November 13,
3 2020, the Town filed challenges, asserting that the written majority authorization (WMA)
4 process was inappropriate for this particular petition. The Town asked the Department of
5 Labor Relations (DLR) to either dismiss the petition or convert it to a representation
6 petition and process it accordingly. The Union opposed the challenges and request. On
7 November 13, the WMA Investigator notified the parties that the DLR Director had denied
8 the Town's conversion request. By letter dated December 18, 2020, however, after the
9 parties submitted position statements and other information in response to the
10 Investigator's request, the DLR Director converted the petition to the instant
11 representation case, MCR-20-8361. As discussed further, the Director reasoned that this
12 conversion would allow the CERB to determine "whether and how the facts of this case
13 impact any formula for determining which call firefighters have a sufficient continuity of
14 employment to entitle them to collective bargaining rights."¹ On February 24, 2021, the
15 Union requested that the Director reconsider the decision. The DLR denied the request
16 on March 12, 2021.

17 On February 19, March 5, and March 10, 2021, a duly-designated DLR hearing

¹ The Director's letter states in part that, "In addition to any new submissions the parties will proffer during the pendency of MCR-20-8361, the CERB will also consider all submissions that were provided by the Union and the Employer through the date of this notice." At the time, the DLR assumed that any hearing would be short and that the parties would submit a couple of additional exhibits and offer brief testimony to clarify some issues related to geographic station assignments and still alarms. Ultimately, the parties' three days of hearing and 56 exhibits supplanted the WMA submissions. To the extent that the parties wanted any of the original WMA submissions included in the record of MCR-20-8361, those were introduced as joint exhibits and are part of the hearing record.

1 officer (Hearing Officer) held a hearing at which both parties had the opportunity to be
2 heard, to examine witnesses and to introduce evidence. The parties filed post-hearing
3 briefs on May 10, 2021.

4 Stipulations of Fact

5 The Union and the Town stipulated to the following facts:

6 Overview

- 7
- 8 1. The Town of Boxford ("Town") is a municipal corporation within the
9 Commonwealth of Massachusetts and is a public employer within the meaning of
10 Section 1 of M.G.L. c. 150E ("Law").
11
 - 12 2. The Boxford Professional Firefighters, Local 5305, IAFF ("Union") is an employee
13 organization within the meaning of Section 1 of the Law.²
14
 - 15 3. On October 29, 2020, the Union filed a petition for written majority authorization
16 in case number WMAM-20-8282 seeking certification as the exclusive
17 representative of a bargaining unit comprised of "all full-time and regular part-
18 time Town of Boxford Firefighters below the rank of Chief, but excluding all
19 managerial, confidential, casual and other employees of the Town." Exhibit A.
20
 - 21 4. On October 30, 2020, the Union filed an amended petition clarifying that it was
22 petitioning for a unit of four (4) employees and making technical amendments to
23 the unit description. Exhibit B.
24
 - 25 5. On December 18, 2020, the DLR Director converted WMAM-20-8282 to a
26 representation petition in case number MCR-20-8361.
27
 - 28 6. For the purposes of a decision in MCR-20-8361 regarding the appropriate
29 formula to apply in determining eligible members of the petitioned-for bargaining
30 unit, all of the stipulated factual information below, unless otherwise noted, is
31 based on the time period November 1, 2019 through October 31, 2020 ("the
32 relevant time period").
33

34 Boxford Fire Services

- 35
- 36 7. The Town operates two (2) fire stations, commonly referred to as the East Station
37 and the West Station.
38

² All references to the Law herein, including in the parties' stipulations, are to M.G.L. c. 150E.

- 1 8. The Town employs both full-time and call firefighters.
2
3 9. As of October 30, 2020, the ratio of full-time firefighters to call firefighters,
4 excluding the Fire Chief, was 4:39.³ In 2006, the ratio was 2:38.
5
6 10. During the relevant time period, each full-time firefighter provided 40 hours of
7 regularly scheduled work.
8

9 Full-time Positions and Employees

- 10
11 11. During the relevant time period, excluding the Chief, the Town employed four
12 permanent, full-time members of the Fire Department (David Blake, Tyler
13 Brown, Katie Colangelo and Michael Soltys).
14
15 12. Full-time firefighters are eligible bargaining unit members.
16
17 13. Full-time firefighters are assigned to either the East or West Stations based
18 upon operational needs, within the Fire Chief's discretion. For calls occurring
19 outside the full-time firefighters' regularly scheduled hours, full-time firefighters
20 are assigned to either the East or West Stations based upon proximity to their
21 place of residence.
22
23 14. Full-time firefighters are not required to respond to any calls outside of their
24 regularly scheduled 40 hours. There is an expectation, but not a requirement,
25 that a full-time firefighter should respond, especially to a serious or more
26 complicated alarm, or if there is an insufficient call firefighter response in relation
27 to the nature of the call.
28
29 15. Full-time firefighters also perform non-emergency work, including fire prevention
30 duties, community outreach, station duties, and administrative duties, as do call
31 firefighters.
32
33 16. Full-time firefighters are required to be EMT certified or become EMT certified
34 within one year of date of hire, however the Fire Chief may extend the one-year
35 period within his discretion.
36
37 17. Full-time firefighters are required to be pump operators, which enables them to
38 drive the fire engine.
39

40 Call Positions and Employees

- 41
42 18. Call firefighters perform station coverage for full-time firefighters who are absent.
43 A full-time firefighter may cover the shift at the Chief's discretion.

³ On November 30, 2020, call firefighter Paul Clark (P. Clark) retired. The current ratio is thus 4:38.

- 1 19. 19 current call firefighters are pump operators, for which they receive an
2 additional \$1.04 in hourly pay.
3
- 4 20. 15 current⁴ call firefighters have successfully completed the call/volunteer fire
5 academy and attained firefighter I/II certification. Four call firefighters are
6 currently enrolled and will graduate on March 1, 2021. The six most senior call
7 firefighters have not attended the academy but receive additional pay because
8 of equivalent experience and training.
9

10 Full-time Firefighter Shift Assignments

- 11
- 12 21. Full-time firefighters are assigned to work 40 hours per week on weekday, day
13 shifts.
14
- 15 22. Full-time firefighters provide on-shift coverage between the hours of 7:00 a.m.
16 and 5:00 p.m., Monday through Friday, for 50 hours of coverage per week.
17
- 18 a. 7:00 A.M. to 5:00 P.M. Monday, Tuesday, Wednesday, Thursday
19 (Firefighter David Blake)
20
- 21 b. 7:00 A.M. to 5:00 P.M. Monday, Tuesday, Thursday, Friday
22 (Lieutenant Tyler Brown)
23
- 24 c. 7:00 A.M. to 5:00 P.M. Tuesday, Wednesday, Thursday, Friday
25 (Firefighter Katie Colangelo)
26
- 27 d. 8:00 A.M. to 4:00 P.M. Monday – Friday
28 (Lieutenant Michael Soltys)
29

30 Other Station Coverage

- 31
- 32 23. During off hours, the Dispatch Center contacts the OIC by phone to investigate
33 incidents not requiring an emergency response.

34 The Department's Alarms

- 35
- 36 24. There are 4 types of calls generated by the 911 dispatch center to Fire
37 Department personnel: (1) still alarms; (2) general alarms; (3) West Station
38 alarms; and (4) East Station alarms.
39
- 40 25. The type of alarm is determined by (a) the nature of the call; (b) the location in
41 town for that alarm; and (c) the day of the week and the time of the day.
42

43 General Alarms

- 44 26. General alarms occur anytime (weekday, weekend, daytime, evening, nighttime)

⁴"Current" means at the time of hearing.

1 and all firefighters (full-time and call) are eligible to respond.
2

- 3 27. General alarms are toned for calls of the most serious and complex nature
4 requiring the most manpower. East or West station alarms may be upgraded to
5 general alarms for incidents requiring more manpower and/or more
6 apparatuses, incident seriousness and complexity, or lack of adequate firefighter
7 response to the station alarm. (Joint Exhibit 2, Run Card)
8

9 Station Alarms

- 10
11 28. Station alarms (East & West) are toned based on the location of the reported
12 emergency in town. Station alarms are toned to all firefighters (full-time and call).
13 Call firefighters and off-shift, full-time firefighters assigned to a specific station
14 (East or West) are eligible to respond.
15
16 29. Call firefighters may also respond to a station alarm that is not their assigned
17 station if they happen to be geographically close to that station when the alarm
18 is toned.
19

20 Still Alarms⁵ Call firefighters are not eligible to respond to still alarms, unless they are
21 covering a full-time firefighter shift, or are otherwise assigned by the Fire Chief at the
22 time of the still alarm.
23

24 Trainings

- 25
26 30. The main department-wide trainings are conducted on Monday nights. The
27 Department altered the nature and frequency of trainings beginning in March
28 2020 due to the COVID-19 pandemic.
29
30 31. Eleven call firefighters were either enrolled at the fire academy, enrolled in the
31 Town's recruit training program, or enrolled in a State EMT certification program
32 during the 11/1/19 – 10/31/20 timeframe.
33
34 32. Ross Francis. Firefighter Francis, who was hired 4/1/19, attended the
35 Massachusetts Fire Academy for 240 hours between November 2019 through
36 the end of February 2020. He was also enrolled in EMT certification training,
37 which he attended for 120 hours between September 2020 and December 2020.
38
39 33. Hunter Hassam. Firefighter Hassam, who was hired 1/8/19, attended the
40 Massachusetts Fire Academy for 240 hours between November 2019 and
41 February 2020. He was also enrolled in EMT certification training, which he

⁵ In general, as described in more detail below, a Still Alarm is sounded for any incident occurring during on-shift hours that the four full-time firefighters can staff themselves without the assistance of call firefighters.

