

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

\*\*\*\*\*

In the Matter of: \*  
\* Case Number: MUP-18-6943  
TOWN OF SCITUATE \*  
\*  
and \* Date Issued: September 10, 2021  
\*  
SCITUATE FIREFIGHTERS UNION, \*  
LOCAL 1464, IAFF \*

\*\*\*\*\*

Hearing Officer:  
  
James Sunkenberg, Esq.

Appearances:

John J. Clifford, Esq. - Representing Town of Scituate  
Patrick N. Bryant, Esq. - Representing Scituate Firefighters Union,  
Local 1464, IAFF

HEARING OFFICER'S DECISION

SUMMARY

1 The issue is whether the Town of Scituate (Town) violated Section 10(a)(5) and,  
2 derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law)  
3 by reducing the number of firefighters assigned to an apparatus when responding to an  
4 alarm without giving the Scituate Firefighters Union (Union) prior notice and an  
5 opportunity to bargain to resolution or impasse. Based on the record, and for the reasons  
6 explained below, I find that the Town violated the Law.

STATEMENT OF CASE

7  
8 On October 19, 2018, the Union filed a charge of prohibited practice (Charge) with  
9 the Department of Labor Relations (DLR) alleging that the Town had violated Section

1 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by reducing the number of  
2 firefighters assigned to an apparatus when responding to an alarm without giving the  
3 Union notice and opportunity to bargain. On or around November 7, 2018, the Union filed  
4 an amended charge alleging a recurrence of the complained of conduct. On February  
5 13, 2019, a DLR investigator investigated the charge. On February 26, 2019, the  
6 investigator issued a two-count Complaint of Prohibited Practice (Complaint) alleging that  
7 the Town violated the Law in April 2018, and again in October 2018, by reducing staffing  
8 on an apparatus when responding to an alarm without giving the Union prior notice and  
9 an opportunity to bargain. On March 4, 2019, the Town filed its Answer to the Complaint.  
10 On October 22, 2020, I conducted a hearing by videoconference during which the parties  
11 received a full opportunity to be heard, to examine and cross-examine witnesses, and to  
12 present evidence.<sup>1</sup> On January 22, 2021, the parties filed post-hearing briefs.

13

#### STIPULATIONS OF FACT

- 14 1. The Town is a public employer within the meaning of Section 1 of the Law.
- 15 2. The Union is an employee organization within the meaning of Section 1 of the Law.
- 16 3. The Union is the exclusive bargaining representative for a unit of firefighters  
17 employed by the Town.
- 18 4. The Union and the Town are parties to a collective bargaining agreement which is  
19 effective from July 1, 2014 through June 30, 2017.
- 20 5. On April 19, 2018, John P. Murphy, the Town's Fire Chief, ordered that staffing  
21 would be reduced from 11 to 10 firefighters on the day and night tours.
- 22 6. On or about July 1, 2018, Murphy restored a second firefighter to Engine 1 on the  
23 day shift.
- 24
- 25
- 26
- 27
- 28
- 29

---

<sup>1</sup>I conducted the hearing remotely pursuant to Governor Baker's teleworking directive to executive branch employees.

1 7. On October 31, 2018, Murphy ordered that staffing would be reduced from 11 to  
2 10 firefighters on the day and night tours.

3  
4 FINDINGS OF FACT

5 General Background

6 The Union represents a bargaining unit of firefighters, lieutenants, and captains in  
7 the Scituate Fire Department (Department). As of the date of the hearing, the Department  
8 had 36 firefighters, four lieutenants, four captains, a deputy chief, and a chief. Two of  
9 the 36 firefighters were in the Fire Academy and two firefighters were on long-term  
10 disability leave, reducing the number of “on shift” firefighters to 32. Since approximately  
11 2000, the Department has required all newly hired firefighters to be paramedics. As of  
12 October 2020, 28 – 29 firefighters were paramedics; all were certified EMTs. John P.  
13 Murphy (Murphy) has been the fire chief for approximately seven (7) years.

14 At full staffing, the Department employs 40 firefighters and assigns 11-12  
15 bargaining unit personnel per shift. The Department, however, regularly runs at minimum  
16 staffing of ten (10) personnel per shift.<sup>2</sup> Each 24-hour period is divided into a day shift,  
17 8:00 am – 6:00 pm, and a night shift, 6:00 pm – 8:00 am, with bargaining unit members  
18 working 24-hours on, 72-hours off, 24-hours on. The Department has four groups. Each  
19 group consists of eight (8) firefighters, a lieutenant, and a captain. At full staffing, each  
20 group would consist of 10 firefighters.

21 The Department operates three fire stations. Station 1 is located in the heart of  
22 the Town at 149 First Parish Road and was the Department’s Headquarters until 2018.  
23 Station 3 is the Public Safety Building and current Headquarters, located at 800 CJC

---

<sup>2</sup>Murphy testified that 10 firefighters is “our standard.” When discussing staffing, the parties have at times used the term “firefighter” to include officers.

1 Highway/Route 3A. The Public Safety Building opened in March 2017; prior to March  
2 2017, Station 3 was located closer to Station 1 at 384 First Parish Road. Station 4 is  
3 located at 4 River Street in Humarock, which is a part of Scituate located on a peninsula  
4 accessible only through the town of Marshfield. Station 4 is approximately seven miles  
5 from Station 1, and the new Station 3 is approximately 3 miles from Station 1. Because  
6 Humarock is separated from the rest of the Town, the Department does not rely on it as  
7 part of the initial response force within the mainland parts of the Town.

8 The Town's area is approximately 17 square miles and its population, as of 2014,  
9 was approximately 18,000, with seasonal increases of over 10,000. The Town is divided  
10 into districts, with each station having primary jurisdiction over certain districts. Station 1  
11 covers Districts 1A and 1B; Station 3 covers Districts 3A and 3B, District 2, mutual aid,  
12 and District 4. Station 1 is the busiest station. In 2019, the Department responded to  
13 1,732 calls within Districts 1A and 1B, or 55% of total calls.

14 The Department operates four types of apparatus that are relevant to this matter:  
15 Engines; Ladders; Rescues; and Car 3-2. Engines are primarily used to pump and deliver  
16 water, and for commencing basic firefighting at fires; they carry a "first-in" medical bag.  
17 Ladders are primarily used for truck work, which can include forcible entry, ventilation,  
18 search and rescue, aerial operations for water delivery and rescue, utility control,  
19 illumination, overhaul, and salvage. Rescues are ambulances, and they provide  
20 advanced life support and transportation. Car 3-2 is the shift commander's vehicle, and  
21 it contains an array of medical equipment. The Department's primary fleet consists of  
22 three engines (E-1, 3, and 4), one ladder (L-1), two rescues (R-1 and 2), and one  
23 command vehicle (Car 3-2).

1 2014 ESCI Report

2 In 2013, the Town hired Emergency Services Consulting International (ESCI) to  
3 conduct a staffing, management, and financial analysis of the Department. This project  
4 resulted in a June 2014 “Staffing, Management, and Financial Analysis” (ESCI Report).  
5 The ESCI Report recommended, among other things: improving labor-management  
6 relationships; more involvement by the fire chief in the bargaining process; implementing  
7 formal skills and knowledge reviews; implementing formal performance evaluations; and  
8 establishing minimum training requirements for fire suppression, rescue, and medical  
9 skills.

