

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

In the Matter of:

TOWN OF SCITUATE

and

SCITUATE FIREFIGHTERS UNION,  
LOCAL 1464, IAFF

Case No. MUP-18-6943

Date issued: March 28, 2022

CERB Members Participating:

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

Appearances:

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

SUMMARY

1 The Town of Scituate (Town) appeals from a Department of Labor Relations  
2 Hearing Officer decision holding that it violated Section 10(a)(5) and, derivatively, Section  
3 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by reducing the  
4 number of firefighters assigned to a fire engine when responding to an alarm without  
5 giving the Scituate Firefighters Union (Union) prior notice and an opportunity to bargain  
6 to resolution or impasse. We affirm the decision for the reasons stated below.

7 FACTS

1           The parties agreed to certain stipulations, and the Hearing Officer made additional  
2 findings of fact based on the record. Although the Town disputes some of the conclusions  
3 drawn from these findings, it does not dispute the subsidiary findings. We therefore adopt  
4 those findings and summarize the relevant portions below, supplemented as necessary  
5 with additional information contained in the record. Further reference may be made to  
6 the facts set out in the Hearing Officer's decision, reported at 48 MLC 50.

7 Background

8           The Union represents a bargaining unit of firefighters, lieutenants and captains in  
9 the Scituate Fire Department (Department). At all relevant times, John P. Murphy  
10 (Murphy) has been the Town's Fire Chief.

11           The Department operates three fire stations - Station 1, Station 3 and Station 4.  
12 The Department maintains a fleet of firefighting equipment that is housed among the three  
13 stations. The fleet consists of three engines (E-1, E-3 and E-4), one ladder (L-1), two  
14 ambulances, also referred to as "rescues" (R-1 and 2), and one command vehicle (Car 3-  
15 2). Engines are primarily used to pump and deliver water and to commence basic  
16 firefighting at fires. Engines also carry a "first-in" medical bag. Ladders can perform  
17 operations such as forcible entry, ventilation, search and rescue, and aerial operations  
18 for water delivery and rescue. Car 3-2 is the shift commander's vehicle. It carries an  
19 array of medical equipment. As of October 2020, all firefighters were certified EMTs and  
20 about three quarters of them were paramedics.

21           At issue in this case are two orders that Murphy issued in 2018 regarding staffing  
22 and apparatus changes, specifically, changes to the staffing on E-1 when responding to  
23 a call, as well as Station 1's overall staffing and apparatus.

1           The history of this staffing from 2014-2018 is as follows. According to a chart  
2 contained in a report that the Town commissioned in 2013 from Emergency Services  
3 Consulting International (ESCI) regarding the Department's "staffing, management and  
4 finances "(ESCI Report), as of June 2014, E-1, Ladder 1, Car 3-2, R-1 and R-2 were  
5 housed at Station 1. According to the chart, the minimum staffing on each of these  
6 vehicles between 2013 and 2014 was as follows: Car 3-2 (1); Engine 1 (2); L-1 (1) and  
7 Rescue 1 (2). The ESCI Report indicated R-2 was "cross-staffed," i.e., that the  
8 Department assigned no staff to R-2, but should an incident occurred while R-1 was  
9 engaged, the Department would staff R-2 with two firefighters - one of the two firefighters  
10 assigned to E-1, and L-1's sole firefighter. According to the ESCI Report, when that  
11 occurred, the Department would call in off-duty personnel on an overtime basis to bring  
12 L-1 and E-1 back to their minimum staffing levels. The ESCI Report stated that the  
13 utilization of R-2 had increased steadily over the past three years and that cross-staffing  
14 R-2 had not only increased overtime costs, but decreased the Department's ability to be  
15 available for fire response due to the need to hire personnel on an overtime basis to staff  
16 E-1 and L-1.