1 attended for 120 hours between September 2020 and December 2020.
2

- 3 34. Jason Kilmer. Firefighter Jason Kilmer, who was hired 4/18/19, attended the
4 Massachusetts Fire Academy for 240 hours between November 2019 and
5 February 2020. He was also enrolled in EMT certification training, which he
6 attended for 120 hours between September 2020 and December 2020.
7
- 8 35. Christopher Patrikas. Firefighter Patrikas, who was hired 2/4/20, was enrolled in
9 the Boxford Recruit Training Program for two months from February 2020
10 through the end of March 2020, and therefore was not on the call firefighter
11 roster and was not eligible to respond to alarms or attend other training until his
12 recruit training was complete.
13
- 14 36. Calum Tilston. Firefighter Tilston, who was hired 2/4/20, was enrolled in the
15 Boxford Recruit Training Program for two months from February 2020 through
16 the end of March 2020, and was therefore not on the call firefighter roster and
17 was not eligible to respond to alarms or attend other training until his recruit
18 training was complete.
19
- 20 37. Laura Foster. Firefighter Laura Foster, who was hired 2/4/20, was enrolled in the
21 Boxford Recruit Training Program for two months from February 2020 through
22 the end of March 2020, and was therefore not on the call firefighter roster and
23 was not eligible to respond to alarms or attend other training until her recruit
24 training was complete and she reached her 18th birthday on June 15, 2020.
25
- 26 38. Patrick Whelan. Firefighter Patrick Whalen, who was hired 2/4/20, was enrolled
27 in the Boxford Recruit Training Program for two months from February 2020
28 through the end of March 2020, and was therefore not on the call firefighter
29 roster and was not eligible to respond to alarms or attend other training until his
30 recruit training was complete.
31
- 32 39. Ashley Riter. Firefighter Ashley Riter, who was hired 2/4/20, was enrolled in the
33 Boxford Recruit Training Program for two months from February 2020 through
34 the end of March 2020, and was therefore not on the call firefighter roster and
35 was not eligible to respond to alarms or attend other training until her recruit
36 training was complete.
37
- 38 40. Salvatore DeSantis. Firefighter Salvatore DeSantis, who was hired on April 1,
39 2019, was enrolled in EMT certification training, which he attended for 120 hours
40 between September 2019 and December 2019.
41
- 42 41. Hannah Lilly. Firefighter Hannah Lilly, who was hired on March 15, 2018, was
43 enrolled in EMT certification training, which she attended for 120 hours between
44 September 2019 and December 2019.
45
- 46 42. Rob Sterner. Firefighter Rob Sterner, who was hired on March 15, 2018, was

1 enrolled in EMT certification training, which he attended for 120 hours between
2 September 2020 and December 2020.

3
4 Findings of Fact⁶

5 I. Overview and History of Boxford Fire Services

6 Prior to 2000, the Town relied exclusively on call firefighters to provide firefighting
7 services. In about 2000, the Town hired its first two full-time firefighters.⁷ By 2006, the
8 Town had two full-time firefighters and thirty-eight call firefighters. In 2016, the Town
9 increased the complement of full-time firefighters to four, while keeping the roster of call
10 firefighters at about thirty-eight. As of October of 2020, the ratio of full-time to call
11 firefighters, excluding the Fire Chief, was 4 to 39.⁸

12 Since 2006, therefore, the Town has relied on a combination of full-time career
13 firefighters and part-time call firefighters of all ranks to respond to emergencies twenty-four
14 hours a day, seven days a week, 365 days a year. As described in the stipulations and in
15 greater detail below, full-time firefighters provide on-shift coverage between the hours of
16 7:00 a.m. to 5:00 p.m., Monday – Friday, with each full-time firefighter working a total of forty
17 hours a week. No full-time firefighters are scheduled to work off-shift hours, which are

⁶ The Petitioner's post-hearing brief cites factual findings from Boxford I, supra, as facts in the current case. However, the record of the current case contains no stipulation or other agreement either on the record or in post-hearing briefs regarding partial or wholesale acceptance of the CERB's factual findings in Boxford I for such purposes. Therefore, the factual findings discussed below are based solely on the witness testimony and documentary evidence presented at hearing in the current case.

⁷ It is not clear from the record when the Town first hired a full-time Fire Chief.

⁸ Joint Exhibit (JX) 1, JX 20, and JX 43 include call firefighter rosters that illustrate very small fluctuations in the number of call firefighters during the relevant period that are not material to a decision in this case.

1 Mondays through Friday, from 5:00 p.m. to 7:00 a.m., and weekends. There is no station
2 coverage during this time, and all emergencies are handled through alarms generated by
3 the 911 dispatch system to which both call and full-time firefighters may, but are not required
4 to, respond. In general, when non-emergency calls come in during off-shift hours, the
5 dispatcher, without sounding an alarm, contacts the OIC who decides how the call should
6 be handled. The OIC is a rotating off-shift assignment among call and full-time firefighters.

7 Among its vehicles, the Department has fire engines that carry 2500 gallons of
8 water (also known as pump trucks),⁹ and a rescue truck that responds to motor vehicle
9 accidents and medical services requests, but does not transport patients.¹⁰

10 Brian Geiger (Geiger) has served as the Town's Fire Chief since 2015. He started
11 working for the Town in 2006 as a call firefighter. He became a full-time firefighter in
12 2009 and a Lieutenant around 2013.

13 In Fiscal Year (FY) 2007, the total Department budget was \$395,974.00. By
14 FY2016, it was \$487,135.30. In FY2017, after the Department expanded from two to
15 four full-time firefighters, the total budget increased to \$629,534.10. In FY2020, the
16 Department's budget was \$735,795.¹¹

17 Stations

18 The Department operates two fire stations, the East Station, in the East District of

⁹ The Town has no pressurized hydrants. It relies on various ponds and streams with pre-connected pipes for water access.

¹⁰ There was no testimony on the total number of vehicles. However, Union Exhibit 6, p.5 refers to five Department "engines."

¹¹ We discuss additional details regarding the budget in separate sections, below.

1 Town, and the West Station, in the West District. The East Station, where the Chief's
2 office is located and business mail is received, is considered the Department's
3 headquarters. During the relevant time period, which, as stipulated, was November 1,
4 2019 through October 31, 2020, the Town assigned full-time firefighters to the East or
5 West Stations, depending on operational needs, as determined by the Fire Chief. During
6 off-shift hours, full-time and call firefighters are assigned to respond to alarms by
7 residency. This means that with the limited exceptions described below, only firefighters
8 assigned to the East Station are eligible to respond to alarms toned for the East Station,
9 and only firefighters assigned to the West Station are eligible to respond to alarms toned
10 for the West Station.

11 This was not always the case. In the past, including in 2006, the Town assigned
12 all full-time firefighters to the East Station due to the East District's larger population and
13 call volume; it only assigned full-time firefighters to the West Station as needed. The full-
14 time firefighters assigned to the East Station responded to both East and West Station
15 alarms during on-shift hours. During off-shift hours, full-time firefighters were assigned to
16 the East or West station based on residency. Also, in 2006, the Department had eighteen
17 call firefighters assigned to the East Station and seventeen assigned to the West Station,
18 based on residency.

19 During his tenure as Chief, Geiger has generally continued to assign full-time
20 firefighters to the East or West Stations during on-shift hours based on operational needs.
21 With the onset of COVID-19, however, Geiger has assigned two full-time firefighters to
22 the East Station and two to the West Station. During off-shift hours, Geiger has continued
23 to assign both full-time and call firefighters to the East or West Stations based on

1 residency.

2 Pagers, Apps and Alarms¹²

3 The Department issues every firefighter a one-way voice pager when they are
4 hired. The pager has two set modes, a monitor mode that allows the firefighter to hear
5 every single possible communication on the airway (alarms and radio transmissions) and
6 another mode called standby or alert mode. The Town's Director of Communications
7 programs the alert mode for each firefighter to either East or West tones, depending on
8 the firefighter's geographic station assignment. Listening to the pager in monitor mode
9 does not change a call firefighter's eligibility to respond to only their assigned alarms, i.e.,
10 East, West, and General Alarm Tones).

11 Because pagers are geographically limited, the Department uses a phone app
12 called eDispatches as a secondary means of notifying firefighters about an alarm. All full-
13 time and call staff have eDispatches on their phones. For up to a minute, the app sends
14 an alert to their phone (East call, West call, or East/West call for a General call) along
15 with a voice recording from dispatch describing the call.

16 All full-time and call firefighters have a second app called IamResponding on their
17 phones. This app enables firefighters to indicate that they are responding to calls so that
18 dispatch can see how many firefighters are responding. If dispatch sees that too few
19 firefighters are responding to an East or West Alarm, they can upgrade the call to a

¹² The terms "alarms," "tones," and "calls" appear interchangeably in the hearing record. The term "calls" appears in the record primarily as an abbreviation of "call responses." A "tone" is an emergency alarm. "Incidents" are all events with a clearly defined start and end for a specific function or action entered in the PAMET record-keeping system and encompass alarms, tones, calls, trainings, and administrative events.

1 General Alarm to prompt more firefighters to respond. Even without using the app,
2 however, any firefighter can request dispatch to upgrade a station call to a General Alarm
3 if they get to the station and see that they are the only firefighter responding.

4 Alarms

5 The Town uses four primary alarms generated by the Town's 911 dispatch center
6 to Fire Department personnel: General Tones, East Tones, West Tones, and Still
7 Alarms.¹³ As described in the stipulations and in more detail below, the type of alarm is
8 determined by the nature and location of the call to dispatch, as well as the day of the
9 week, and the time of the day. If dispatch determines that the call should be toned (as
10 opposed to calling the OIC), it uses three different tones to notify firefighters of the type
11 of alarm – the Still Tone, the East Tone and the West Tone; the General Tone is a
12 simultaneous combination of the East and West Tone. The Still Alarm tone is an
13 attention-getting audible sound for full time firefighters that does not activate pagers in
14 alert mode or the eDispatches app. The tone is an almost simultaneous combination of
15 the East and West Tones.

16 Run Cards

17 Run cards are used by dispatchers to categorize the calls received and the type of
18 tone that should be sounded. Dispatchers are trained to use the run card with three
19 determining factors of the type, time, and location of the emergency call. The March 30,
20 2020 run card (JX 2) lists ten separate events. For each of those events, the run card

¹³ A comprehensive list of alarm types appears in Employer Exhibit 1 and includes: Still Alarm-East (SE); Still Alarm-West (SW); East Tone (ET); West Tone (WT); East Upgrade (EU); West Upgrade (WU); General Tone (GT); Upgrade General (UG); Storm/General Coverage (GC); and Trouble Alarm (TA).

1 indicates whether the incident should be toned as an East, West, or General Alarm.
2 During the relevant period, the dispatcher toned all calls occurring during on-shift hours
3 as a Still Alarm, unless the reason for the call was one of the ten incidents listed on the
4 run card. All *off-shift* alarms, however, are toned as East or West Alarms, unless
5 otherwise listed on the run card. A brief, more detailed description of each type of alarm
6 is set forth below.

7 General Alarms

8 A General Alarm is a call that can occur at any time of the day for all full-time and
9 all available call firefighters to respond. The General Alarm tone is used for the most
10 serious and complex calls that require the most manpower, such as a structure fire or
11 major motor vehicle accident on Route 95. All firefighters' pagers are activated by a
12 General Alarm.