10 The ESCI Report made numerous findings regarding R-2, which at the time the  
11 Department used to provide “out-of-town interfacility transfers and to respond as a second  
12 unit should a second simultaneous medical incident be dispatched within the town.” The  
13 Town’s reliance on R-2 had “increased dramatically” from 2010 – 2012. The Department  
14 staffed R-2 by calling-back personnel or cross-staffing it with on-duty personnel, which  
15 required calling-back personnel to staff the vacated apparatus. This frequently required  
16 the Department to expend overtime to put R-2 in service. The ESCI Report concluded  
17 that the increased use of R-2 carried the potential for increased overtime expenditures to  
18 place the unit in service. Cross-staffing R-2 with personnel from other apparatus also  
19 decreased the Department’s ability to be available for fire response. Although staffing R-  
20 2 “on the traditional basis” would increase costs, it would offset the risk of decreasing the  
21 Department’s ability to be available for fire response. The ESCI Report concluded that  
22 “the need for a second transport ambulance is evident.”

1           From 2001 – 2012, overall workload had increased 21.35 percent. The majority of  
2 the Department's workload involved medical responses, 62.26%, compared to 4.03% for  
3 actual fire service demand. For medical responses, workload tends to increase around  
4 6:00 am, peaks at mid-day, and declines into the evening. Fire incidents, however,  
5 remain relatively stable throughout all hours of the day. Geographically, the demand for  
6 services centered on Stations 1 and 3.

7           The analysis found that incidents occurred "one at a time" 77.4% of the time, with  
8 a second concurrent incident occurring 16.3% of the time. The second concurrent  
9 incident rate was "well above" the "typical concurrency" rate of 10%. Most concurrent  
10 incidents were medical in nature, which, as noted, required personnel to staff R-2 and  
11 decreased the Department's ability to respond to a fire incident. Due in part to the  
12 increase in concurrent calls, most of which are medical, the Department's response time  
13 had declined from an average of 3:36 in 2001 to 4:25 in 2012, with its 90<sup>th</sup> percentile  
14 performance declining from 6:00 in 2001 to 7:00 in 2012.<sup>3</sup>

15           Additionally, the ESCI Report found that the Department's Rules and Regulations  
16 contained "little in the way of operational guidance." The ESCI Report recommended that  
17 the Department "should research some of the various Standard Operating Guidelines  
18 available commercially and include as many operational policies, procedures, and rules  
19 as necessary to provide appropriate scene operational guidance." It also suggested  
20 creating a "training officer" at the rank of captain or above. As of the date of the hearing,  
21 the Department had not implemented standard operating procedures.

---

<sup>3</sup>The rate of concurrent calls has risen to 34% and continues to rise.

1           Regarding funding, the Department's cost per capita was higher than most  
2 comparable communities. Based on cost per square mile, however, the Department was  
3 below the overall average and ranked seventh among comparable communities.  
4 Additionally, the Department had a higher rate of incidents per 1,000 population and it  
5 was above the regional median for fire incidents.

6           The ESCI Report also discussed the critical importance of the initial emergency  
7 response:

8           Although modern codes tend to make fires in newer structures more infrequent,  
9 today's energy-efficient construction (designed to hold heat during the winter) also  
10 tends to confine the heat of a hostile fire. In addition, research has shown that  
11 modern furnishings generally burn hotter (due to synthetics), and roofs collapse  
12 sooner because prefabricated roof trusses separate easily after a very short  
13 exposure to flame. In the 1970s, scientists at the National Institute of Standards  
14 and Technology found that after a fire broke out, building occupants had about 17  
15 minutes to escape before being overcome by heat and smoke. Today that  
16 estimate is three minutes. The necessity of firefighters arriving on the scene of a  
17 fire in the shortest span of time is more critical now than ever.

18           ....

19  
20           Of significance to the staffing objective of this study is that *NFPA 1710* establishes  
21 that a response company consists of four personnel. The standard does not  
22 require that all four be on the same vehicle, but does expect that the four will  
23 operate as a single functioning unit once on scene. The *NFPA 1710* response time  
24 standard also requires that all four personnel be on the scene within the  
25 recommended response time guidelines....

26  
27           There is another reason the arrival of four personnel is critical for structure fires.  
28 As mentioned earlier, OSHA regulations require that before personnel can enter a  
29 building to extinguish a fire, at least two personnel must be on scene and assigned  
30 to conduct search and rescue in case the fire attack crew becomes trapped. This  
31 is referred to as the two-in, two-out rule. There are, however, some exceptions to  
32 this regulation. If it is *known* that victims are trapped inside the building, a  
33 rescue attempt can be performed without additional personnel ready to intervene  
34 outside the structure.

35  
36           Firefighting Basics: NFPA 1710 and NIST Report

37           NFPA 1710

1           The National Fire Protection Association (NFPA) is a nationally recognized  
2 association that develops consensus-based standards for professional fire departments.  
3 Although its guidelines are advisory, departments around the country, including the  
4 Department, recognize the NFPA as authoritative. NFPA 1710, *Standard for the*  
5 *Organization and Deployment of Fire Suppression Operations, Emergency Medical*  
6 *Operations, and Special Operations to the Public by Career Fire Departments*, “was the  
7 first organized approach to defining levels of service, deployment capabilities, and staffing  
8 levels for substantially career fire departments.”<sup>4</sup> NFPA 1710 used research work and  
9 empirical studies “as a basis for developing response times and resource capabilities for  
10 those services, as identified by the fire department.” Its stated purpose is “to specify the  
11 minimum criteria addressing the effectiveness and efficiency... in protecting the citizens  
12 of the jurisdiction and the occupational safety and health of fire department employees;”  
13 and it applies to “the deployment of resources by a fire department to emergency  
14 situations when operations can be implemented to save lives and property.”

15           Here relevant, NFPA 1710 defines a “Company” as:

16           A group of members: (1) under the direct supervision of an officer; (2) trained and  
17 equipped to perform assigned tasks; (3) usually organized and identified as engine  
18 companies, ladder companies, rescue companies, squad companies, or multi-  
19 functional companies; (4) operating with one piece of fire apparatus (pumper,  
20 aerial fire apparatus, elevating platform, quint, rescue, squad, ambulance) except  
21 where multiple apparatus are assigned that are dispatched and arrive together,  
22 continuously operate together, and are managed by a single company officer; (5)  
23 arriving at the incident scene on fire apparatus.<sup>5</sup>  
24

---

<sup>4</sup>NFPA 1710 first issued in 2001. At the hearing, the Union submitted the 2016 Edition into evidence.

<sup>5</sup>In some jurisdictions, “the response capability of the initial arriving company is configured with two apparatus operating together.... The objective is to ensure that a minimum of four personnel are assigned to and deployed as a company.”



1 Additionally, NFPA 1710 defines a “Team” as: “Two or more members who have been  
2 assigned a common task and are in communication with each other, coordinate their  
3 activities as a work group, and support the safety of one another.”