17           The ESCI report also discussed the Department's safety standards and  
18 expectations, comparing them in various places to nationally published benchmark data  
19 from the National Fire Protection Association (NFPA), the U.S. Fire Administration, and  
20 data from nearby fire departments. In the section of the report addressing "Staff  
21 Allocation," the ESCI Report stated that the Department had "identified that at least 10  
22 personnel should be on scene for a fire in a single-family home for safe and effective

1 operations, including mutual aid personnel.” Regarding responses to all but the smallest,  
2 low risk incidents, the ESCI Report stated, in accord with NFPA 1710 regulations,<sup>1</sup>

3 [A] response company consists of four personnel. The standard does not  
4 *require* that all four be on the same vehicle, but does expect that the four  
5 will operate as a single function unit once on scene. . . .(Emphasis in  
6 original).

7  
8 There is another reason the arrival of four personnel is critical for structure  
9 fires. . . .OSHA regulations [29 CFR 1910.134(g)(4)] require that before  
10 personnel can enter a building to extinguish a fire, at least two personnel  
11 must be on scene and assigned to conduct search and rescue in case the  
12 fire attack crew becomes trapped. This is referred to as the two-in two out  
13 rule. There are, however, some exceptions to this regulation. If it is *known*  
14 that victims are trapped inside the building, a rescue attempt can be  
15 performed without additional personnel ready to intervene outside the  
16 structure.

17  
18 Among its several conclusions, the ESCI Report stated:

19 Overall demand has continued to increase over the last ten years while  
20 resources have remained steady or declined. Due to this increase in  
21 service demand, response times have continued to increase, medical  
22 incidents continue to comprise a vast majority of the department’s total  
23 service demand, and the need for a second transport ambulance is evident.

24  
25 In 2016, the Department implemented the recommendation to staff R-2. On or  
26 around May 13, 2016, Murphy issued a document titled “2<sup>nd</sup> Ambulance Guidelines:  
27 revised 5/13/16)” (2016 Guidelines) that staffed R-2 with an on-shift medic and a day  
28 medic. Under this staffing plan, which increased minimum staffing from ten to eleven  
29 during the day shift, R-1 was staffed with two on-shift medics and both E-1 and L-1, which  
30 was still housed at Station 1, were staffed with one driver each. The 2016 Guidelines  
31 indicated that R-1 would alternate with R-2 as the primary and backup rescue vehicle

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<sup>1</sup> ESCI noted that NFPA recommendations are just recommendations, i.e., published peer standards that should not be considered law or regulation such as those issued by OSHA or the EPA.

1 during the day shift. If a fire call came in when R-1 and R-2 were in house, the backup  
2 rescue would staff E-1 along with E-1's driver, and the primary rescue would go to the fire  
3 in the rescue vehicle. If a fire call came in with only one rescue vehicle in house, the  
4 firefighter tech on the remaining rescue vehicle would go on E-1 with the E-1 driver, and  
5 the rescue driver would follow to the scene with support. If a fire call came in when both  
6 rescue vehicles were committed, Car 3-2, E-1, L-1 and E-3, would respond.<sup>2</sup> If an EMS,  
7 non-fire call came in when both rescues were unavailable, the L-1 firefighter would ride  
8 with the E-1 driver. In sum, the 2016 Guidelines reflect that even though E-1 had only  
9 one driver assigned to it between 2016 – 2018, there was no scenario in which it would  
10 respond to a call without at least one additional firefighter. This changed in 2018, as  
11 described below.<sup>3</sup>

## 12 2018 Memos

13 Murphy issued three memos in 2018 regarding staffing and apparatus deployment  
14 (2018 Memos) among the three stations. First, in April 2018, one month after the parties  
15 began negotiations for a successor contract, Murphy issued Memo 18-06, titled,

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<sup>2</sup> To illustrate this point, the Hearing Officer made findings regarding the “Bailey’s Road Fire,” a structure fire that occurred on May 30, 2016. That fire was notable because it occurred in one of the Town’s more remote locations when both rescue vehicles were out on medical calls, and traffic due to a Memorial Day parade made it difficult for mutual aid to reach the location. Car 3-2, which was staffed with a captain, and E-1 and L-1, each staffed with a single firefighter, departed Station 1 at the same time and met E-3, which was staffed with a lieutenant and a firefighter. Until Murphy arrived to command the scene, the incident commander, a captain, engaged in fire suppression, rather than command the scene. Also, the firefighters on the scene had to enter the burning structure individually due to staffing.