13 Station Alarms

14 East Tones and West Tones, also referred to as East and West Station Alarms,
15 can also occur 24/7 and are toned based on the location of a reported emergency in
16 Town, i.e., nearest to West Station or East Station. As explained above, call firefighters
17 and off-duty full-time firefighters may respond only to the tone affiliated with their
18 geographically assigned station unless they are geographically close to the other station
19 when the alarm is toned, or they are filling in for an absent firefighter at the station for
20 which the call is toned.

21 Station Alarms may be upgraded to General Alarms for incidents requiring more
22 manpower or equipment, for the seriousness and complexity of incidents, or for a lack of
23 adequate firefighter response to the initial Station Alarm, including situations where the

1 call firefighters who respond lack the necessary qualifications to drive Department
2 vehicles. If a call is upgraded from a Station Alarm to a General Alarm, all firefighters
3 regardless of station assignment are eligible to respond.

4 Still Alarms – On-Shift

5 Still Alarms are toned for emergencies that the four full-time firefighters can
6 appropriately staff, as well as non-emergency situations, such as chirping smoke
7 detectors. Before there were four full-time firefighters, most on-shift and off-shift calls
8 were toned as General Alarms, as a means of attaining the Department's goal of getting
9 the greatest number of call firefighters to a scene.¹⁴

10 However, beginning in 2016, with four instead of two full-time firefighters, the
11 Department had an improved ability during on-shift hours to respond to emergencies with
12 adequate personnel and equipment, and had less of a need to rely on call firefighter
13 support. As a result, in 2016, Geiger instituted the Still Alarm tone described above, and
14 gradually phased in the practice of toning calls received between 8:00 a.m. and 4:00 p.m.
15 as Still Alarms unless the run card dictated otherwise. Once Geiger determined that the
16 policy was not detrimental to the Department's emergency response, he expanded it to
17 7:00 a.m. – 5:00 p.m. Since that time, all on-shift calls have been toned as Still Alarms
18 unless the call is for an emergency listed on the run card, in which case the dispatcher
19 will tone the appropriate alarm. As a result of these changes, while only 3% (28 of 939)
20 of alarms were recorded as Still Alarms in 2006, from 2017-2020, Still Alarms represented

¹⁴ During an unidentified period of time prior to 2016, the Department automatically toned all on-shift West District calls as General Alarms to increase the call firefighter response rate.

1 between 41-46% of all alarms.¹⁵

2 In practice, when a Still Alarm sounds during on-shift hours, the four full-time
3 firefighters decide how to respond to the scene, e.g., whether all four full-time firefighters
4 should respond, or whether only one or two of them are needed at the scene. The only
5 times that call firefighters are eligible to respond to a still alarm during on-shift hours is
6 when they are voluntarily working a full-time firefighter shift,¹⁶ on an assignment for the
7 Fire Chief,¹⁷ or happen to be at the fire station for routine business.¹⁸ The joint exhibits
8 further reflect limited “direct response” exceptions based on the proximity or relationship
9 to the emergency¹⁹ or for undefined reasons.²⁰

10 Still Alarms - Off-Shift

11 Although Still Alarm tones sound only during on-shift hours, the Department also

¹⁵ These numbers are derived from JX 22.

¹⁶ JX 35 is a chart of call firefighters’ responses to Still Alarms during the relevant period. The categories of responses include “Shift Coverage,” “OIC,” “Assignment,” “Direct Response,” and “Other.”

¹⁷ These are instances where call firefighters are at the East or West Fire Stations for tool, hose, and gear maintenance.

¹⁸ Routine business could include something as simple as stopping by to say hello or discuss something with Geiger, washing their turnout gear, or picking up a red light permit for their vehicle.

¹⁹ For example, the exhibits reflect that call firefighters responded to Still Alarms concerning an emergency at a relative’s house and an emergency that occurred a few houses away from a call firefighter’s house.

²⁰ According to JX 35, four call firefighters responded to Still Alarms for “other” reasons during the relevant period.

1 records off-shift OIC calls as Still Alarms. When the Dispatch Center receives a non-
2 emergency call during off-shift hours, the dispatcher contacts the OIC by phone to
3 investigate the incident and determine next steps. Assuming that the event is not
4 upgraded to a Station or General Alarm once the firefighter arrives on the scene, the call
5 is entered into the Department's record keeping system as a Still Alarm, even though no
6 alarm was toned for firefighters listening in "alert" mode. During the relevant time period,
7 no call firefighter responded to more than five Still Alarms as the OIC.²¹

8 Firefighters' Ranks and Duties

9 The Department is a paramilitary organization with the following rank structure: chief,
10 deputy chief, captain, lieutenant, private, and probationary firefighter.²² Full-time and call
11 firefighters are eligible to hold the same ranks. The chain of command and rank
12 supersedes the full-time or call designation such that there is no distinction between full-time
13 and call firefighters at the scene of an emergency.²³ Depending on the circumstances, a

²¹ See JX 35.

²² Geiger testified that the lowest rank is that of firefighter. His testimony on this point is consistent with JX 12, which lists the titles of "Firefighter, Fire Lieutenant, Fire Captain and Fire Deputy" in the career firefighter compensation matrix. However, the employee lists in JX 1 and JX 20, which are both lists of active firefighters, do not include a separate rank of firefighter, but do include ranks of "private" and "probationary," in addition to lieutenant, captain and deputy ranks. Blake also referred to private and probationary firefighters when he testified that probationary firefighters are paid at a lower rate than privates. Blake has been a full-time firefighter for the Town since 2016. For this reason, we sub-divide the firefighter rank into "probationary" and "private."

²³ The Town broadly asserts in its post-hearing brief that it has "never drawn a distinction between full-time and call firefighters." As discussed in greater detail below, we find that while it does not distinguish between the two for the purposes of rank, it does distinguish between full-time and call firefighters in numerous other aspects ranging from certification requirements to certain job duties, to promotional requirements.

1 call firefighter could be the incident commander of an emergency if that call firefighter is the
2 highest-ranking individual at the scene. During the relevant time period, and continuing
3 through February of 2021, two full-time firefighters were lieutenants and two were
4 privates. Of the call firefighters during the same time period, there was one deputy chief,
5 one captain, and four lieutenants, and the rest were privates or probationary firefighters.²⁴
6 The Department employs a total of ten officers, not including Chief Geiger.

7 Duties and Work Environment

8 In general, full-time and call firefighters perform the same firefighting job functions,
9 receive the same training on all equipment, and have equal access to the same
10 equipment when called to an emergency. Full-time and call firefighters must be pump
11 operators to drive a fire engine. They must also undergo training to drive the rescue truck.

12 According to a job description that was last approved in 2005,²⁵ the principal
13 purpose of a full-time firefighter's job is to:

- 14 • Control and extinguish fires and engage in search and rescue for the
15 preservation of life and property.
- 16 • Respond to all medical emergencies and administer First Responder aid as
17 defined by the Massachusetts Department of Health and, if certified as an
18 Emergency Medical Technician, Emergency Medical protocols.
19 Maintain apparatus, quarters, buildings, equipment, and grounds as
20 directed.
21

²⁴ There is conflicting information in JX 1 and JX 20 about whether some individuals were private or probationary firefighters during the relevant time period, but these differences are immaterial.

²⁵ JX 8 is an edited version of the 2005 full-time firefighter job description and states "updated 1/10/2018." In 2018, Geiger sent Blake the 2005 job description for the purposes of wage discussions that Blake and the other full-time firefighters were having with the Personnel Board, Select Board, Finance Board, and Town Administrator. It is undisputed that Geiger did not make the edits in JX 8, and the Town did not approve the edits. We therefore do not include the edits.

1 Under Work Environment, the job description indicates, among other things:

- 2 • Daily assignment is based on a 40-hour work week, with specific
- 3 shifts assigned by the shift commander, depending on current needs.
- 4 • May be assigned to either East or West station, depending on current
- 5 needs, as determined by the shift commander.

6 The call firefighter job description is nearly identical to the full-time firefighter job
7 description, with key exceptions. In the section on Work Environment, whereas the full-
8 time firefighter job description states that “[d]aily assignment is based on a 40-hour work
9 week” the call firefighter job description provides that:

- 10 • Daily assignment is based on an employee’s availability to respond
- 11 to emergency calls 24 hours-a-day, 7-days-week, responding from
- 12 either the East or West station. Minimum participation requirements
- 13 must be met to maintain employment and position.²⁶
- 14

15 In addition to the duties listed in their formal job descriptions, full-time and call
16 firefighters perform other related duties. For instance, the Town’s four full-time firefighters
17 handle day-to-day Fire Department operations including fire prevention duties, station
18 duties, community outreach duties, such as school visits, write grants, and conduct
19 inspections.

20 The Department conducts numerous types of inspections, including general safety
21 inspections, smoke detector inspections, and inspections regarding furnace installations and
22 removals, oil tank installations and removals, and building construction plans. Full-time
23 firefighters are generally responsible for safety inspections. Call firefighters may go on an
24 inspection as the result of working a shift for a full-time firefighter, but they do not sign off on

²⁶ As described infra, the Town does not require call firefighters to respond to a minimum number of calls or work a minimum number of hours to retain their position. There are certain qualifications and training requirements, however, which are discussed below.

1 inspection forms.

2 Call Firefighter Non-Alarm Duties

3 As described throughout this decision, during on and off-shift hours, call firefighters
4 primarily respond to alarms to which they are eligible to respond. However, during on-shift
5 hours, they may also volunteer to provide shift coverage for absent full-time firefighters.
6 Open shifts arise when full-time firefighters are on vacation, sick, using personal time, or are
7 off-site for training. Geiger uses his discretion to fill scheduled hours with call firefighters
8 based on operational and budgetary considerations. In general, he tries to maintain a three-
9 person staff minimum. At times, Geiger considers himself the third full-time firefighter, but if
10 he has a busy schedule, he will schedule a call firefighter to fill an open slot created by a
11 full-time firefighter's absence. When Geiger schedules a call firefighter for station coverage,
12 he may or may not decide to require the call firefighter to have certain certifications. For
13 instance, on any given day, Geiger must have at least one EMT and one pump operator on
14 duty. The procedure for filling open shifts depends in some respects on the day. Typically,
15 the Department emails all firefighters regarding the open shift. Geiger collects the
16 responses. He keeps a spreadsheet where he tracks who expressed interest on a
17 particular day and who was assigned. He tracks the percentage of assignments for those
18 who express interest in filling shifts in order to make subsequent shift assignments and
19 balance the assignments among those interested. There is no requirement that call
20 firefighters perform station coverage duties.