4 NFPA 1710 contemplates that fire departments shall organize on-duty members  
5 assigned to fire suppression into “company units” that have appropriate apparatus and  
6 equipment assigned to these companies. Each company shall be led by an officer, who  
7 shall be considered part of the company. Both engine and ladder companies shall be  
8 staffed with a minimum of four on-duty members.

9 NFPA 1710 also provides that the first arriving engine company at a fire  
10 suppression incident shall arrive on the scene within 240 seconds (four minutes) of travel  
11 time, and, except for high-rise incidents, an initial full alarm assignment within 480  
12 seconds (eight minutes).<sup>6</sup> The initial response is critical because, “an early, aggressive,  
13 and offensive primary interior attack on a working fire, where feasible, is usually the most  
14 effective strategy to reduce loss of lives and property damage.” NFPA 1710 states:

15 Given that the progression of a structure fire to the point of flashover (i.e., the very  
16 rapid spreading of the fire due to superheating of room contents and other  
17 combustibles) generally occurs in less than 10 minutes, two of the most important  
18 elements in limiting fire spread are the quick arrival of sufficient personnel and  
19 equipment to attack and extinguish the fire as close to the point of origin as  
20 possible.<sup>7</sup>

---

<sup>6</sup>Travel time refers to “the time interval that begins when a unit is en route to the emergency incident and ends when the unit arrives at the scene.” An “initial full alarm assignment” means: “Those personnel, equipment, and resources ordinarily dispatched upon notification of a structure fire.” For a typical residential home, it consists of at least 15 personnel. Times are given in seconds to emphasize the importance of a precise, rapid response.

<sup>7</sup>The testimony of Joseph Fleming (Fleming), a Boston Fire Department Deputy Chief and the Union’s expert witness in this case, was instructive on this point. Synthetic materials, such as those used in modern, upholstered furniture, can reduce the amount of time before a fire flashes over to as few as three minutes. Cooking fires, which do not usually

1           A fire that spreads beyond its room of origin dramatically increases the potential  
2 for civilian injury or death, and thus presents an increasing risk to firefighters who have to  
3 battle a larger fire and may have to enter the structure. For example, NFPA 1710 reports  
4 that from 2006 – 2010, a home structure fire confined to its room of origin resulted in 1.91  
5 deaths per 1,000 fires. When a fire spread beyond a room but was confined to its floor  
6 of origin, the number jumped to 22.73 deaths per 1,000 fires. A fire that spread beyond  
7 its floor of origin resulted in 24.63 deaths per 1,000 fires.

8           NIST Report

9           The 2010 National Institute of Standards Report on Residential Fireground Field  
10 Experiments (NIST Report) investigated the effect of varying crew size, first apparatus  
11 arrival time, and response time on firefighter safety, overall task completion, and interior  
12 residential tenability using realistic residential fires, with the results and conclusions  
13 directly informing the NFPA 1710 Technical Committee. The NIST Report presented the  
14 results of more than 60 laboratory residential fireground experiments designed to quantify  
15 the effects of various configurations on a low hazard residential structure fire, which is the  
16 most common type of fire.<sup>8</sup> The NIST Report states:

17           In addition to systematically controlling for the arrival times of the first and  
18 subsequent fire apparatus, crew size was varied to consider two-, three-, four-, and  
19 five-person staffing.<sup>9</sup> Each deployment performed a series of 22 tasks that were

---

involve synthetic materials, take longer to flash over. He testified: “So response time has always been critical.... You want to get as many firefighters there as quickly as possible.”

<sup>8</sup>Fleming explained that it was designed to provide flexible guidance. Most small communities, including the Town, do not meet all NFPA 1710 standards.

<sup>9</sup>Fleming explained that “they didn’t even look at the situation where the first firefighter – or the first truck would show up with one firefighter...they assumed three engines and a truck and a chief and an aide.” He added, “so when they say three firefighters, what they

1           timed, while the thermal and toxic environment inside the structure was  
2           measured.<sup>10</sup>

3  
4           The NIST Study found that four-person crews finished all tasks on the fireground seven  
5           minutes – nearly 30% – faster than two-person crews, and 5.1 minutes faster – nearly  
6           25% – faster than three-person crews. Adding a fifth person to the crew did not decrease  
7           overall task times.<sup>11</sup>

8           The NIST Study found that, “Delayed response, particularly in conjunction with the  
9           deployment of inadequate resources, reduces the likelihood of controlling the fire in time  
10          to prevent major damage and possible loss of life and increases the danger to firefighters.”

11          Additionally:

12           Decision-making about staffing levels and geographic distribution of resources  
13           must consider those times when there will be simultaneous events requiring  
14           resources deployment. There should be sufficient redundancy or overlap in the  
15           system to allow for simultaneous calls and high volume of near simultaneous  
16           responses without compromising the safety of the public or firefighters.

17  
18          2016 Implementation of Second Ambulance

---

mean is three firefighters on the engine and three firefighters on the truck and a chief and  
an aide. So actually they’re talking about 14 firefighters.”

<sup>10</sup>For purposes of this Decision, it is sufficient to consider the basic tasks firefighters do  
when showing up at any fire: secure a permanent water supply by hooking up to a hydrant;  
run an attack line with a hose; charge the line with water; move the line; and do forcible  
entry. The safety of any occupants is, of course, the first priority.

Fleming testified: “There’s almost nothing that one firefighter can do, but there are some  
things that two firefighters can do.” One firefighter could “show up and hook up to the  
hydrant,” but that would take all his or her time and would not impact the safety of anyone  
inside the structure. Murphy agreed with this assessment.

<sup>11</sup>Five-person crews are beneficial for medium and high-hazard fires, especially in urban  
settings.

1 On or around May 13, 2016, Murphy issued "2<sup>nd</sup> Ambulance Guidelines: revised  
2 5/13/16." These guidelines, which increased staffing to 11 during the day shift, state:

3 We are planning to implement the 2<sup>nd</sup> front line ambulance on Monday May 2<sup>nd</sup>,  
4 2016 at 0800. The 3 components covered in this document are: Manning, Hiring,  
5 & Apparatus deployment.  
6

### 7 **Manning**

- 8
- 9 •Manning. R-1: 2 on shift medics R-2: 1 on shift medic & day medic. Shift  
10 commander on 3-2, E-1 driver, L-1 driver, E-3 driver & LT, E-4 2 FF's.
- 11 •Day medics rotation: 2 days on, 2 days off 0800-1800 (groups 1 & 2, groups 3 &  
12 4)
- 13 •Run rotation: R-2 1<sup>st</sup> run then alternating runs. R-2 not primary rescue after 1600.  
14 Option: R-1 district 3 & 4, R-2 district 1
- 15 •Medic rotation. 2 Jr. medics will not be assigned together. Shift commander will  
16 be in charge of the rotation, input from the Sr. medic is encouraged.
- 17

### 18 **Hiring**

- 19
- 20 •Separate document will be attached once approved
- 21

### 22 **Apparatus Deployment**

- 23
- 24 •**Fire calls: w/ both rescues in house.**
- 25 •Backup rescue will man E-1 (2<sup>nd</sup> & 3<sup>rd</sup>)
- 26 •Primary rescue goes to fire in rescue.
- 27 •Medical: 2<sup>nd</sup> rescue will stay in quarters
- 28
- 29 •**Fire call w/1 rescue in house:**
- 30 •FF Tech on rescue will go on E-1; rescue driver will follow to scene for fire support.  
31 Rescue will be available once apparatus are able to return (medic goes back on  
32 rescue at scene).
- 33
- 34 •**Fire call w/ both ambulances committed:** 3-2, E-1, L-1, & E-3 respond. If a  
35 confirmed fire start a mutual aid engine & E-4 called to Station 1.
- 36 •**EMS call/non fire call: L-1 FF will ride w/ E-1.**
- 37

38 2016 Bailey's Road Fire<sup>12</sup>

---

<sup>12</sup>Although the response to this fire is not at issue in this case, the Bailey's Road fire is helpful to understanding how a fire response can unfold.