<sup>3</sup> We address in the Opinion section the Town’s argument that no change occurred.

1 “Manning/Apparatus Changes.”<sup>4</sup> This memo announced that effective May 20, 2018,  
2 “due to the overtime budget being expended, manning will be reduced to ten firefighters  
3 for the day and night tours.” The memo described changes to the apparatus assigned to  
4 all three stations: L-1 was moved from Station 1 to Station 3 and cross-staffed with  
5 personnel from R-2; R-1 was staffed with two paramedics and remained in Station 1. R-  
6 2 was staffed with two paramedics but moved from Station 1 to Station 3, leaving Station  
7 1 with Car 3-2, R-1 and E-1. Under this configuration, if R-1 was in quarters when a fire  
8 alarm came in, the memo ordered the tech to ride on E-1, with the ambulance following  
9 to the scene.

10 Memo 18-06 also described staffing and callbacks under two other scenarios as  
11 follows:

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

15  
16 When Rescue 1 is out of Town and 3-2 is responding to a medical call in  
17 district 3 or 4 the first arriving units to the best of their ability, shall determine  
18 if the patient will require transport to a medical facility. This will be conveyed  
19 to the shift commander and if transporting, hire back one firefighter to  
20 Station 1 immediately. . . .<sup>5</sup>

21 Murphy testified that the Department was able to hire back firefighters through callbacks  
22 80% of the time.

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<sup>4</sup> During the negotiations, the Union proposed increasing minimum manning to 12, including staffing E-1 with two firefighters. The Town maintained that it did not have to bargain over minimum manning and rejected the proposal.

<sup>5</sup> Although not expressly stated in the memos, the hearing testimony reflects that callbacks to Station 1 would occur only if both rescues were in use. No callbacks would occur if only one rescue vehicle was in use.

1 Memo 18-06 directly addressed the fact that E-1 would not have two personnel  
2 assigned to it, but indicated that despite this fact, “this manning plan will ensure that a  
3 minimum of four personnel respond from the closest station in districts 1 and 3 on all calls  
4 when not otherwise committed.”

5 On June 26, 2018, Murphy issued another memo regarding “Manning Changes”  
6 (Memo 18-16). This memo announced a return to minimum staffing of eleven firefighters  
7 on the day shift, but still ten on the night shift. According to Memo-18-16, the eleventh  
8 firefighter would be assigned to E-1 during the day and at any other time that eleven  
9 firefighters were on duty.

10 On October 31, 2018, Murphy issued a third Memo 18-22 regarding staff,  
11 apparatus deployment and callbacks. This memo reinstated the staffing and apparatus  
12 deployment set out in Memo 18-06, including the assignment of only one firefighter EMT  
13 or paramedic to E-1 during all shifts, and the statement that the staffing plan would  
14 “ensure that a minimum of four personnel respond from the closest station in Districts 1  
15 and 3 on all calls *when not otherwise committed*.” Based on the frequency of concurrent  
16 calls that the Department was then experiencing, Murphy estimated that this plan left E-  
17 1 Station 1, without R-1, for about 2.5 hours a day. Although Car 3-2 was still assigned  
18 to Station 1, at some point after Murphy issued the 2018 Memos, an unidentified individual  
19 or individuals informed him that there had been one or more occasions when captains  
20 had not stayed in Station 1 with E-1 when R-1 was on a call, leaving E-1 alone and staffed  
21 with just one firefighter to respond to a call.<sup>6</sup>

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<sup>6</sup> Murphy testified that he had instructed command staff, especially captains, to remain in Station 1 with E-1 when R-1 was out of the station so that E-1 would not be alone in the

1           There is no dispute that a single firefighter cannot effectively respond to a fire or  
2 that operating with a single firefighter is less safe than operating with two or more.<sup>7</sup> There  
3 is also no dispute that Murphy issued all three 2018 Memos without giving the Union prior  
4 notice and an opportunity to bargain.