21 Call firefighters may also volunteer for and be paid to assist the Chief with specific
22 tasks, such as fire hose testing. When assisting the Chief or filling an open shift, call
23 firefighters may perform the type of non-emergency work that full-time firefighters perform,

1 e.g., community outreach such as school visits, station duties, and other administrative
2 duties and inspections. In addition to these duties, firefighters may also volunteer to
3 perform certain Town details, such as road races, graduations and elections.

4 The Town does not mandate that call firefighters respond to a minimum number of
5 alarms or work a minimum number of hours doing non-emergency work as a condition of
6 remaining a Town call firefighter. Except for the OIC assignments described below, it does
7 not assign call firefighters any shifts.

8 Officer In Charge Assignments and Duties

9 Each of the full-time and call officers (lieutenant and above) is assigned a week-
10 long Monday to Monday²⁷ rotation as the OIC. As there are ten officers, there is a ten-
11 week schedule. The OIC is tasked with responding to non-emergency calls during off-
12 shift hours. There is no evidence in the record that a call officer working an OIC shift is
13 required to be at a fire station or is otherwise restricted in their personal activities.

14 When the civilian Department dispatcher receives a call that they understand
15 based on their experience and the run card to be a non-emergency call, the dispatcher
16 calls the OIC with the relevant information about the call. The OIC then directly assists
17 the caller.²⁸ If the OIC does not respond to the dispatcher's call, then the dispatcher
18 contacts the OIC for the following week. If the second OIC fails to respond, the dispatcher

²⁷ Geiger initially testified that it is a Sunday-to-Sunday schedule, but then stated that "I want to say Monday is the first day and it ends on Monday. He also testified that the OIC schedule is "typically outside of the full-time schedule . . . from 7:00 a.m. to 5:00 p.m. Monday through Friday."

²⁸ Should the officer arrive at the scene of the non-emergency call and determine that the incident needs more services, they may request that dispatch upgrade the call to a Station Alarm or General Alarm.

1 tones out the call as an East or West Station alarm based on geography. Call officers
2 who do not respond to a dispatcher's call do not suffer adverse consequences.²⁹

3 Hours and Earnings

4 Full-Time Firefighters - Hours

5 As the stipulations reflect, the full-time firefighters' "on-shift hours" cover ten hours
6 per weekday, Mondays through Fridays, 7:00 a.m. through 5:00 p.m., for a Department-
7 wide total of fifty hours of on-shift coverage per week. As reflected in the stipulations, during
8 the relevant period, there were five full-time firefighters, including Chief Geiger, As
9 Stipulation 10 reflects, the Department schedules each individual full-time firefighter to work
10 forty hours per week, such that three full-time firefighters work Mondays, Wednesdays, and
11 Fridays, and four work on Tuesdays and Thursdays. Chief Geiger works Monday through
12 Friday, 9:00 a.m. to 5:00 p.m. During the relevant time period, Blake, Brown, Colangelo,
13 and Soltys each worked 2080 regularly-scheduled hours.

14 The Department does not require full-time firefighters to respond to emergency
15 calls outside of their regularly scheduled hours, but expects full-time firefighters to do so
16 especially for serious or more complicated alarms, or if there is an insufficient call
17 firefighter response to a call.

18 Full-time Firefighters Earnings

19 In 2018, the Town established a wage schedule for full-time firefighters based on
20 grade and step levels. To move from one step to the next, full-time firefighters must complete

²⁹ Geiger testified on cross-examination that while the Department wants the OIC to answer the phone, the term "obligation . . . is a little strong." He also testified that there are no adverse consequences for the OIC should they not do so.

1 twenty hours of pre-approved additional training and have a satisfactory job performance
2 review. Grade levels are as follows: F-1 is a Firefighter, F-2 is a Lieutenant, F-3 is a Captain,
3 and F-4 is a Fire Deputy. Each grade has corresponding step levels 1-10. In FY2021, the
4 full-time firefighter salary scale ranged from a Step 1 Firefighter with an hourly rate of \$25.28
5 and an annual salary, excluding overtime, of \$52,586, to a Step 10 Fire Deputy with an
6 hourly rate of \$41.41 and an annual salary, excluding overtime, of \$86,131.³⁰ Full-time
7 firefighters are also eligible for uniform allowances and stipends as EMTs, the Training
8 Director, the Maintenance Director and the EMS Director.³¹ During the relevant time period,
9 Soltys earned \$77,431, Blake earned \$71,788, Brown earned \$74,209, and Colangelo
10 earned \$66,377.³²

11 Overtime

12 Full-time firefighters receive overtime pay for attending trainings, covering a shift
13 for an absent full-time firefighter, and responding to calls outside of their regularly
14 scheduled 40-hour work week. During the relevant period, Blake worked 353 overtime
15 hours, Brown worked 339, Colangelo worked 168, and Soltys worked 167.³³

³⁰ This information is taken from JX 12, the Personnel Board Proposed Career Firefighter compensation matrix from the Annual Town Meeting, May 14, 2019. This appears to be the FY2020 full-time firefighter salary schedule, but there was no detailed testimony about this exhibit.

³¹ In FY2020, the Department paid full-time firefighters an EMT stipend of \$1,521 and a uniform allowance of \$1,191. Full-time firefighter Brown received stipends as the Training Director and the Maintenance Director.

³² The record does not include detailed information about the full-time firefighters' overtime rate, or the individual firefighter's grade and step levels.

³³ JX 14 lists Soltys as working 215 hours of overtime, but Geiger testified that Soltys only worked and was paid for 167 hours of overtime as there was a period of time when Soltys worked hours outside of his regularly scheduled shift but was not eligible to be paid for those hours at an overtime rate because he had taken COVID-related leave time during

1 Call Firefighters' Hours

2 Call firefighters are on call 24/7, 365 days per year to respond to alarms to which
3 they are eligible to respond. As emphasized throughout this decision, the Town does not
4 mandate that call firefighters work a minimum number of hours as a condition of remaining
5 a call firefighter.

6 Call Firefighter Earnings

7 Call firefighters' hourly rates depend on rank and certifications. In FY2020, base rates
8 were as follows: Firefighter \$15.11; Probationary Firefighter \$17.30; Private \$18.96;
9 Lieutenant \$19.78; and Captain 22.54.³⁴ In FY2020, the Department also paid officer
10 position stipends as follows: Deputy Chief \$2,696, Captains \$855, and Lieutenants \$389.
11 The Department further pays stipends to call firefighters for participation in the EMT on-call
12 program. As with the full-time firefighters, call firefighters that hold the following positions are
13 also eligible for stipends: Training Director (\$1051); EMS Director (\$1051),³⁵ and
14 Maintenance Director (\$466). The Department provides differentials for call firefighters with
15 certain skills, including pump operator \$1.04, EMT \$2.07, and paramedic \$3.11, and for
16 successful completion of Fire Academy training \$2.07.³⁶ The Department pays all call

the regular shift. Blake also acknowledged that JX 14 included 48 hours that Soltys worked off-shift but was paid for at straight time because he left his regular shift early for COVID-related reasons.

³⁴ There is no testimony in the record clarifying the differences in JX 16 between the call firefighter, probationary, and private base hourly base rates, or explaining the omission of the Deputy Chief base rate.

³⁵ Call firefighter Carrie Burke (Burke) is the EMS Director.

³⁶ The six most senior call firefighters during the relevant time period had not attended the Call/Vol. Academy, but the Chief had designated them as being eligible for the Firefighter I/II pay rate because of their equivalent experience and training.

1 firefighters a \$50.00 detail rate for all details they work in excess of four hours.³⁷

2 The Department pays call firefighters an hourly rate for all call hours they work.
3 These hours include all of the tasks described above, including responses to emergency
4 alarms, responses to non-emergency alarms as the OIC, station coverage, hydrant
5 maintenance, station maintenance, and training hours both inside and outside of the
6 Department, as described below. During the relevant time period, call firefighters' paid
7 hours, including call hours, training hours, and detail hours ranged from 18.5 to 844 hours,
8 with respective earnings that range from \$345 to \$15,220. Hassam is the only call firefighter
9 to have worked at least 33% of the full-time firefighters' scheduled 2080 hours.

10 Call Firefighter Alarm Response Rates

11 The Town does not require call firefighters to respond to a minimum percentage
12 of toned alarms as a condition of continuing to serve as a call firefighter. Over time, the
13 Department has struggled with low call firefighter response rates³⁸ and drafted policies

³⁷ In 2016, Geiger advocated before the Board of Selectmen for an increase in call firefighter pay, which had not been evaluated for a long time. Geiger sought to increase their hourly pay rate to align with surrounding towns, and to include pay bumps for Firefighter I/II, EMT and pump operator certifications.

³⁸ As an example of an incident to which there was an inadequate call response, the record includes testimony regarding the 2016 "Crooked Pond incident." This incident was a structure fire that occurred during a weekday, at about 1:00 p.m. During the fire, Geiger and two full-time officers responded immediately, but the initial call firefighter response was inadequate. As a result, the Town had to rely on mutual aid from other communities. The number of call firefighters at the scene eventually increased and was of assistance, but initial response was a concern for Geiger. No person was injured that day.

1 that include a minimum call response rate.³⁹ At the time of the hearing, however, no such
2 policies were being implemented or enforced, although call firefighter response rates
3 remain an ongoing topic of discussion.⁴⁰ Geiger's opinion is that call firefighter response
4 rates have improved recently, something that he attributes to a variety of factors including:
5 improved recruitment, interviews that set clear expectations for individuals,⁴¹ and a shift
6 in technology that allows people to work from home.

7 During the relevant time period there were about 875 total alarms, including 52

³⁹ JX 7 is a one-page document titled Standard Operating Guidelines, Continued Employment Requirements, GA-100.6. This document, which existed before Geiger was Chief, requires call firefighters to respond to at least 10% of all calls (provided that call attendance excludes still alarms and is based on general calls plus East or West calls depending on assigned station). The policy document states, "Date Adopted: May 23, 2019," but it is undisputed that the Town Personnel Board has not adopted this policy. Geiger testified that he inserted that date when he reformatted the document. On a related note, the record reflects that in about 2019, Geiger posted a spreadsheet of call firefighter response rates with a highlighted section of call firefighters with response rates under 10%. However, there is no record of discipline arising from this posting or evidence of related policy announcements. There is also no information in the record about the underlying calculation for the response rates in the 2019 spreadsheet.

⁴⁰ JX 45 and JX 47, the September 5, 2019 and December 21, 2020 Officers Meeting Notes, establish that the call firefighter response rate minimum issue is an ongoing point of discussion within the Department. During the September 5, 2019 officers' meeting, Geiger stated that the Department needed to set a specific response percentage in light of the fact that he found old policies requiring a 70% response rate to be unrealistic. The meeting notes from the September 5, 2015 meeting state, "[w]e discussed changing the response requirement to 5%-10% for total calls (East + General or West + General)" and that another option was to remove specific time periods from the calculation and measure "response availability from 19:00-0500 M-Th and 19:00F to 05:00 (sic) Monday." Geiger further explained during the September 5, 2015 meeting that he would use the standard to "reappoint" members to the Department annually, thereby making it easier to remove members "who provide nothing." Geiger reiterated this concept during the December 21, 2020 officers' meeting.