1           At 12:37 pm on Memorial Day, May 30, 2016, the Department received an  
2 emergency call for a structure fire at a residence on Bailey's Island Road while both  
3 Rescues, then assigned to Station 1, were out of quarters on medical calls that required  
4 transportation to the local hospital. The local newspaper quoted Murphy as describing  
5 the location, which is approximately four miles from Station 1, as "one of the more remote  
6 places" in Scituate. A woman was known to be trapped in the house.

7           The response unfolded as follows: Engine 3, staffed with a lieutenant and a  
8 firefighter, was first due and arrived from Station 3 at approximately 12:45 pm. Car 3-2,  
9 staffed by the captain on duty, and E-1 and L-1, both staffed with a single firefighter,  
10 departed Station 1 at approximately the same time, with all three arriving at approximately  
11 12:46 pm. Due to a holiday parade then occurring in the Town, the mutual aid response  
12 was delayed in arriving on the scene. The response resulted in four firefighters and a  
13 shift commander on scene within ten minutes, falling short of the Department's goal of  
14 having 10 firefighters on scene including mutual aid.

15           Due to the limited initial response, the captain, who was the incident commander  
16 on the scene, had to engage in fire suppression.<sup>13</sup> Additionally, unable to maintain the 2-  
17 in/2-out rule, the firefighters on the scene entered the burning structure individually to  
18 search for the victim, whom they ultimately rescued.

---

<sup>13</sup>Fleming explained that rather than engaging in fire suppression, the incident commander should have been conducting a 360-degree size-up of the fire-incident, pursuant to standard operating procedures, as part of establishing a command post. Here, the incident commander had to engage the fire rather than command the incident. At some point, Murphy arrived and took command of the scene.

1 Fleming, who reviewed and studied the incident response, offered the following  
2 analysis:

3 **Lt. Norlin stretched the 1<sup>st</sup> li[n]e into the building uncharged by himself.** This  
4 is typical for 2-person Engine Companies. In Discussion with NIOSH Investigators  
5 they often see this practice in FF Fatalities and recommend that lines be charged  
6 before entering the building. Moving a hoseline after it is charged is difficult. In  
7 most cases after charging the line the pump operator also goes inside leaving no  
8 one outside. **In this case, Capt. McGowan arrived shortly after Lt. Norlin**  
9 **entered the building so he charged the line.** But this required the Shift  
10 Commander (Incident Commander) to get involved with operations which is also  
11 discouraged by NIOSH. **Because Engine 1 only had 1 FF it dropped 1800 feet**  
12 **of feeder but had to wait for a Mutual Aid company to provide a supply from**  
13 **a hydrant. This means that the initial attack was made with just the water in**  
14 **the tank of the Engine.** This is also discouraged by NIOSH. **Members entered**  
15 **the building one at a time preventing the firefighters from operating in**  
16 **“teams.”** This is discouraged by NIOSH.

17  
18 **Every time that a FD responds to a building fire every additional FF improves**  
19 **effectiveness and safety. Every reduction of staffing by even a single**  
20 **firefighter reduce[s] the “margin for error.” At every fire due to the “fog of**  
21 **war,” Firefighters are making educated guesses about the location of the**  
22 **fire, location of the victim(s), how far the fire has advanced etc. In this**  
23 **case, the margin of error was very small but the members of the fire**  
24 **guessed correctly and had luck on their [side].**

25 **This situation must be avoided whenever possible.** (Emphasis in  
26 original)

#### 27 28 Parties Commence Successor Negotiations

29  
30 In March 2018, the parties commenced bargaining for a successor CBA. The  
31 Union proposed increasing manning per shift to 12 as follows: one employee on Car 3-2;  
32 two employees on E-1; two employees on E-3; two employees on E-4; two employees on  
33 R-1; two employees on R-2; and one employee on L-1. The Town refused to negotiate  
34 minimum manning and rejected the proposal.

#### 35 Memo 18-06

36 On April 19, 2018, Murphy issued, without bargaining with the Union, Memo 18-06  
37 regarding “Manning/Apparatus Changes.” Memo 18-06 states:

1 Due to the overtime budget being expended manning will be reduced to ten  
2 firefighters for the day and night tours effective Friday April 20<sup>th</sup> by 1800. With  
3 EMS being the vast majority of calls we will be running Rescue 1 and Rescue 2 as  
4 front line apparatus. Rescue 2 will run out of Station 3 (24/7) until further notice.  
5 This will provide the best EMS service to the Town with the available personnel  
6 and current budget challenges. We will still maintain our goal of ten firefighter  
7 minimum for fire incidents.

8  
9 With this change ladder 1 will also be stationed and respond out of Station 3 (24/7).  
10 It will be cross staffed with Rescue 2 personnel. Rescue 2 has less runs than  
11 rescue 1 (40% to 54%) and will improve the ladder response capabilities from  
12 Station 3. All spare engines will be garaged at Station 1 and the third rescue will  
13 be housed at Station 3.

14  
15 Station 1 will run with Car 3-2, Rescue 1, and one firefighter on Engine 1. Though  
16 Engine 1 will not have 2 personnel assigned when at a level of 10 firefighters, this  
17 manning plan will ensure that a minimum of four personnel respond from the  
18 closest station in Districts 1 and 3 on all calls when not otherwise committed.  
19 Rescue 2 will continue to be the Humarock and mutual aid ambulance.

20  
21 Apparatus assignments:

22  
23 Station 1

- 24 •Car 3-2 Shift commander
- 25 •Rescue 1: Two paramedics
- 26 •Engine 1: FF EMT or paramedic (if at 11 two FF's will be assigned to E-1).
- 27 •If Rescue 1 is in quarters and a first alarm response comes in the tech shall ride
- 28 on Engine 1 and the ambulance will follow to the scene.

29  
30  
31 Station 3

- 32 •Engine 3: Lieutenant & 1 FF (two FF's if Lt. is assigned to Car 3-2 or officer is not
- 33 hired for Station 3).
- 34 •Rescue 2: 2 paramedics
- 35 •Ladder 1: To be covered by tech from Rescue 2 or engine 3 passenger if Rescue
- 36 2 is not available.
- 37 •Engine 4: Two firefighters

38  
39  
40 Hiring/call backs

- 41 •If the shift does not have a minimum of four paramedics (not including
- 42 Lieutenants) an attempt to hire a medic as the 11<sup>th</sup> firefighter shall be made from
- 43 the detail list. If four medics are not available the Lieutenants will be available to
- 44 fill this need for Rescue 2.