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station. The Hearing Officer did not credit this testimony for several reasons, including that Lieutenant Sean Cashman (Cashman), the only officer to testify, had testified that he was not aware of such an order. The Hearing Officer also accurately noted that any such order would conflict with the plain language of Memos 18-06 and 18-22, which, when stating, If “Rescue 1 was out of Town and Car 3-2 was responding to a medical call in district 3 or 4,” contemplated situations where neither R-1 nor Car 3-2 would be in Station 1 with E-1; and further stated that four personnel would respond to a fire only “when not otherwise committed.” On review, the Town asserted that it finds it “troubling” that the Hearing Officer rejected Murphy’s testimony, contending that Murphy otherwise gave detailed testimony regarding improved response time and the impacts of his 2018 memos on firefighters. However, because the Hearing Officer’s finding was well-explained and supported by the evidence, we decline to disturb it. See Vinal v. Contributory Retirement Appeal Board, 13 Mass. App. Ct. 85 (1982) (declining to disturb factfinder’s findings where they were well-explained and the evidence did not require a contrary finding). See also Town of Weymouth, 19 MLC 1126, 1132, MUP-6839 (August 4, 1992) (a hearing officer may believe parts of a witness’s testimony while disbelieving other parts). Further, even if Murphy had instructed his captains to stay behind with E-1, Murphy admitted during his testimony that a shift commander could go on a medical call in other districts even if Rescue 1 were out and that he had been alerted to instances where shift commanders had left E-1 alone in the station.

<sup>7</sup> Chief Murphy testified that having two people go to a scene is safer than having one. He also testified that there is little that a single firefighter could effectively do at a scene. Despite this testimony, the Town points to a statement made by the Union’s expert witness Jay Fleming, that he wished to make clear that he was “not saying that running with one firefighter on Engine 1 is unsafe.” However, the Town omitted Fleming’s follow-up to similar statements he made while testifying, i.e., “I am not arguing that running an engine company with one firefighter is unsafe because everything a firefighter does is unsafe because safe is a relative term.” ; “All I’m arguing is that if you ran an engine with one person, it’s less safe than if you run it with two because there’s less options and there’s less things you can do.” ; “What I’m saying is that running any engine company with less than two firefighters decreases the margin of safety. It increases the probability that [as] one rule breaks, it will build on another, and eventually it’s going to catch up to you.”



1 Opinion<sup>8</sup>

2 At issue here is whether the Town was obligated to give the Union prior notice and  
3 an opportunity to bargain prior to implementing Memos 18-06 and 18-22. An employer  
4 commits a prohibited practice within the meaning of Section 10(a)(5) of the Law when it  
5 makes a change to a mandatory subject of bargaining without giving the exclusive  
6 representative of the affected employees prior notice and an opportunity to bargain over  
7 the change. School Committee of Newton v. Labor Relations Commission, 388 Mass.  
8 557 (1983). To establish that an employer made an unlawful unilateral change, a union  
9 must demonstrate: 1) that the employer altered an existing practice or implemented a new  
10 one; 2) the change affected a mandatory subject of bargaining; and 3) the change was  
11 implemented without prior notice and an opportunity to bargain. Bristol County Sheriff's  
12 Department, 31 MLC 6, MUP-18-2872 (July 15, 2004)(citing City of Boston, 26 MLC 177,  
13 181, MUP-1431 (March 23, 2000).