⁴¹ See footnote 53 and accompanying text.

1 General Tones, 312 East Tones, 137 West Tones, and 374 Still Alarms (286 Still East;
2 88 Still West). No call firefighter responded to 33% of all alarms. The parties' joint exhibits
3 contain additional information regarding call firefighters' response rates as follows:

- 4 • No call firefighter responded to 33% of all alarms. Call firefighter Kevin Foster (K.
5 Foster) responded to a total of 32.6% of all alarms, including General Alarms, East
6 Station Alarms, West Station Alarms, and Still Alarms while the remaining call
7 firefighters responded to 18.4% or less of all alarms. 14 call firefighters responded
8 to more than 33% of combined General and assigned Station Alarms.
- 9 • General Alarms comprised 6% of all alarms. Ten call firefighters responded to 33%
10 or more of General Alarms. The remaining call firefighters responded to less than
11 33% of General Alarms.
- 12 • East Station Tones comprised 36% of all alarms. Seven call firefighters responded
13 to 33% or more East Station alarms.
- 14 • West Station Tones comprised 16% of all alarms. Eight call firefighters responded
15 to 33% or more West Station alarms.
- 16 • Still Alarms (during on-shift and off-shift hours) comprised 43% of all alarms (374
17 of 875), with about 79% of Still Alarms occurring during on-shift hours, and about
18 9% occurring during off-shift hours. No call firefighter responded to more than 10%
19 of all Still Alarms.
- 20 • During on-shift hours there were 84 non-Still Alarms, or about 21%. 68% of the
21 time, four or fewer of the 38 call firefighters responded to on-shift non-Still Alarms.
22 11% of the time, no call firefighters responded to on-shift non-Still Alarms.

23 Full-Time Firefighters' Response Rates

25 Blake was the only full-time firefighter that responded to more than 33% of those
26 alarms, with a 42% response rate. Brown responded to 31%, and Colangelo and Soltys
27 responded to 23%.

28 Certifications and Training

29 Full-time and Call Firefighter Certification Requirements

30 As set forth in the 2005 job description and elsewhere in the record, the Town
31 requires full-time firefighters to: 1) have a valid Massachusetts driver's license; 2)
32 Firefighter I and Firefighters (FF I/II) certification from the Massachusetts Firefighting
33 Academy; 2) have Emergency Medical Technician (EMT) certification from the

1 Commonwealth or EMT certification within one year of date of hire⁴²; and 3) be pump
2 operators.

3 The requirements are different for call firefighters. As set forth on the 2005 job
4 description, the Department requires call firefighters to have a valid Massachusetts
5 driver's license, and to either "have or be willing to obtain as soon as possible current
6 First Responder's Certification from the Commonwealth of Massachusetts and maintain
7 that certification." As described below however, although call firefighters are encouraged
8 to obtain FFI/II certification and EMT certification, the Department does not compel them
9 to do so as a condition of continued employment. Nor does it require them to be pump
10 operators or rescue truck drivers, although they must have the appropriate training to
11 operate these vehicles.⁴³

12 Firefighter I/Firefighter II Training, Generally

13 Firefighter I and Firefighter II (FFI/II) certification is the professional certification for
14 all Massachusetts firefighters. The Massachusetts Firefighting Academy has two
15 programs for FFI/II certifications, Career Recruit Training (the Career Academy) and

⁴² The Fire Chief may extend the one-year EMT certification period at his discretion. For example, Brown requested but did not need an extension to achieve EMT certification when it appeared that the course instructor would not be able to complete the course instruction. Under the circumstances Geiger granted the request. However, another instructor completed the course instruction, and Brown achieved certification within one year of being hired.

⁴³ During the relevant period, 50% (19 out of 38) of call firefighters were pump operators. In 2020, 22 out of 38 call firefighters attended an orientation that enabled them to operate a new Rescue 2 fire truck.

1 Call/Volunteer Training (Call/Vol Academy).⁴⁴ The Career Academy is held forty-hours
2 per week, Monday through Friday 9:00 a.m. – 5:00 p.m. The Call/Vol Academy is a five-
3 month program (November-March) with fifty-seven training days, primarily on Monday,
4 Tuesday, and Wednesday evenings, as well as Saturday and Sundays. Participants
5 attend two nights per week and every Saturday. There are lecture days, exam days, and
6 mandatory skill days. Missing mandatory skill days results in removal from the program.
7 In Essex County, the Call/Vol Academy is offered only once a year.

8 Both programs provide “Pro Board training” and upon completion, attendees of
9 both training programs become “Pro Board certified” with Firefighter I/II certifications,
10 meaning that they have met the knowledge, practical skills, and demonstrated proficiency
11 in skills to meet the National Fire Protection Association’s (NFPA) Standard 1001.

12 EMT Training

13 The Department pays for an online module with unlimited access for firefighters to
14 take as many trainings as desired throughout the year. Geiger has found the online
15 module allows full-time and call firefighters to best manage their time in terms of EMT
16 trainings. Most firefighters participate in an EMT program that coincides with a college
17 semester, either September to December, or from January to May. The EMT program is
18 over 120 hours and requires extensive reading and practical skill assessments.

19 Call Firefighters’ Certifications

20 Since becoming Chief, Geiger has actively sought to have all new call firefighters
21 achieve EMT certification within six months of their initial appointment, and FF/I/II

⁴⁴ The main difference between the two training programs is that the Career Academy provides more hands-on training and has more of a fitness element to it than the Call/Vol Academy. Another difference is when the programs are given.

1 certification within two years of being hired. According to Geiger, it takes about two years
2 for a new call firefighter to become completely trained and certified.⁴⁵

3 Despite these aspirations, the Department has no “hard and fast rule” that makes
4 call firefighters’ Call/Vol Academy and EMT Training a requirement of continued
5 employment.⁴⁶ For “retention” purposes, Geiger takes into consideration individual
6 circumstances and the limited availability of Call/Vol Academy opportunities that may

⁴⁵ After Geiger hires a new call firefighter, he discusses the Department’s expectations and the commitment required, including “an up-front commitment” to attend EMT classes and the Academy. He outlines the schedule so that they understand that EMT school could be two nights a week or one night a week for several months. He also informs them that the Fire Academy is three to four days a week for several months as well. He explains that typically EMT training should be done the first year of hire and the Academy in the second year. Geiger also evaluates the new hire’s background and abilities to decide whether the Department should send them first to EMT training or Academy training. If the new hire is EMT-trained or in the process of EMT testing, the Department is likely to send them to Call/Vol Academy. For high school students hired through the Department’s Fire Explorer program, Geiger prioritizes EMT training. However, if a probationary employee lacks proficiency or has low alarm response rate, Geiger is hesitant to send them immediately to the Call/Vol Academy. Geiger will also not send a call firefighter to the Call/Vol Academy if they have a conflicting job schedule or plan to attend an out-of-state college in the near future.

⁴⁶ Geiger testified that the Department requires all new members to become EMTs within six months to a year of their initial employment, and that “the Fire Academy is also very strongly pushed for to the point where it’s almost mandatory that they attend that within another two years of their employment.” When asked if there was a “hard and fast rule” regarding either certification in terms of continued employment, Geiger stated that that “basically new hires have to complete both of those requirements.” The qualifications that Geiger included in his testimony, such as “almost mandatory” and “basically” fail to establish that successful completion of these training programs within a proscribed period of time is essential for call firefighters to maintain employment. Moreover, although Geiger testified that he and certain call firefighters have “jointly agree[ed] to part ways,” there is no evidence that Geiger has terminated an employee for lack of Call/Vol Academy or EMT training and certifications. Accordingly, we reject the Town’s post-hearing brief assertion that “attendance and completion of the [the Call/Vol Academy] and EMT certification is mandatory to continue to be employed.”

1 interfere with a call firefighter's ability to achieve certifications.⁴⁷ Consistent with the
2 policy, as of January 2021, nine call firefighters had no certifications at all, of which Geiger
3 hired seven. Of those seven, three were scheduled to attend the Call/Vol Academy in
4 2021 or 2022, and one was in high school and headed to college. Three others
5 unsuccessfully completed an EMT training program. As for the remaining two who Geiger
6 had not hired and who lacked any certification, one unsuccessfully completed an EMT
7 training program and there is no further information about the other.

8 Although the Department has not terminated any call firefighter for not achieving
9 EMT/Paramedic and FFI/II certification and Academy attendance within two years of
10 being hired, certain call firefighters agreed, in consultation with Geiger, to leave
11 employment.⁴⁸ For instance, of the eleven call firefighters that Geiger hired between
12 2015-2018 who are no longer working for the Department, two never achieved EMT
13 certification, seven never attended the Call/Vol Academy, and one withdrew from the
14 Call/Vol Academy.⁴⁹ According to Geiger, the Department decided not to invest in sending

⁴⁷ The record shows for example, that call firefighters Patrick Gallagher, Ian Fitch, and Thomas Nee attended EMT training but did not achieve certification. They nevertheless stayed on the active roster. Similarly, call firefighter Christopher Patrikas did not complete Call/Vol Academy training and did not get EMT certification in his first year, but stayed on the active roster.

⁴⁸ In Transcript 1 (Tr. 1), p. 57, the Town attorney uses the phrases "hire date" and "termination date" in reference to the dates listed in JX 43. We find that in context, the word "termination" is used to refer to the date an individual's employment ended by mutual agreement, not that Geiger unilaterally terminated an individual.

⁴⁹ The remaining three achieved EMT certifications and attended the Call/Vol Academy, but the reasons for their departures are unclear.

1 certain call firefighters to the Academy after evaluating their employment and determining
2 that they “were less likely to remain an active member” of the Department.

3 While there is no hard and fast rule that makes call firefighters’ Call/Vol Academy
4 and EMT Training a requirement of continued employment, the exhibits reflect that the
5 percentage of call firefighters with FFI/II and/or EMT certification has increased from 2005
6 to January 2021. In 2005, 25% of the Department had FFI/II certification

7 By 2015, 38% of call firefighters (17 of 44) had FFI/II certification through the
8 Academy.⁵⁰ During the relevant time period, 39% of call firefighters (15 of 38) had FFI/II
9 certification through the Academy.⁵¹ By January of 2021, 40% of call firefighters (16 of
10 40) had FFI/II certification through the Academy. Six other firefighters had additional
11 experience ⁵²

12 With respect to EMT certifications, in 2015, 59% of call firefighters (26 of 44) were
13 EMT or Paramedic certified, a number that increased during the relevant time period to
14 76% of call firefighters (29 of 38).⁵³ By January of 2021, 78% of call firefighters (31 of 40)
15 were EMT or Paramedic certified.