1 •If both rescues are transporting hire two firefighters back on an “EMS Recall,” the  
2 first hired will be assigned to Engine 1, the second hired will be assigned to Ladder  
3 1, Station 3.

4 •When Rescue 1 is out of Town and 3-2 is responding to a medical call in district  
5 3 or 4 the first arriving units to the best of their ability, shall determine if the patient  
6 will require transport to a medical facility. This will be conveyed to the shift  
7 commander and if transporting, hire back one firefighter to Station 1 immediately.  
8 After confirmed transport and Rescue one is still not available hire one additional  
9 firefighter back for ladder 1 at Station 3.

10  
11 Memo 18-15

12  
13 On June 26, 2018, Murphy issued Memo 18-15 regarding “Manning changes.”

14 Memo 18-15 states:

15 Effective July 1<sup>st</sup>, 2018 the Department will staff the day shift (0800-1800) with 11  
16 firefighters and the night shifts (1800-0800) with 10 firefighters as we currently  
17 operate. The eleventh firefighter will be assigned to Engine 1 during the day and  
18 any other time 11 FF’s are on duty. All current operations and mutual aid response  
19 will remain the same. I will continue to pursue additional funding to staff the night  
20 shift with 11 firefighters.

21  
22 When staffed at 11 personnel and both rescues are transporting to area hospitals  
23 we will call back one FF for Station 3 to man the ladder. Per the agreement with  
24 the Union we can only order to 10 firefighters when attempting to staff at 11  
25 personnel. If we are unable to retain 11 firefighters we will operate under the  
26 current staffing and apparatus assignments. Any questions on operations when  
27 at 10 firefighters please refer to the Memo 18-06 posted on 4/19/18.

28  
29 Memo 18-22

30  
31 On October 31, 2018, while the parties were still bargaining for a successor CBA,  
32 Murphy issued, again without bargaining with the Union, Memo 18-22 regarding “Manning  
33 changes.” Memo 18-22 states:

34 Due to the overtime budget and man power concerns manning will be reduced to  
35 ten firefighters for the day & night tours effective Friday November 2, 2018 at 0800.  
36 We currently have 2 FF’s out on IOD, 4 FF’s out long term sick leave, 1 FF in the  
37 Mass Fire Academy (MFA), 1 recruit starting the MFA in November, 1 recruit  
38 waiting for an MFA assignment, and 2 vacancies we are trying to fill. This will be  
39 a temporary change until the man power and the available budget stabilizes.  
40



1 Station 1 will run with Car 3-2, Rescue 1, and one firefighter on Engine 1. Though  
 2 Engine 1 will not have 2 personnel assigned when at a level of 10 firefighters, this  
 3 manning plan will ensure that a minimum of four personnel respond from the  
 4 closest station in Districts 1 and 3 on all calls when not otherwise committed.  
 5 Rescue 2 will continue to be the Humarock and mutual aid ambulance.

6  
 7 Apparatus assignments:

8  
 9 Station 1

- 10 •Car 3-2: Shift commander
- 11 •Rescue 1: Two paramedics
- 12 •Engine 1: FF EMT or paramedic (if at 11 two FF's will be assigned to E-1).
- 13 •If Rescue 1 is in quarters and a first alarm response comes in the tech shall ride
- 14 on Engine 1 and the ambulance will follow to the scene.

15  
 16 Station 3

- 17 •Engine 3: Lieutenant and 1 FF (two FF's if Lt. is assigned to Car 3-2 or officer is
- 18 not hired for Station 3).
- 19 •Rescue 2: 2 paramedics
- 20 •Ladder 1: To be covered by tech from Rescue 2 or engine 3 passenger if Rescue
- 21 2 is not available.
- 22 •Engine 4: Two firefighters

23  
 24 Hiring/call backs

- 25 •If the shift does not have a minimum of four paramedics (not including
- 26 Lieutenants) an attempt to hire a medic as the 11<sup>th</sup> firefighter shall be made from
- 27 the detail list. If four medics are not available the Lieutenants will be available to
- 28 fill this need for Rescue 2.
- 29 •If both rescues are transporting hire two firefighters back on an "EMS Recall," the
- 30 first hired will be assigned to Engine 1, the second hired will be assigned to Ladder
- 31 1, Station 3.
- 32 •When Rescue 1 is out of Town and 3-2 is responding to a medical call in district
- 33 3 or 4 the first arriving units to the best of their ability, shall determine if the patient
- 34 will require transport to a medical facility. This will be conveyed to the shift
- 35 commander and if transporting, hire back one firefighter for Station 1 immediately.
- 36 After confirmed transport and Rescue one is still not available hire one additional
- 37 firefighter back for ladder 1 at Station 3.<sup>14</sup>

---

<sup>14</sup>Murphy testified that after he redeployed R-2 and L-1 to Station 3, he became aware that Car 3-2 was not always staying back with E-1 when R-1 was out of quarters. According to Murphy, he told his command staff, especially the captains, to remain behind with E-1 so that it would not be by itself. He described this as "common sense." He did not explain when he became aware of the issue or when he issued this verbal order.

His testimony conflicts with the express terms of both Memo 18-06 and 18-22, which provide that under the new manning plan, four personnel will respond from the closest

1 The redeployment has resulted in R-1 responding to approximately 55% of EMS  
 2 calls, and R-2 responding to approximately 45%. The response time to the west end of  
 3 North Scituate has been reduced, and the Department is now able to respond to an EMS  
 4 call nearly anywhere in town in approximately 4.5 minutes. The Department has also cut  
 5 in half its reliance on mutual aid.

#### 6 OPINION

7 The issue is whether the Town violated the Law by reducing the number of  
 8 firefighters assigned to an apparatus when responding to an alarm without giving the  
 9 Union prior notice and an opportunity to bargain to resolution and impasse. Specifically,  
 10 the Complaint alleges that the Town violated the Law when Murphy ordered, through  
 11 Memos 18-06 and 18-22, that when there were 10 firefighters on duty, one firefighter  
 12 would Staff Engine 1 when it responded to an alarm. For the following reasons, I find that  
 13 the Town violated the Law.

14 A public employer violates Section 10(a)(5) of the Law when it implements a  
 15 change in a mandatory subject of bargaining without first providing its employees'  
 16 exclusive collective bargaining representative with notice and an opportunity to bargain.  
 17 School Committee of Newton v. Labor Relations Commission, 388 Mass. 557, 572

---

station on all calls “when not otherwise committed.” Memo 18-22 contained the same language as did Memo 18-06. These memos also expressly contemplate a scenario where “Rescue 1 is out of town and 3-2 is responding to a medical call in district 3 or 4.” Murphy also testified that Car 3-2 would always go in tandem with the engine on any call “unless the captain’s called to do something different.” He also estimated that given the current frequency of concurrent calls, E-1 is in quarters without R-1 for about 2.5 hours a day. Additionally, Lt. Sean Cashman, the only rank and file officer to testify, was not aware of any such verbal directive that modified the express terms of these memos. Based upon these considerations, I do not find Murphy’s testimony that he effectively verbally amended both memos credible.