14 The Hearing Officer addressed each of these elements, finding first that the Town  
15 had implemented a new practice by redeploying Department personnel and apparatus  
16 such that, under the express terms of Memos 18-06 and 18-22, the minimum response  
17 to an alarm from Station 1 is one firefighter on E-1. He found this was a change because  
18 before 2018, in addition to responding with Car 3-2, E-1 would respond to calls with at  
19 least one additional firefighter on E-1, or in tandem with a firefighter on L-1.

20 The Hearing Officer next considered whether the change affected a mandatory  
21 subject of bargaining. He reviewed over four decades of caselaw concerning when and  
22 whether minimum staffing in a fire department was a mandatory subject of bargaining.

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<sup>8</sup> The CERB's jurisdiction is not disputed.

1 These cases hold generally that staffing per piece of apparatus while the apparatus  
2 awaits an alarm is not a mandatory subject of bargaining, but that the number of  
3 firefighters on an apparatus responding to a fire alarm is, provided that such coverage  
4 raises a question of firefighter safety. See, e.g., Town of Bridgewater, 12 MLC 1612,  
5 MUP-5356 (February 7, 1986) (citing City of Newton, 4 MLC 1282, 1283, MUPL-2035  
6 (September 8, 1977)) (reduction in minimum manning per shift that resulted in only one  
7 firefighter assigned to the ambulance when responding to a fire directly and significantly  
8 affected employee safety and workload). The Hearing Officer concluded that the 2018  
9 staffing configurations were a mandatory subject of bargaining because they  
10 contemplated a scenario where four personnel would respond to a fire call only if they  
11 were not otherwise committed and where E-1 would be by itself at the station when a  
12 fire call came in, i.e., when both R-1 and Car 3-2 were out of the station, but Station 1  
13 was ineligible for a callback. According to the Hearing Officer, if an alarm came in at that  
14 time, E-1 would have to respond to that alarm by itself with only one firefighter. The  
15 Hearing Officer found that not only would this staffing scenario violate the two-in, two-out  
16 rule, but, “because the initial firefighter could do little more than hook up to the hydrant,  
17 there would be a delay in attacking the fire until other firefighters showed up, which  
18 increased the risk to firefighter safety when and if other firefighters arrived at the scene.”<sup>9</sup>  
19 The Hearing Officer further reasoned that the lone firefighter might be faced with the  
20 decision of whether to enter a burning building alone and without backup. The Hearing  
21 Officer thus concluded that because Memo 18-06 and Memo 18-22 reduced the number

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<sup>9</sup> The Hearing Officer’s facts contain information regarding firefighting safety and recommendations that are not in dispute and that support these conclusions.

1 of firefighters on a piece of equipment as it responds to an alarm and upon arrival at the  
2 scene of fire, and because this change affected firefighter safety, it was a mandatory  
3 subject of bargaining in accord with Town of Bridgewater, 12 MLC 1612.

4 The Town challenges two aspects of the Hearing Officer's decision: 1) that the  
5 Chief's orders on April 19, 2018 and October 31, 2018 represented a change in existing  
6 practice; and 2) that the changes in working conditions impacted the safety and workload  
7 of Scituate firefighters.

8 As to the change in practice, the Town argues that, as confirmed by Union  
9 witnesses, E-1 had previously been staffed with only one firefighter, thereby refuting the  
10 Hearing Officer's conclusion that the 2018 orders constituted a change. The Town also  
11 argues that even if this did constitute a change, the memos established only that one  
12 firefighter was *assigned* to E-1 – the hearing record is devoid of evidence that only one  
13 firefighter had ever *responded* to an actual fire. We are not persuaded by these  
14 arguments.