16 As the number of FFI/II and EMT certifications increased, so have the Town’s
17 appropriations for call firefighter training. Between 2005 and 2020, the Town
18 appropriation for call firefighter training increased 235% from \$25,456 in FY 2005 to

⁵⁰ One of the call firefighters attended the Career Academy.

⁵¹ Two of the call firefighters attended the Career Academy.

⁵² Three of the call firefighters had attended the Career Academy

⁵³ See JX 27 and JX 20. There are no 2005 EMT training numbers in the record (or in the Boxford I record either)

1 \$85,242 in FY 2020. The EMT training appropriation during the same period increased
2 about from \$450 to \$4000, an increase of approximately 789%.⁵⁴ The percentage
3 differences between 2015 and 2020 are less stark, with the call firefighter training
4 appropriations increasing from \$65,902 to \$85,242 or 29.4% and the EMT training
5 appropriation increasing only \$305.00, from \$3,695 to \$4,000.

6 Non-Certification Trainings

7 Beyond the certification programs described above, call firefighters may participate
8 in other trainings the Department offers. The Department pays call firefighters at an
9 overtime rate for all of their training hours, including certifications and the other types of
10 trainings described below.

11 Recruit Training

12 Before any call firefighters are eligible to respond to alarms or attend other training,
13 they must undergo Boxford Recruit training. Recruit training, which is distinct from the
14 Department's routine Monday night trainings described below, is an initial on-boarding to
15 give call firefighters a basic understanding of firefighting. It is conducted in-house and
16 consists of eight weeks of basic firefighting and basic medical aid.⁵⁵ In 2019, new call
17 firefighters DeSantis, Francis, Hassam, Kilmer, and Owens completed this program.

⁵⁴ Based on Geiger's testimony that the online EMT training model allows full-time and call firefighters to best manage their time, we conclude that the EMT Training appropriation applies to full-time and call firefighters.

⁵⁵ Recruit training is based on the NFPA's Firefighter I/II skills, with an emphasis primarily on Firefighter I skills training, including individual safety, appropriate gear use, introduction to tools, and fire behavior, although it also includes some Firefighter II skills training. If the firefighter subsequently received Firefighter I/II certification from the Call/Vol Academy, they will have completed the NFPA program.

1 Monday Night Trainings

2 The Department conducts Monday night training sessions for full-time and call
3 firefighters. These training sessions happen from September through most of December,
4 and then the second week in January through June, with weeks off for school vacation
5 and other holidays. Monday night trainings typically involve a lecture.⁵⁶

6 According to Geiger, traditional Monday night trainings are “a concurrent
7 refresher for all members,” a “team-building” opportunity, and an opportunity for fire
8 officers to evaluate members’ skills.” Usually, the Department holds medical trainings on
9 the first Monday of the month. Other types of skills practiced at Monday night trainings
10 range from those related to use of a pressurized water system to the introduction of new
11 equipment.

12 Call firefighters and full-time firefighters are paid differently for training.⁵⁷ Call
13 firefighters receive their regular pay rate for attending Monday night trainings. Full-time
14 firefighters receive an overtime rate.⁵⁸

15 There are no consequences for firefighters who occasionally miss Monday night
16 trainings because Geiger understands that call firefighters have to balance their call

⁵⁶ The Department altered the nature and frequency of trainings beginning in March 2020 due to the COVID-19 pandemic, holding virtual “Zoom” meetings and emailing competency quizzes to members.

⁵⁷ Additionally, call firefighters do not have a continuing training program (described in detail in a section below) that forms the basis of a career path for full-time firefighters.

⁵⁸ Geiger testified that when he was a full-time firefighter, he considered the Monday night trainings as “the most important means for myself to get overtime and to increase my salary,” although he also benefitted from the “knowledge. . . skills, and the collective cohesiveness” of training with others. Sweet, but not necessary

1 firefighter roles with their families and other jobs. As the Department invests a lot into
2 the call firefighters, Geiger seeks to maximize their opportunities to succeed.

3 Notwithstanding the above, if a call firefighter missed every single Monday night
4 training, their employment would be in jeopardy. If an individual notified the Department
5 of an anticipated absence and never showed up to Monday night trainings, Geiger would
6 counsel the individual and consider asking the individual to resign.⁵⁹

7 Although Geiger expects firefighters to attend as many Monday night trainings
8 as possible, he does not require them to attend any set percentage because he believes
9 that doing so would hinder call firefighter recruitment and retention and, thereby, the
10 Town's emergency response. Geiger considers the number of overall training hours to
11 be more significant, especially considering that the Department held sixty-five non-
12 Monday night training events during the relevant time period, including driver trainings,
13 group officer trainings, recruit trainings, and other miscellaneous

14 At various times before Geiger became chief, Boxford firefighters were required
15 to attend a certain percentage of Monday night training, ranging from 100% to 80%, and,
16 as stipulated to in the Boxford I decision, to 60%, Boxford I, 35 MLC at 114 (Stipulation
17 16).⁶⁰ Geiger continues to discuss mandated Monday night training attendance within
18 the Department and with the Town Administrator and Personnel Board.⁶¹

⁵⁹ Geiger requires all firefighters to notify him or anyone in the Department in advance of Monday night training absences. The Department also has a vacation log for full-time and call firefighters so that the Department is aware of absences.

⁶⁰ Stipulation 16 in Boxford I stated in pertinent part: "Full-time and call firefighters are required to attend at least 60% of the Monday training sessions."

⁶¹ JX 47, the December 21, 2020 Officers Meeting Notes, illustrates that the issue is an ongoing point of discussion within the Department.

1 Rates of Attendance for Monday Night Trainings

2 Firefighters' individual attendance rates at Monday night trainings vary
3 depending on whether the underlying calculation includes a firefighters' attendance at
4 required officers' meetings or other training sessions. Joint Exhibits 4, 14, 20, and 34
5 illustrate this general point. Based on these four exhibits, the number of call firefighters
6 who attended 60% or more of trainings ranged from 43% (JX 4, 17 out of 39, not
7 accounting for conflicting meetings or trainings) to 74% (JX 34 - 28 of 37), where the
8 Monday night sessions did not conflict with other Department meetings or trainings). JX
9 14 indicates that the Department held twenty-three Monday night trainings during the
10 relevant time period, consisting of forty-two total training hours, and that full-time
11 firefighters attended 87-100% of those twenty-three training sessions.⁶² There is no
12 evidence of discipline for failure to attend any percentage of Monday night training
13 sessions.

14 Other Trainings

15
16 During the relevant time period, the Department held sixty-five non-Monday night
17 paid trainings including: recruit trainings, as described above; group officer trainings;
18 driver trainings; and other miscellaneous trainings.⁶³ Driver trainings are conducted one-
19 on-one by the Deputy Chief. He reaches out to individual firefighters offering to conduct
20 a driving class on a particular day. Geiger initiates group officer trainings and the
21 Lieutenants organize the firefighters in their assigned training group. Miscellaneous

⁶² There was no testimony in the record resolving the conflicting reference to 42 total training hours in JX 15 and the 36.25 training hours in JX 4.

⁶³ See JX 36.

1 trainings arise when a firefighter seeks a specific Academy course to increase their
2 knowledge in a particular area, such as a code of compliance course. Geiger may also
3 assign miscellaneous trainings based on performance deficiencies. In general, online
4 trainings have increased the number of training opportunities. Firefighters also may take
5 courses at other fire departments.

6 During the relevant time period, the average number of call firefighter total training
7 hours, including recruit training, Academy training, EMT training, Monday night trainings,
8 and other trainings was approximately 59 and the median was approximately 40.⁶⁴ These
9 ratios are not clear since the sentence refers to the average number of training hours

10 Continuing Training for Full-Time Firefighters

11 To move between pay scale steps, full-time firefighters must complete twenty
12 hours of continued education and receive a satisfactory job performance review. The
13 twenty hours are separate from, and in addition to Monday night trainings. Aside from
14 being required to fulfill twenty hours of additional training to move up the pay scale, there
15 is no obligation for full-time firefighters to complete the additional training, and there is no
16 disciplinary action for not doing so.

17 Opinion⁶⁵

18 The central issue in this case is the underlying formula to use to determine whether
19 call firefighters should be included in the proposed bargaining unit of four full-time

⁶⁴ See JX 17.

⁶⁵ The CERB's jurisdiction is not contested.

1 firefighters. As a preliminary matter, however, we address the Union's request to reverse
2 the Director's decision to convert this matter to a representation petition.

3 The Union makes two arguments in support of its request. First, it argues that
4 nothing in Section 4 of the Law or the written majority regulations permits the DLR to
5 convert a WMA petition over the Petitioner's objection. Second, it contends that the DLR's
6 decision to convert was based on the incorrect assumption that the CERB's decision in
7 this case would be a matter of first impression.

8 We are not persuaded by either argument. Although, as the Union contends, there
9 may be no statutory or regulatory requirement that explicitly allows the DLR to convert a
10 WMA petition to a Representation petition, the WMA amendments, which were enacted
11 in 2007 pursuant to Chapter 120 of the Acts of 2007, explicitly require that any unit
12 certified pursuant to this process be "an *appropriate* bargaining unit." See M.G.L. c. 150E,
13 §1 (defining "Written majority authorization," in pertinent part, as "writings. . . in which a
14 majority of employees **in an appropriate bargaining unit** designates an employee
15 organization as its representative for the purpose of collective bargaining) (emphasis
16 added); M.G.L. c. 150E, §4, paragraph. 6 (requiring the neutral to "verify the employee
17 organization's majority support **within the appropriate bargaining unit**")(emphasis
18 added).

19 Shortly after the Legislature enacted the WMA amendments, it also enacted
20 Chapter 145 of the Acts of 2007, which abolished the Labor Relations Commission and
21 created what is now the DLR. The enabling statute set out the DLR's structure, i.e., that
22 it is administered by a director, and includes a dispute resolution office, comprised of
23 hearing officers and mediators, the CERB, and the Joint Labor Management Committee.