1 (1983). The duty to bargain extends to both conditions of employment established  
2 through past practice and to conditions of employment established through a collective  
3 bargaining agreement. Commonwealth of Massachusetts, 27 MLC 1, 5, SUP-4304 (June  
4 30, 2000). To establish a unilateral change violation, the charging party must show that:  
5 1) the employer altered an existing practice or implemented a new one; 2) the change  
6 affected a mandatory subject of bargaining; and 3) the change was implemented without  
7 prior notice and an opportunity to bargain. Town of Lexington, 37 MLC 115, 119, MUP-  
8 08-5313 (December 9, 2010); Commonwealth of Massachusetts, 20 MLC 1545, 1552,  
9 SUP-3460 (May 13, 1994).

#### 10 Employer Altered an Existing Practice or Implemented a New One

11 The evidence shows that the Town implemented a new practice.<sup>15</sup> Murphy's orders  
12 redeployed Department personnel and apparatus, and changed the response protocol  
13 from Station 1. Although E-1 has been staffed with one firefighter in the past, under the  
14 express terms of Memos 18-06 and 18-22, the minimum response to an alarm from  
15 Station 1 is now one firefighter on E-1. Previously, E-1 would respond with at least one

---

<sup>15</sup>Although the Town argues that no change occurred because E-1 has been staffed in the past with one firefighter, the Town's brief repeatedly acknowledges that a change occurred, by stating: "The Fire Chief testified that under these new orders;" "The only change that actually occurred around the time the Fire Chief issued his orders in 2018 was that instead of the ladder truck responding with Engine-1 to a fire or emergency call, now the Captain would be responding in a command vehicle;" "While the practice had been for the ladder truck to accompany Engine 1 to a potential call, the new practice called for the Fire Chief to respond in a command vehicle;" "Fire Chief Murphy testified that the deployment practices he implemented in 2018 substantially improved Scituate's ability to meet NFPA-1710, particularly with regard to medical calls;" "The Town redeployed staff and apparatus to better serve the citizens of Scituate;" "The Fire Chief provided credible and substantial evidence that recent changes in staff and apparatus deployment had dramatically improved the services provided by the Fire Department to residents of Scituate."

1 additional firefighter on E-1, or it would respond in tandem with one firefighter on L-1.  
2 Accordingly, the Town implemented a new practice.

3 Change Affected a Mandatory Subject of Bargaining

4 I briefly review the Commonwealth Employment Relations Board's (CERB)  
5 relevant decisions regarding firefighting staffing. In Town of Danvers, 3 MLC 1559, 1573,  
6 MUP-2292, 2299 (April 6, 1977), the CERB determined that minimum manning per shift  
7 in a fire department was a permissive subject of bargaining. The CERB stated, in relevant  
8 part:

9 There was evidence in this case that firefighters train as teams and that individual  
10 firefighters perform certain specified duties or evolutions in conjunction with other  
11 members of the team. We recognize that the workload and risk of injury of each  
12 firefighter increase as team complement at a fire is reduced or whenever  
13 substitution of a specific firefighter is made. Workload and safety, in turn, fall within  
14 the language of Section 6 of the Law.... However, we find that the number of  
15 firefighters on duty has no direct impact on workload and safety. We find that a  
16 decision regarding shift coverage in a fire department has far greater impact on  
17 the level of delivery of a public service than on workload and safety of firefighters.  
18 Thus, we find it to be a permissive subject of bargaining. Nothing in this opinion  
19 should be prevent firefighters from bargaining with their employers regarding such  
20 subjects as safety or workload. Id. at 1574.

21  
22 In City of Newton, 4 MLC 1282, 1284, MUPL-2035 (September 8, 1977), the  
23 CERB, after affirming its holding in Town of Danvers, concluded that the "departure of  
24 firefighting apparatus from the station in response to an alarm" was the "logical and  
25 rational point at which to draw the line between mandatory and permissive bargaining  
26 over coverage." Affirming a Hearing Officer Decision on appeal, the CERB reasoned:

27 The unmistakable meaning of the Hearing Officer's Decision is that when  
28 firefighting apparatus responds to an alarm the number of firefighters on that  
29 apparatus is a mandatory subject of bargaining to the extent that such coverage  
30 raises a question of safety. It is equally clear that the Decision of the Hearing  
31 Officer does not make mandatory a proposal for coverage per piece of apparatus  
32 while that apparatus awaits an alarm. Thus, the number of firefighters on duty on  
33 a shift per piece of equipment was not found to be a mandatory subject of

1 bargaining. This would be tantamount to minimum manning per shift which we  
2 have found to be permissive.

3  
4 We believe that the facts found by the Hearing Officer amply justify his conclusion  
5 that the number of firefighters on a piece of equipment when it is responding to an  
6 alarm has a direct and substantial impact on safety and workload. The basic  
7 functions and tasks of a firefighter are keyed to the operation of a “company,” the  
8 normal complement on a piece of equipment. The safety and efficiency of the fire  
9 suppression effort is thus related to the operation of these companies. While the  
10 number of companies responding or available to respond on a given shift is a level  
11 of services decision, the composition of the firefighting team expected to operate  
12 that equipment at the scene of a fire is a question of workload and safety. The  
13 number of firefighters on a piece of equipment as it responds to an alarm is  
14 substantially related to these negotiable concerns. To make this topic permissive  
15 would restrict the ability of the firefighter to bargain over their safety and workload  
16 concerns in the most practical and effective manner. City of Newton at 1283-1284.

17  
18 Consistent with Town of Danvers and City of Newton, the CERB further developed  
19 this area of the Law in subsequent decisions: City of Boston, 8 MLC 1418, 1432-1436,  
20 MUP-3821 (November 2, 1981) (city’s refusal to bargain over impacts of decision to  
21 eliminate three fire suppression companies did not violate the Law where the record did  
22 not establish a substantial impact on workload and safety of bargaining unit members);<sup>16</sup>  
23 Town of Billerica, 8 MLC 1957, 1962, MUP-4000, 4122 (March 19, 1982) (periodic  
24 reduction in manning per piece of apparatus when responding to a fire triggered safety  
25 and workload bargaining obligation where at times trucks responded to alarms without an

---

<sup>16</sup>The CERB concluded that any measurable increase in workload and risk of injury fell “well within the parameters of workload and risk currently shouldered by members of the bargaining unit as a whole.” Id. at 1432-1433. The CERB has grappled with the safety implications of a delayed response time since at least this decision. It concluded that potential delays in response time “of up to three minutes” resulting from the deactivation of the companies were not “out of the normal course of firefighting.” Id. at 1435. Importantly, the CERB stated: “Furthermore, while rapid response is clearly desirable, we have little evidence on what is a “safe” response time.... Thus, we conclude on the record before us that the closing of the three companies had no substantial impact on the safety of bargaining unit members.” Id. at 1436.

