

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

JOSEPH E. BRENNAN
ATTORNEY GENERAL



RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

April 4, 1977

Honorable James Wilfong
House of Representatives
State House
Augusta, Maine 04333

Dear Representative Wilfong:

On March 24, 1977, you requested an opinion regarding volunteer firefighters and collective bargaining. Your question, as we understand it, is whether the collective bargaining provisions of Title 26 M.R.S.A. Ch. 9-A extend to volunteer firefighters. We conclude that these provisions do not reach volunteer firefighters, as we understand that term.

It is assumed that the term "volunteer firefighter" means an individual who serves the community as a firefighter as he is able and willing to serve. He may or may not be compensated for actual service, but he has no contractual obligation to the community to serve. Assuming that volunteer firefighters are employees of their communities while actually rendering service, they would appear to fall within the statutory exception which excludes from the definition of public employee, ". . . temporary, . . . or on-call employee(s)." 26 M.R.S.A. § 962-6-G. Volunteer firefighters would seem to be temporary employees in two senses: they serve at their own will and are employees, if at all, only for the time during which they actually render service. Even if they have obligatory stand-by or on-call duty by virtue of membership in a volunteer fire association, the duty is to the organization and only indirectly to the community. In any event, on-call employees are outside the scope of the definition of public employees. Under 26 M.R.S.A. § 963, the right to bargain collectively is extended only to "public employees or a group of public employees."

You will note that under § 3776 of Title 30, Ch. 228, the Municipal Fire Protection Act, volunteer firefighters "actually engaged in firefighting operations" are to be accorded "the same

Hon. James Wilfong

April 4, 1977

Page 2

privileges and immunities as the municipality or employees thereof" which they serve. The question might be raised whether the right to bargain collectively is one of those privileges. Section 3667 in terms appears to be limited to instances of potential tort liability for damage caused by firefighting operations. Even if it were to be more broadly read to include, for instance, collective bargaining rights, under the general interpretation of a clause according to one group the same privileges and immunities enjoyed by another group, volunteer firefighters and municipal employees would have to be treated similarly. It should be noted that for the purposes of the Municipal Public Employees Labor Relations Law, any municipal employee who was temporary or on-call would fall outside the definition of public employee and would not enjoy the rights accorded by the Act. Thus, the treatment of volunteer firefighters would not be different from that of municipal employees similarly situated.

Your request suggested the possibility of a special collective bargaining law for volunteer firefighters passed by the 107th Legislature. We have found no such law.

Sincerely,



DONALD G. ALEXANDER
Deputy Attorney General

DGA:jg