1 M.G.L. c. 23, 9O. Pursuant to this legislation, the CERB is authorized to, among other
2 things, “review orders and to issue decisions.” M.G.L. c. 23, §9R. In addition, Section 8
3 of Chapter 145 of the Acts of 2007 granted to the DLR, “[n]otwithstanding any general or
4 special law to the contrary, . . . all of the legal powers, authorities, responsibilities, duties,
5 rights, and obligations previously conferred on the labor relations commission . . .
6 including without limitation those set forth in . . . Chapter 150A, and Chapter 150E of the
7 General Laws.”

8 As described in Cultivate Holdings, 47 MLC 56, WMAP-20-8085 (September 24,
9 2020), after the Legislature enacted the WMA amendments to Chapter 150E, it did not
10 amend Sections 3 or 4 to eliminate the outdated references to “the commission.”
11 Accordingly, Section 3 of the Law, which explains the criteria for determining “an
12 appropriate bargaining unit,” still refers to the “commission,”⁶⁶ stating in pertinent part that:

13 The commission shall prescribe rules and regulations and establish
14 procedures for the determination of appropriate bargaining units which shall
15 be consistent with the purposes of providing for stable and continuing labor
16 relations, giving due regard to such criteria as community of interest,
17 efficiency of operations and effective dealings, and to safeguarding the
18 rights of employees to effective representation.

19 As further explained in Cultivate Holdings, since 2008, the CERB has construed
20 references to “the commission” in Sections 3 and 4 of the Law as granting the CERB the
21 authority to determine appropriate bargaining units and resolve unit composition disputes
22 both in the first instance and on review in traditional representation and unit clarification
23 proceedings. Id. at 57-58 (citations omitted). It has also construed Section 4 of the Law

⁶⁶ M.G.L. c. 150E, §1 continues to define the “commission,” as “the labor relations commission established under section nine O of chapter twenty-three.” M.G.L. c. 23, § 9O, however, now defines the DLR.

1 as providing for hearings in traditional representation matters, but not in WMA petitions,
2 including most commonly, hearings to determine appropriate bargaining units. Id. at 58.

3 In this case, the DLR director converted the WMA petition on grounds that this
4 case was “factually distinct from other previous cases regarding the inclusion of
5 firefighters in an appropriate unit.” He thus determined that this was a matter of first
6 impression for the CERB, and that conversion would “permit a determination of whether
7 and how the factual differences in this case impact any formula for determining which call
8 firefighters have a sufficient continuity of employment to entitle them to collective
9 bargaining rights.” The effect of this ruling was twofold - it enabled the parties to have a
10 hearing to establish the facts necessary for the CERB to make this determination, and it
11 further allowed the CERB to establish the criteria for determining which of the Town’s call
12 firefighters were eligible for collective bargaining rights, thereby effectuating Section 3’s
13 dictate to determine appropriate bargaining units that are “consistent with the purposes
14 of providing for stable and continuing labor relations.”

15 Although the Union protests that it filed a WMA petition for “an appropriate
16 bargaining unit,” i.e., for “all full-time and regular part-time firefighters,” its argument
17 ignores that the critical issue here is what constitutes a regular part-time firefighter in
18 Boxford, and that a unit that excluded one or more regular part-time employees would be
19 inappropriately underinclusive. See, e.g., Town of Sturbridge, 29 MLC 156, 159, MCR-
20 02-4998 (February 7, 2003) (Sturbridge II).

21 The Union also contends that the Director was mistaken in his characterization of
22 this matter as a case of first impression, contending instead that because the facts of this
23 case are essentially the same as those in Boxford I, the Boxford I formula should apply.

1 As we explain below, however, since Boxford I issued, the Town has changed the way it
2 uses call firefighters during on-shift hours and what it requires of them. Although we have
3 decided to use a formula that we have previously used to determine whether call
4 firefighters are regular part-time employees, i.e., the Monson formula, we do so only after
5 a careful consideration of the unique facts of this case. We thus conclude that the Director
6 did not err or exceed his authority under Section 3 of the Law to “establish procedures for
7 the determination of appropriate bargaining units” when he converted the WMA petition
8 to a representation petition. The ruling enabled the CERB to determine the appropriate
9 bargaining unit after hearing, in a manner consistent with Section 3 of the Law. We
10 therefore turn to the main issue before us.

11 Appropriate Bargaining Unit

12 As stated above, Section 3 of the Law requires the CERB to determine appropriate
13 bargaining units consistent with the fundamental purpose of providing for stable and
14 continuing labor relations, while giving due regard to the following statutory criteria: 1)
15 community of interest; 2) efficiency of operations and effective dealings; and 3)
16 safeguarding the rights of employees to effective representation. Town of Bolton, 25 MLC
17 62, 65, MCR-4562 (September 10, 1998). It is the CERB’s well-established policy to
18 include all regular part-time employees in the same bargaining unit as full-time employees
19 with whom they share a community of interest. Town of Grafton, 28 MLC 399, 400, MCR-
20 02-4942 (May 23, 2002). However, the CERB excludes from coverage those employees
21 who lack a sufficient interest in their wages, hours and other terms and conditions of
22 employment to warrant collective bargaining. Town of Lee, 34 MLC 39, 45, MCR-06-5218
23 (October 12, 2007).

1 To decide whether the petitioned-for unit is appropriate in cases involving on-call
2 employees, the CERB examines whether the call employees' employment relationship
3 with their employer is too insubstantial or casual to justify participation in collective
4 bargaining. Town of Boxford, 35 MLC at 118. The CERB examines a number of factors,
5 including the employees' continuity of employment, regularity of work, the relationship of
6 the work performed to the needs of the employer, and the amount of work performed by
7 employees. Id. No one factor is dispositive. Id. Rather, the CERB examines the function,
8 nature, and character of the employees' work in relation to the needs of the employer in
9 making this determination. Id. If the CERB determines that the call personnel at issue are
10 not casual, but are regular part-time employees, the CERB then determines whether they
11 share a sufficient community of interest with other bargaining unit members to warrant
12 their inclusion in the unit. Town of Sturbridge, 29 MLC 156, 161, MCR-02-4998 (February
13 7, 2003) (Sturbridge II).

14 The CERB has applied these standards on a case-by-case basis in a number of
15 different call firefighter scenarios, including, most recently in Town of Monson, supra.
16 There, the CERB held that because the nature of the work performed by the on-call staff
17 employed by the town's fire department extended beyond responding to alarms and
18 included working regularly-scheduled weekday and weekend per diem shifts that were
19 staffed only by call employees, it would not assess whether those employees had
20 sufficient continuity and regularity of employment to justify granting them collective
21 bargaining rights solely on their alarm response rate. 42 MLC at 75. Rather, the CERB
22 based collective bargaining rights on whether the call employees had been compensated
23 at an hourly rate for no less than 33% of the hours that full-time firefighters were

1 scheduled to work in the fiscal year preceding the decision. 42 MLC at 86. In so holding,
2 the CERB acknowledged its previous efforts to craft a solution for determining the
3 collective bargaining rights of non-regularly scheduled employees that avoided the
4 “problems inherent in conditioning the existence of rights under the Law on an arbitrary
5 number of hours worked.” Id. (citing Boxford I, 35 MLC at 114 (further citing Town of Lee,
6 34 MLC 39, 45, MCR-06-5218)). However, the CERB stated that the number of hours
7 upon which it based its standard was not arbitrary, but rather, as in Boston School
8 Committee, 7 MLC 1947, MCR-3074 (March 23, 1981), based upon regular employees’
9 work schedules.

10 The parties disagree on what standard the CERB should apply in this petition.
11 Throughout these proceedings, the Union has urged us to apply the formula we used in
12 Boxford I, which granted collective bargaining rights to any call firefighters who had
13 responded to 33% of all alarms sounded in the previous fiscal year and attended at least
14 60% of Monday night trainings. Notably, however, the Union seeks to represent the unit
15 that the CERB finds to be an appropriate unit, even if that unit differs from the petitioned-
16 for unit, and neither party disputes that the four full-time firefighters are eligible to vote in
17 a representation election.

18 The Town asks the CERB to apply a variation of the Boxford I formula, in which all
19 call firefighters hired after January 1, 2015 who have attended and completed the
20 call/volunteer Fire Academy and attained FFI/II certification and who have obtained and
21 maintained an EMT certification, as well as all call firefighters hired prior to January 1,
22 2015, regardless of Academy attendance or certification, would be initially eligible to vote
23 in the representation election. In order to continue being part of the bargaining unit after

1 that, the Town would require call firefighters to respond to 33% of all *eligible* alarms and
2 attend 60% of all (as opposed to just Monday night) trainings. In response, the Union
3 argues that the Town's proposed formula bears no resemblance to any decided case. To
4 the extent that the CERB applies the Town's formula, the Union argues no sufficient
5 community of interest exists between the call and regular firefighters.

6 We decline to adopt either formula. We conclude instead that the Monson formula
7 best applies here because it accounts not just for alarm response and Monday night
8 trainings, but for all the work that call firefighters perform on an hourly-compensated
9 basis, including participating in other trainings and certification programs, responding to
10 General, East, West and Still Alarms, providing shift coverage for absent full-time
11 firefighters, and otherwise working at the direction of the Chief. As in Monson, a formula
12 that measures all of the hours the call firefighters worked in a given year as a percentage
13 of full-time hours "provides a simple way to quantify all of the work for which call
14 employees are paid on an hourly basis, thus providing a workable way of measuring
15 regularity of work and consistency of employment." Monson, 42 MLC at 86. This formula
16 also better captures the degree to which the Town relies on the call firefighters for their
17 services, including the degree to which it has invested in their training.

18 In adopting the Monson formula, we note that the rotating OIC assignments are
19 facially similar to the weekend shifts that the call officers and firefighters were assigned
20 to perform in Town of Sturbridge, 18 MLC 1416, 1420, MCR-4002 (May 21, 1992)
21 (Sturbridge I) (call officers), and (Sturbridge II) (all call firefighters, including officers).
22 Based on the regularity of mandatory assignments, coupled with attendance at monthly
23 drills, responding to calls and performing standby work which, in Sturbridge II, resulted in

1 all call firefighters regularly working at least 70 hours per quarter, the CERB included the
2 call firefighters in a unit of full-time firefighters. Sturbridge II, 29 MLC at 161. The OIC
3 assignments in this case are distinguishable from those in Sturbridge II because there is
4 no evidence here that a call officer working an OIC shift is required to be at a fire station.
5 Further, OIC officers are not paid for the entire OIC shift, but only for the hours they spend
6 responding to still alarms while serving as the OIC. The record also does not indicate that
7 OICs are penalized in any way if they do not respond to a dispatcher's call while they are
8 the OIC. Instead, the dispatcher calls the next-scheduled OIC, and if that individual does
9 not respond, the dispatcher tones the call as an East or West alarm. Finally, the
10 Sturbridge I formula fails to address the other factors present in this case, and we
11 therefore decline to use it.