1 officer present and at other times firefighters were put in the position of entering a burning  
2 structure alone while fellow firefighters operated the pump); and Town of Reading, 9 MLC  
3 1730, 1740, MUP-4541 (A.O. March 29, 1983) (no bargaining obligation where response  
4 to mutual aid cover assignments amounts to little more than moving from one fire station  
5 to another to continue to await alarms of fire).<sup>17</sup>

6 In Town of Bridgewater, 12 MLC 1612, MUP-5356 (February 7, 1986), the CERB  
7 determined that the town violated the Law where the chief's reduction in minimum  
8 manning per shift from six to five firefighters in a group periodically resulted in a reduction  
9 in the number of firefighters assigned to an apparatus when responding to an alarm.  
10 Specifically, the reduction resulted in an ambulance responding to an alarm with one

---

<sup>17</sup> Town of Reading involved three types of mutual aid responses: responses to known working fires; cover assignments; and line box alarms. In a cover assignment, an engine travels to a vacant station in the mutual aid community to respond to any additional alarms that may arise. In a line box alarm, an alarm on the border of two communities brings a full response by the town where the box is located and a one-engine response by the other town. The record disclosed that during the relevant three-year period over 94% of mutual aid calls consisted of cover assignments, which the CERB concluded amounted to coverage while awaiting an alarm and was therefore not a mandatory subject of bargaining. After expressly cautioning that its conclusion was "based solely upon the record presented in this case," the CERB qualified its conclusion by stating:

We feel that minimum manning proposals which speak to these additional categories of mutual response (i.e., responses to working fires or line box alarms) address the traditional situations when fire apparatus responds to an alarm. This would also be true for proposals which speak to manning per piece when apparatus leaves a cover station in another community to respond to an alarm of fire. The number of firefighters on that apparatus, we have held, is a mandatory subject of bargaining to the extent that such coverage raises a question of safety. Id. at 1740.

In sum, the advisory opinion in Town of Reading did not purport to modify or change the CERB's interpretation of the Law, but merely applied the rule announced in City of Newton to mutual aid responses in the community of Reading.

1 firefighter instead of two, directly and significantly affecting the safety and workload of the  
2 firefighter assigned to that ambulance. Id. at 1616-1617. The CERB went on to opine  
3 that the employer “could maintain a shift complement of five and then call in a sixth  
4 firefighter upon receipt of an alarm. As long as the ambulance does not respond to the  
5 alarm until it is manned by two firefighters the employer will have maintained the per piece  
6 manning level.” Id. at 1618.<sup>18</sup>

7 Town of Halifax, 20 MLC 1320, MUP-7823 (December 16, 1993), the next case to  
8 address firefighting staffing, involved a change to staffing during the weekend dayshift.  
9 Prior to the disputed change, which resulted from one of the four firefighters in the  
10 department taking a leave of absence, two on-duty firefighters would respond to an alarm  
11 together. After the change, only one firefighter was on-duty, with a second on-call. In  
12 response to an alarm, the on-duty firefighter would wait at the station for the on-call  
13 firefighter to arrive, and then the two would respond to the scene together. This change  
14 resulted in a delay in response time of up to six minutes. Id. at 1323. Noting that it had  
15 “contemplated such a scenario” in Town of Bridgewater, the CERB, finding no bargaining  
16 obligation and summarizing its prior decisions, stated:

17 Read together, these cases stand for the proposition that changes that impact the  
18 firefighters at the scene of a fire raise safety and workload issues sufficient to  
19 require the employer to bargain, while changes that impact the firefighters before  
20 they respond to a fire do not have a sufficient impact on safety and workload to  
21 overcome the employer’s interest in determining level of services. Viewed from  
22 this perspective, the case fits squarely into the latter category. Id. at 1325.  
23

---

<sup>18</sup> The CERB stated in the remedial portion of its decision that, “It appears from the record evidence that the length of time during which the ambulance was responding to an alarm with a single fire fighter was brief, at most.” Id. at 1618. This fact did not affect the CERB’s conclusion that the town violated the Law.

1 The CERB concluded that the union did not prove that a delay in response time by itself  
2 raises bargainable questions of safety and workload. It stated, in relevant part: “[I]n the  
3 absence of conclusive evidence to the contrary, as long as the manning per piece in  
4 response to an alarm remains constant, the delay by itself does not sufficiently implicate  
5 safety or workload issues.” Id. at 1326.

6 City of Melrose, 22 MLC 1209, MUP-9265 (September 22, 1995) (repudiation of  
7 agreement to assign four firefighters to ladder truck whenever two engines and a ladder  
8 are in service did not amount to a unilateral change where the manning requirement was  
9 general and did not specify circumstances that implicate safety and workload); and Town  
10 of Dracut, 23 MLC 113, 114, MUP-9455 (November 15, 1996) (decision not to replace  
11 absent firefighters did not violate the Law where the record does not demonstrate that  
12 single firefighters responded to calls that were emergency in nature) followed.

13 In Town of Marshfield, 30 MLC 164, MUP-02-3327 (June 2, 2004), the CERB  
14 concluded that the town did not violate the Law by failing to bargain over the impacts of  
15 its decision to acquire and deploy a Quint, which is a multi-function vehicle with both  
16 engine and ladder capacities, to replace an aging engine and ladder. The union argued  
17 that the “decision to assign to the Quint one officer and four firefighters at maximum  
18 staffing and one officer and three firefighters at medium and minimum staffing affects  
19 firefighters’ safety” because the reassignment and redeployment of firefighters “resulted  
20 in increased response times that could jeopardize firefighter safety.” Id. at 173. Citing  
21 Town of Halifax, 20 MLC at 1326, the CERB stated:

22 In the case before us, the staffing per piece of equipment at all three district fire  
23 stations when responding to alarms has remained the same, except for the  
24 increased staffing on the Quint. There is no evidence in the record indicating that  
25 the increased staffing level on that apparatus resulted in any safety complications



1 other than a potential delay in responding to alarms....Thus, the issue raised by  
2 the Union does not affect firefighter safety to the extent that the Town was required  
3 to impact bargain with the Union. Id.  
4

5 The CERB then rejected the union's argument that using the Quint as both an engine and  
6 a ladder had safety repercussions because, according to the CERB, "the Quint can  
7 achieve the same goals at a fire scene while operating alone as the engine and ladder  
8 trucks previously had done together." Additionally, the CERB rejected the argument that  
9 the increase in response time that resulted from an increased reliance on mutual aid calls  
10 due to the Quint's frequent malfunctioning affected safety, again reiterating its rule that "a  
11 delay in responding to an alarm, without more, does not implicate firefighter safety to a  
12 degree where bargaining becomes necessary." Id. at 173-174. Finally, the CERB  
13 concluded that the union had failed to demonstrate that implementing the Quint directly  
14 and significantly impacted firefighters' workload. Id. at 175.

15 Here, the orders changed the staffing response to an alarm from Station 1.  
16 Although the Town has characterized the redeployment as providing for four personnel  
17 responding from each station, the manning plan clearly provides that four personnel will  
18 respond from Station 1 on all calls "when not otherwise committed." The express terms  
19 of the orders contemplate a scenario where E-1 will be by itself at Station 1 and ineligible  
20 for a callback. If an alarm that falls within the primary jurisdiction of Station 1 comes in  
21 during that time, E-1 must respond to that alarm by itself with one firefighter as the first  
22 due engine.