15 First, the Hearing Officer specifically acknowledged that E-1 had previously been  
16 staffed with one firefighter in the past. The material change that he found here was not  
17 simply this assignment, but that, pursuant to Memos 18-06 and 18-22, the minimum  
18 *response* to an alarm from Station 1 could be a single firefighter on E-1. That this was a  
19 new or changed practice is evident from examining the staffing and apparatus  
20 configurations from 2014-2016 and 2016-2018. From 2014-2016, E-1 had a minimum  
21 staffing of two and became eligible for a callback whenever its staffing was reduced to  
22 one as a result of the need to cross-staff R-2 with one of the E-1 firefighters. In 2016,  
23 although E-1 was staffed with one firefighter, the 2016 Guidelines reflect that it would

1 always respond to a fire call with at least two other firefighters, either on E-1, or in tandem  
2 with other apparatus, even if one or both rescue vehicles were committed. Even for EMS  
3 calls or non-fire calls, the L-1 firefighter would ride with E-1.

4 We agree with the Hearing Officer that this changed when Murphy issued the 2018  
5 Memos that reassigned L-1 and R-1 to Station 3, and contemplated a scenario when Car  
6 3-2 and Rescue 1 could be out on calls at the same time, but E-1 would be ineligible for  
7 a callback. Under these circumstances, the firefighter on E-1 would have to respond alone  
8 to a call coming into Station 1. Because Murphy acknowledged that he had been notified  
9 of situations where Car 3-2 did not remain in the station when R-1 was out, we agree with  
10 the Hearing Officer that the complement of staff and apparatus responding to calls as  
11 described in the 2018 memos constitutes a change from previous years.

12 The Town spends the remainder of its supplementary statement focusing on the  
13 absence of any evidence that a single firefighter on E-1 had, in fact, ever been the sole  
14 responder to a call. It therefore argues that the Union had failed to demonstrate that this  
15 change had a significant effect on firefighter safety that triggered its duty to bargain under  
16 decision principles articulated in Town of Bridgewater and related decisions. The Town  
17 states that in the absence of a showing of actual harm or safety concerns, the Hearing  
18 Officer's decision is based on purely hypothetical concerns and should be overturned.

19 We disagree. First, in making this argument, the Town continues to argue that  
20 command personnel from Car 3-2 would be available to respond with E-1. The Hearing  
21 Officer properly rejected this argument for the reasons noted above, and we therefore do  
22 not consider it. Moreover, as indicated above, the Law requires employers to give notice  
23 and an opportunity to bargain over mandatory subjects of bargaining *prior* to

1 implementing contemplated changes. Particularly when it comes to matters of safety, to  
2 excuse an employer from its pre-implementation bargaining obligation simply because no  
3 dire consequences had yet flowed from its decision would be contrary to the duty to  
4 bargain in good faith and expose bargaining unit members to risk that might have been  
5 avoidable through pre-implementation bargaining. Here, based on expert testimony and  
6 the exhibits in the record, the Hearing Officer analyzed how the changes outlined in the  
7 2018 memos could negatively impact bargaining unit members' safety when responding  
8 to fires. We find the factual and legal analysis thorough and well-supported, and we adopt  
9 it in its entirety.<sup>10</sup>

10 Although the Employer argues that the Hearing Officer ignored that other  
11 apparatus could meet a single firefighter on E-1 at a fire scene, thereby eliminating safety  
12 concerns, we note unlike the staffing/deployment described in 2014 and 2016, Memos  
13 18-06 and 18-22 made no provision for this, instead stating that four personnel would  
14 respond to a fire unless they were "otherwise committed." The Employer also argues that  
15 the Hearing Officer's decision would result in a bargaining obligation every time that any  
16 manning was reduced. This is not the case. The CERB stated in Town of Reading, 9

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<sup>10</sup> There is no merit to the Town's argument that the Hearing Officer veered from the allegations contained in the complaint and charge by framing the issue as whether the Town violated the Law by *reducing the number of firefighters assigned*" to an apparatus when responding to an alarm without bargaining as opposed to the manner in which the violation was pleaded in the Complaint, which alleged that "the Town has failed to bargain in good faith by reducing the number of firefighter staffing Engine 1 *when it responded to an alarm . . .*" (Emphasis in Town's brief). The Town argued that this analysis shifted the focus from the number of firefighters actually responding to an alarm to the number of firefighters assigned to an apparatus before it responded to the alarm. This is merely a matter of semantics. Both the Decision and the Order focus on the minimum number of firefighters "*responding* to an alarm from Station 1" and not merely those assigned to an apparatus.