12 Likewise, the Boxford I formula also fails to fully capture the nature of the
13 relationship that currently exists between the Town and the call firefighters. In Boxford I,
14 the CERB determined that call firefighters must have responded to 33% of all alarms and
15 attended 60% of Monday night trainings in the prior year. Here, no 60% Monday night
16 training attendance rule exists, and the Town pays call firefighters to attend other types
17 of trainings. Moreover, the Town pays call firefighters for more than just being on call for
18 alarms.

19 None of the parties' remaining arguments persuade us to adopt their proposed
20 formula. We turn first to the Town's proposal that would base call firefighter continued
21 eligibility for bargaining unit rights based on their response rates only to alarms to which
22 they are eligible to respond. On this point, we agree with the Union that the fact that call
23 firefighters are often ineligible to respond to Still Alarms and geographic station

1 assignments or tones should not affect our determination of whether the call firefighters
2 are regular part-time or casual employees. The CERB rejected a similar proposal in
3 Monson, in which the union argued that call firefighters who had responded to 33% of “all
4 call” alarms, i.e., only those alarms that all call firefighters could respond to, regardless of
5 training or certification, should be granted collective bargaining rights. Relying on Boston
6 School Committee, which held that substitute teachers who had worked one-third of all
7 possible working days in a school year (60/180) had a sufficient continuity of employment
8 to enjoy collective bargaining rights. the CERB disagreed. Id. at 86 (citing Boston School
9 Committee, 7 MLC at 1951). The CERB explained that in Boston School Committee, the
10 one-third standard was not based on the number of days that the School Committee had
11 *invited* the substitutes to work, but rather on the total number of days in the school year
12 that full-time teachers worked. Monson, 42 MLC at 86. Applying this principle to the facts
13 in Monson, the CERB declined to limit its evaluation of the bargaining rights of non-EMT
14 firefighters only to the calls to which they were eligible to respond. Id. We do the same
15 here.

16 Further, the Town’s proposal that call firefighters respond to 33% of all eligible
17 alarm fails to consider that call firefighters can and do respond to Still Alarms and to
18 Station Alarms that are not their geographically assigned stations in some instances.

19 The Town also argues we should not apply the Monson formula because, unlike
20 in Boxford I, Monson’s fire department had regularly scheduled per-diem shifts that were
21 staffed by call firefighters. In Monson, however, as here, the call firefighters were not
22 required to fill any shifts. Further, the overarching basis for the Monson decision was that
23 the Monson call firefighters’ work extended beyond merely responding to alarms, and

1 counting all of that work was the best way to measure continuity and regularity of
2 employment and the town's reliance on the call firefighters to meet the town's needs. Id.
3 at 86.

4 Finally, we reject any eligibility formula that initially relies solely on FFI/II
5 certification or long-term service as a Town call firefighter. The Town believes that these
6 criteria will "preserve cohesiveness" within the Department. However, unlike all of the
7 formulas previously discussed, these initial eligibility requirements do not consider the
8 actual work that the firefighters have recently performed, a key component of any analysis
9 of whether employees are regular part-time or casual.

10 The Union's arguments in favor of using the Boxford I formula fare no better. The
11 Union argues that there is no basis in law or fact to deviate from the Boxford I formula,
12 insisting that the only material change since 2006 is the addition of two full-time
13 firefighters. The centerpiece of the Union's argument is that "[t]he Town's increased
14 reliance upon career firefighters does not mean more call firefighters have a substantial
15 interest in their employment." As such, the Union's post-hearing brief is largely devoted
16 to comparing factual information from Boxford I regarding alarm response rates and
17 training hours to the case at issue. While the Union acknowledges the resulting increase
18 in Still Alarms during on-shift hours, it maintains that that change is immaterial to the
19 outcome of this case as call firefighters typically did not respond to alarms during on-shift
20 hours.

21 In its recitation of the facts, the Union raises three points in support of its assertion
22 that call firefighter requirements and working conditions have not materially changed
23 since 2006. First, the Union argues that the Department's encouragement of call

1 firefighters to attain FFI/II certification has not materially changed the number of call
2 firefighters with those qualifications since the early 2000s. Nevertheless, the Department
3 has made steady gains in this regard. In 2005, 25% of the Department had FFI/II
4 certification, but during the relevant time period, 39% of call firefighters (15 of 38) had
5 FFI/II certification through the Academy, and by January of 2021, 40% of call firefighters
6 (16 of 40) had FFI/II certification through the Academy. Moreover, the Town has also
7 devoted increasingly significant resources to training call firefighters. Between 2005 and
8 2020, the Town appropriation for call firefighter training increased 235%. The EMT
9 training appropriation during the same period increased about 789%. These changes are
10 material. Given that the Town pays the call firefighters for these trainings and strongly
11 encourages them to participate in these trainings, it is appropriate to count these hours
12 when assessing the relationship of the work performed to the needs of the employer. It
13 is self-evident that the better trained and more certifications that call firefighters have, the
14 more useful they are to the Department.

15 This is the case even if, as the Union argues, the amount of time that call
16 firefighters spent engaged in training during the relevant time period is the same as it was
17 in 2006. Citing Boxford I, 35 MLC at 117, the Union emphasizes that in 2006, the average
18 training hours were 66.13 hours and the median was 70.75, but during the relevant time
19 period, the average training hours were 59.1 and the median was 40.3. Although these
20 numbers have support in the record, the evidentiary record of Boxford I contained no
21 indication that the Town was paying call firefighters to attend anything other than Monday
22 night trainings. In this case, however, the record reflects that the Town pays call
23 firefighters to attend recruit training, Call/Vol Academy Training, EMT Training, or other

1 non-Monday night trainings. Moreover, and critically, there is currently no 60% Monday
2 night training attendance requirement.

3 Finally, the Union argues that the amount of time that call firefighters spend
4 responding to alarms is the same as it was in 2006. The Union maintains that despite the
5 increase in Still Alarms from 3% of total alarms in 2006, to 43% during the relevant time
6 period, non-training work hours decreased slightly. Citing Boxford I, 35 MLC at 116-117,
7 the Union notes that in 2006, call firefighters worked an average of 151.7 hours with a
8 median of 115.25, whereas during the relevant time period, call firefighters worked an
9 average of 140.7 hours and a median of 102 hours. This aspect of the Union's argument,
10 even if it is factually accurate, requires the CERB to ignore the wide array of work that
11 call firefighters perform that is evident in this case, but not in Boxford I, including facts
12 showing call firefighters' geographic station assignments, and that the population
13 differences and alarm frequencies of the East Station differ significantly from the West
14 Station. Moreover, at the time the parties litigated Boxford I, OIC assignments didn't exist,
15 and Still Alarms were used in a completely different manner and with far less frequency.

16 For all of these reasons, we adopt the Monson formula, i.e., that any call firefighter
17 who works at least 33% of the hours that full-time firefighters are scheduled to work in the
18 preceding year, by performing work for which the Town pays them at their hourly rate, are
19 entitled to collective bargaining rights. 33% of the full-time firefighters' scheduled 2080
20 hours, rounded to the nearest whole number, is 686 hours.

21 Community of Interest

22
23 In the event that one or more call firefighters meet the criteria described above, we

1 next address whether they share a community of interest with the full-time employees.⁶⁷

2 To determine whether employees share a community of interest, the CERB
3 considers factors like similarity of skills and functions, similarity of pay and working
4 conditions, common supervision, work contact and similarity of training and experience.
5 Town of Monson at 42 MLC at 86-87 (citing Waltham School Committee, 25 MLC 137,
6 139, CAS-3220 (March 1, 1999)). No single factor is outcome determinative. Id.
7 Community of interest does not require an identity of interest, provided there is no inherent
8 conflict among consolidated groups of employees. Town of Somerset, 25 MLC 98, 100,
9 CAS-3145 (January 6, 1999). The CERB has consistently found a community of interest
10 among employees who share a similarity of interests and working conditions based upon
11 common supervision and a similar work environment. Springfield Water and Sewer
12 Commission, 24 MLC 55, 59, MCR-4603 (January 15, 1998).

13 The record reflects that the job duties of full-time and call firefighters are essentially
14 the same when responding to fires and other emergencies as well as when they are
15 providing station coverage or performing tasks for the Chief. The evidence also shows
16 that the two groups of employees work together during on and off-shift hours, at the
17 station and at fires. We also find it significant that full-time and call firefighters are eligible
18 to hold the same ranks, and the rank of an individual at a fire supersedes the full-time or
19 call designation. Call firefighters are eligible to hold stipend positions, and a call firefighter
20 serves as the Department's EMS Director.

21 While there are differences in wages and training requirements, there is no

⁶⁷ The Town does not contest community of interest; the Union does so only if the CERB adopts the Town's initial eligibility requirements, which we do not. We nevertheless address this issue for the sake of completeness.

1 evidence that these differences have been so significant as to cause conflict within the
 2 unit. Boxford I, 35 MLC at 120. We therefore conclude that those call firefighters who
 3 qualify as regular, part-time personnel pursuant to the Monson formula, share a
 4 community of interest with their full-time counterparts.

5 Conclusion and Direction of Election

6
 7 Based on the record and for the reasons stated above, we conclude that:

- 8
 9 1. A question of representation has arisen concerning certain firefighters of the
 10 Town of Boxford.
 11
 12 2. The unit appropriate for collective bargaining consists of all full-time and regular
 13 part-time employees of the Boxford Fire Department, but excluding the Chief,
 14 and all managerial, confidential and casual employees, and all other
 15 employees of the Town of Boxford.
 16
 17 a. For purposes of this unit, the term "regular part-time employee"
 18 is defined as: Any employee who has, in the fiscal year
 19 preceding the date of this decision, worked at least 33%, i.e.,
 20 686 of 2080 hours that full-time employees are regularly
 21 scheduled to work, by performing work for which the Fire
 22 Department pays them at their hourly rate.
 23 b. In or about July 1 of each year, the parties will meet to review
 24 information from the prior fiscal year to determine which
 25 employees meet the above criteria.
 26
 27 3. Within fourteen (14) days of this Decision, the Town shall provide the
 28 Department of Labor Relations and the Union with an election eligibility list,
 29 containing the names and addresses of all eligible voters, as defined above.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
 COMMONWEALTH EMPLOYMENT RELATIONS BOARD

Marjorie F Wittner

MARJORIE F. WITTNER, CHAIR

Joan Ackerman

JOAN ACKERSTEIN, CERB MEMBER

A handwritten signature in blue ink, appearing to read "Kelly Strong". The signature is written in a cursive style with a large initial "K".

KELLY STRONG, CERB MEMBER