23 The evidence conclusively shows that this change directly and substantially affects  
24 firefighter safety. A single firefighter responding to a fire on an engine cannot operate as

1 part of a team, let alone a company. As the CERB stated in City of Newton, 4 MLC at  
2 1283-83:

3 The basic functions and tasks of a firefighter are keyed to the operation of a  
4 "company," the normal complement on a piece of equipment. The safety and  
5 efficiency of the fire suppression effort is thus related to the operation of these  
6 companies. While the number of companies responding or available to respond  
7 on a given shift is a level of services decision, the composition of the firefighting  
8 team expected to operate that equipment at the scene of a fire is a question of  
9 workload and safety.

10  
11 A single firefighter who is first due to a fire scene and faces a split-second decision  
12 whether to enter a burning structure alone and without backup to attempt a rescue faces  
13 a critical risk to his or her safety that falls outside the normal scope of the safety risks  
14 inherent to the position. Although a minimum response of two firefighters also cannot  
15 observe basic safety measures such as the 2-in/2-out rule, the evidence shows that a  
16 team of two firefighters can at least initiate an attack on the fire, whereas a single  
17 firefighter can do little more than hook up to the hydrant. The evidence also shows that  
18 the initial attack is critical to containing the fire, and a delay in attacking the fire, even one  
19 measured in seconds, substantially increases the risk to firefighter safety. Moreover, the  
20 Town does not have standard operating procedures, including procedures for a firefighter  
21 arriving alone at the scene of a fire. The safety concerns related to this change are  
22 evident, and they need not be inferred.

23 Even if one accepted, which I do not, Murphy's position that Car 3-2 would always  
24 be available to respond with E-1 to a call when R-1 was committed, the memos would still  
25 trigger a bargaining obligation because that scheme would result in the incident  
26 commander engaging in fire suppression at the expense of commanding the incident,  
27 which would also affect safety and workload. Prior to the change, E-1 was always

1 accompanied by at least one additional firefighter, whether on E-1 or in tandem with L-1,  
2 in addition to Car 3-2. In short, Memo 18-06 and the subsequent Memo 18-22 reduced  
3 the number of firefighters on a piece of equipment as it responds to an alarm and upon  
4 arrival at the scene of a fire. Town of Bridgewater, 12 MLC 1612. The change directly  
5 and substantially impacts firefighter safety. Accordingly, the change affected a mandatory  
6 subject of bargaining.<sup>19</sup>

7 Change Implemented without Prior Notice and an Opportunity to Bargain

8 This is not reasonably in dispute. The Union sought to bargain over firefighter  
9 staffing. The Town refused. Murphy issued the orders without affording the Union prior  
10 notice and an opportunity to bargain to resolution or impasse.

11 CONCLUSION

12 The Town violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law  
13 by reducing the number of firefighters assigned to an apparatus when responding to an  
14 alarm from Station 1 without giving the Union prior notice and an opportunity to bargain  
15 to resolution or impasse over the decision to reduce the number of firefighters assigned  
16 to the apparatus and the impacts of that decision on bargaining unit members' terms and  
17 conditions of employment.

18 ORDER

19 WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED that the Town shall:

- 20 1. Cease and desist from:  
21

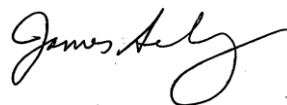
---

<sup>19</sup>That the precise sequence of events resulting in E-1 responding alone to a fire have not yet occurred is of no consequence. Fires can occur at any time, concurrent calls are rising within the Department, and this is the scheme in place for responding to an alarm from Station 1.

- 1 a. Refusing to bargain in good faith by unilaterally reducing the minimum number
- 2 of firefighters responding to an alarm from Station 1, including Engine 1, without
- 3 giving the Union prior notice and an opportunity to bargain to resolution or
- 4 impasse about the decision and its impacts.
- 5
- 6 b. In any like or similar manner interfering with, restraining, or coercing employees
- 7 in the exercise of their rights under the Law.
- 8
- 9 2. Take the following affirmative action that will effectuate the purpose of the Law:
- 10
- 11 a. Upon demand, bargain to resolution or impasse prior to reducing the minimum
- 12 number of firefighters responding to an alarm from Station 1, including the
- 13 staffing on Engine 1 when responding to an alarm.
- 14
- 15 b. Pending the completion of bargaining, restore the prior staffing scheme of a
- 16 minimum of two firefighters, not including the shift commander, responding to
- 17 an alarm from Station 1, whether on the same or different apparatus.
- 18
- 19 c. Post immediately in all conspicuous places where members of the Union's
- 20 bargaining unit usually congregate, or where notices are usually posted,
- 21 including electronically if the Town customarily communicates with these
- 22 members via intranet or email, and display for a period of thirty (30) days
- 23 thereafter, signed copies of the attached Notice to Employees.
- 24
- 25 d. Notify the DLR in writing of steps taken to comply with this Order within ten
- 26 (10) days of receipt.
- 27

28 SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

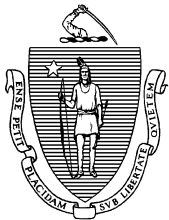


---

JAMES SUNKENBERG, ESQ.  
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c.150E, Section 11 and 456 CMR 13.19, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Notice of Appeal with the Department of Labor Relations not later than ten days after receiving notice of this decision. If a Notice of Appeal is not filed within ten days, this decision shall become final and binding on the parties.



1  
2  
3  
4  
5

# NOTICE TO EMPLOYEES

**POSTED BY ORDER OF A HEARING OFFICER OF  
THE MASSACHUSETTS DEPARTMENT OF LABOR RELATIONS  
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS**

A hearing officer of the Massachusetts Department of Labor Relations (DLR) has held that the Town of Scituate (Town) violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by reducing the minimum response to an alarm from Station 1 to one firefighter on one engine.

Section 2 of the Law gives public employees the right to engage in self-organization; to form, join or assist any union; to bargain collectively through representatives of their choosing; to act together for the purpose of collective bargaining or other mutual aid or protection; and to refrain from all the above.

WE WILL NOT fail and refuse to bargain in good faith by unilaterally reducing the number of firefighters responding to an alarm from Station 1, including Engine 1, without giving the Scituate Firefighters Union prior notice and an opportunity to bargain to resolution or impasse.

WE WILL NOT in any like or similar manner interfere with, restrain, or coerce the Union in the exercise of its rights guaranteed under the Law.

WE WILL take the following affirmative action that effectuate the purposes of the Law:

Upon demand, bargain to resolution or impasse before reducing the minimum number of firefighters responding to an alarm from Station 1, including Engine 1.

Pending the completion of bargaining, restore the prior staffing scheme of a minimum of two firefighters, not including the shift commander, responding to an alarm from Station 1, whether on the same or different apparatus.

Notify the DLR of steps taken to comply with this Order within 10 (ten) days of receipt.

---

Town of Scituate

---

Date

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED OR REMOVED**

This notice must remain posted for 30 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Department of Labor Relations, Lafayette City Center, 2 Avenue de Lafayette, Boston, MA 02111 (Telephone: (617) 626-7132).