1 MLC 1730, 1739, MUP-4541 (A.O. March 29, 1983) that it had “carefully avoided adopting  
2 a per se rule that minimum manning per piece of equipment is a mandatory subject of  
3 bargaining.” It cautioned that each case must be based solely on the record presented  
4 in that case, and that different statistics could present significant questions of safety and  
5 workload that could lead to different conclusions. Id. at 1740. Here, the Hearing Officer  
6 carefully analyzed the facts before him. His holding was therefore limited to those facts,  
7 as is ours.

8 The Town also suggests that the Hearing Officer’s decision ignored improvements  
9 in response times to medical calls that resulted from its changes. However, whether or  
10 not an employer has a bargaining obligation in this context is not a function of the benefits  
11 of the staffing change, but rather whether the composition of the firefighting team  
12 expected to operate equipment at the scene of a fire raises a question of safety. City of  
13 Newton, 4 MLC at 1283-1284. For all the reasons stated above, and in the Hearing  
14 Officer’s decision, we agree that the unilateral reduction in the minimum number of  
15 firefighters responding to an alarm from Station 1 directly and significantly affected  
16 firefighter safety. Because there is no dispute that the Town made this change without  
17 first giving the Union prior notice and an opportunity to bargain, we conclude that it  
18 violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law.

19 Conclusion

20 We affirm the Hearing Officer’s decision in its entirety and issue the following  
21 Order.

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

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- 1. Cease and desist from:
  - a. Refusing to bargain in good faith by unilaterally reducing the minimum number of firefighters responding to an alarm from Station 1, including Engine 1, without giving the Union prior notice and an opportunity to bargain to resolution or impasse about the decision and its impacts.
  - b. In any like or similar manner interfering with, restraining, or coercing employees in the exercise of their rights under the Law.
- 2. Take the following affirmative action that will effectuate the purpose of the Law:
  - a. Upon demand, bargain to resolution or impasse prior to reducing the minimum number of firefighters responding to an alarm from Station 1, including the staffing on Engine 1 when responding to an alarm.
  - b. 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 a different apparatus.
  - c. Post immediately in all conspicuous places where members of the Union's bargaining unit usually congregate, or where notices are usually posted, including electronically if the Town customarily communicates with these members via intranet or email, and display for a period of thirty (30) days thereafter, signed copies of the attached Notice to Employees.
  - d. Notify the DLR in writing of steps taken to comply with this Order within thirty (30) days of receipt.

**SO ORDERED.**

COMMONWEALTH OF MASSACHUSETTS  
COMMONWEALTH EMPLOYMENT RELATIONS BOARD

*Marjorie F Wittner*

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MARJORIE F. WITTNER, CHAIR

*Joan Ackerstein*

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JOAN ACKERSTEIN, CERB MEMBER



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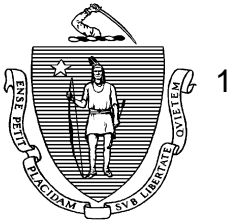
KELLY STRONG, CERB MEMBER

**APPEAL RIGHTS**

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Pursuant to M.G.L. c. 150E, Section 11, decisions of the Commonwealth Employment Relations Board are appealable to the Appeals Court of the Commonwealth of Massachusetts. To obtain such an appeal, the appealing party must file a notice of appeal with the Commonwealth Employment Relations Board within thirty (30) days of receipt of this decision. No Notice of Appeal need be filed with the Appeals Court.





# 1 NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE COMMONWEALTH EMPLOYMENT  
RELATIONS BOARD  
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS

The Commonwealth Employment Relations Board (CERB) has affirmed a Department of Labor Relations (DLR) Hearing Officer decision holding 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 a different apparatus.

\_\_\_\_\_  
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).